JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(September,2020)

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1. *Ilangovan v.State of Tamil Nadu Rep. by Inspector of Police, 2020 SCC OnLine SC 762*

Decided on: 02.09.2020

Bench: 1. Hon'ble Mr. Justice **N.V. Ramana**
2. Hon'ble Mr. Justice S. Abdul Nazeer
3. Hon'ble Mr. Justice Surya Kant

(There is no such principle of law, that requires automatic acquittal of an accused because of the acquittal of the co-accused)

Facts

The brother of the complainant allegedly had an illicit relationship with the daughter of accused no. 4, which resulted in enmity between the two families. On 26.01.2002, the accused persons allegedly came in front of the house of the complainant and a fight took place between the two groups. The present appellant attacked the complainant with an iron rod, while the other 3 accused allegedly attacked other members of the family with sticks. The deceased, on hearing the noise, attempted to intervene, and was attacked by the present appellant on the head with the iron rod, which ultimately resulted in her death.

The Trial Court convicted the appellant under Sections 324 and 302, IPC and sentenced him to 2 years rigorous imprisonment and imprisonment for life, respectively. The other accused were acquitted as the charges against them were not proved beyond reasonable doubt. On appeal, the High Court modified the conviction under Section 302, IPC, and sentence imposed thereunder, to one under Section 304 Part II, IPC, on the ground that the case of the appellant fell under Exception 4 to Section 300, IPC, that is, there was a free fight between the two parties

Decision and Observations

The relevant extract of the decision are as follows:

> **8.** [...] However, there is no such principle of law, that requires automatic acquittal of an accused because of the acquittal of the co-accused. The same is a settled position of law, which has been reiterated by this Court in numerous judgments, including the case of *Yanob Sheikh* v. *State of West Bengal*, (2013) 6 SCC 428, wherein it was held-
>
> "**24.** ... **Where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused**. It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other."
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> ***(emphasis supplied)***

11. The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The counsel is, in effect, relying on the legal maxim "*falsus in uno, falsus in omnibus*", which Indian Courts have always been reluctant to apply. A three Judge Bench of this Court, as far back as in 1957, in *Nisar Ali* v. *The State of Uttar Pradesh*, AIR 1957 SC 366 held on this point as follows:

"**9.** It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim *falsus in unefalsus in omnibus* was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. **This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded**. One American author has stated:

"...the maxim is in itself worthless; first in point of validity ... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is a superfluous form of words. It is also in practice pernicious...." [Wigmore on Evidence, Vol. III, para 1008]

10. The **doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not what may be called "a mandatory rule of evidence**"."

(emphasis supplied)

12. This principle has been consistently followed by this Court, most recently in *Rohtas* v. *State of Haryana*, (2019) 10 SCC 554 and needs no reiteration.

The Apex Court concluded:

13. The Trial Court, as mentioned above, has given specific reasons for disbelieving the testimony of the witnesses with respect to the co-accused, and extending the benefit of doubt to them, while convicting the appellant on the strength of the evidence against him. We find no infirmity in the approach of the Trial Court.

2. ***Bandekar Brothers Pvt. Ltd. and Another v. Prasad VassudevKeni, etc., 2020 SCC OnLine SC 707***

Decided on: 02.09.2020
Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice Navin Sinha

(If in the course of the same transaction two separate offences are made out, for one of which Section 195 of the CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the CrPC must be followed)

Facts

Accused No. 1 in the aforesaid complaints is a proprietary concern of the late V.G. Quenim, based in Goa, which is engaged in the business of producing, processing and sale of iron ore. Accused Nos. 2 and 3 are his son and wife respectively, who are the co-proprietors of M/s. V.G. Quenim, the aforesaid V.G. Quenim having expired on 20.07.2007. M/s. V.G. Quenim had shared a business relationship with the Appellants since the year 1990. However, disputes arose between the parties, as a result of which four suits, being Suit Nos. 7, 8, 14 and 21 of 2000/A, were filed by the Appellants against M/s. V.G. Quenim before the Civil Court at Bacholim. A fifth suit, being Suit No. 1/2003/A, was filed by the late V.G. Quenim against the Appellants, which was withdrawn on 01.10.2007 unconditionally. The Respondents filed their Written Statements and Counter Claims in the said suits filed by the Appellants.

After withdrawal of the fifth suit, these criminal complaints were filed, inasmuch as the Appellants contended that in these proceedings, the Respondent/Accused had given false evidence, and had forged debit notes and made false entries in books of accounts. By two orders dated 01.10.2009, the learned Additional Sessions Judge-I in North Goa at Panaji, returned the complaints, stating that these complaints could only be filed in the Court before whom such proceedings were pending in which the alleged offences were committed. The complaints were then filed before the learned Judicial Magistrate First Class at Bicholim.

After various depositions had been made by witnesses before the said Magistrate, an application dated 09.05.2011 was filed, in which the Appellants prayed, relying upon the Supreme Court judgment in *Iqbal Singh Marwah* v. *Meenakshi Marwah* (2005) 4 SCC 370, that the said complaints be converted to private complaints. This was done by two orders of the Judicial Magistrate dated 13.10.2011, who after converting the said complaints into private complaints, issued process under Sections 191, 192 and 193 of the IPC. It is important to note that the Appellants/complainants did not file any revision or other proceedings to challenge the issue of process under the aforesaid sections of the IPC.

The Respondents, however, filed revision applications against the said orders, in which it was stated that the bar contained in Section 195(1)(b)(i) of the CrPC, and the procedure under

Section 340 CrPC being mandatory, could not be circumvented, and the complaints read as a whole would clearly show that offences under Sections 191 to 193 of the IPC alone were made out, as a result of which the drill under the aforesaid sections of the CrPC would have to be observed. In a counter-affidavit dated 08.10.2012 filed to the aforesaid revision applications, the Appellants, for the first time, took the plea that offences under Sections 463, 464, 465, 467, 468, 469, 471, 474, 475 and 477-A of the IPC were also made out against the Respondents, as a result of which a private complaint would be maintainable. The learned Additional Sessions Judge, Mapusa, by his judgment dated 05.03.2013, held that the bar under Section 195(1)(b)(i) of the CrPC was attracted, and that the provisions under Section 340 of the CrPC, which were mandatory, had to be followed. Since this was not done, the revision petitions were allowed and the complaints quashed. *Iqbal Singh Marwah* (supra) was distinguished, stating that it was a judgment which concerned itself with Section 195(1)(b)(ii) and not Section 195(1)(b)(i) of the CrPC, and would, therefore, have no application in the facts of this case.

Writ petitions filed by the Appellants against the aforesaid judgment proved unsuccessful, the High Court dismissing the aforesaid writ petitions by the impugned judgment dated 22.11.2013.

Decision and Observations

The relevant paragraphs of the judgment are as follows:

> **13.** The point forcefully argued by the learned counsel on behalf of the Appellants is that his clients, being victims of forgery, ought not to be rendered remediless in respect of the acts of forgery which are committed before they are used as evidence in a court proceeding, and that therefore, a private complaint would be maintainable in the fact circumstance mentioned in the two criminal complaints referred to hereinabove. The Court has thus to steer between two opposite poles of a spectrum - the "yin" being the protection of a person from frivolous criminal complaints, and the "yang" being the right of a victim to ventilate his grievance and have the Court try the offence of forgery by means of a private complaint. In order to appreciate whether this case falls within the category of avoiding frivolous litigation, or whether it falls within the individual's right to pursue a private complaint, we must needs refer to several decisions of this Court.
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> **19.** At this stage, it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the CrPC. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of the CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence punishable under these sections does not have to be committed

only *in* any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court.

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22. Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words "or in relation to", making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is *custodia legis*, and not an offence that may have occurred prior to the document being introduced in court proceedings. Indeed, it is this distinction that is vital in understanding the sheet anchor of the Appellant's case namely, this Court's judgment in *Iqbal Singh Marwah* (supra).

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29. Thus, *Iqbal Singh Marwah* (supra) is clear authority for the proposition that in cases which fall under Section 195(1)(b)(ii) of the CrPC, the document that is said to have been forged should be *custodia legis* after which the forgery takes place. That this judgment has been followed in several subsequent judgments is beyond cavil - see *Mahesh Chand Sharma* v. *State of U.P.* (2009) 15 SCC 519 (at paragraphs 21-23); *C.P. Subhash* v. *Inspector of Police, Chennai* (2013) 11 SCC 559 (at paragraphs 12 and 13); *KishorbhaiGandubhaiPethani* v. *State of Gujarat* (2014) 13 SCC 539 (at paragraphs 14 and 15) and *Vishnu ChandruGaonkar* v. *N.M. Dessai* (2018) 5 SCC 422 (at paragraphs 14 and 17).

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33. The aforesaid judgments clearly lay down that when Section 195(1)(b)(i) of the CrPC is attracted, the ratio of *Iqbal Singh Marwah* (supra), which approved *SachidaNand Singh* v. *State of Bihar* (1998) 2 SCC 493, is not attracted, and that therefore, if false evidence is created outside the Court premises attracting Sections 191/192 of the IPC, the aforesaid ratio would not apply so as to validate a private complaint filed for offences made out under these sections.

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42. A perusal of the aforesaid complaints leaves no manner of doubt that the first complaint attracts the provisions of Section 191 of the IPC, and the second complaint attracts the provisions of Section 192 of the IPC. However, for the first time in the counter-affidavit to the revision application that was filed by the Respondents before the learned Sessions Judge, the Appellants stated:

"II. The said application is liable/ought to be dismissed in as much as a perusal of the complaint and its accompaniments not only make out a case under section 192/193 IPC but the same also leads to a conclusion that the offences under sections 463, 464, 465, 467, 468, 469, 471, 474, 475 & 477-A of IPC have also been made out and as such, the accused persons be proceeded accordingly.

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V. The said application deserves to be dismissed because the law relating to the bar engrafted in section 195(1)(b)(ii) of the Code of Criminal Procedure is not applicable to a case where forgery of the document was committed before the document was produced in the court. As such, the documents forgery of which have been committed were not the custodia legis."

43. There is no doubt that realising the difficulties in their way, the Appellants suddenly changed course, and applied to the Magistrate *vide* application dated 09.05.2011 to convert what was a properly drafted application under Section 195 read with section 340 of the CrPC, into a private complaint. A reading of the two complaints leaves no manner of doubt that they have been drafted keeping the ingredients of Sections 191 and 192 of the IPC alone in mind - the only argument from the Appellants now being that since certain debit notes were forged prior to their being introduced in the court proceedings, not only would the ratio in *Iqbal Singh Marwah* (supra) apply, but also that the ingredients of the "forgery" sections of the IPC have now been made out. While it is important to bear in mind that in genuine cases where the ingredients of forgery as defined in Section 463 of the IPC have been made out, and that therefore, a private complainant should not be left remediless, yet it is equally important to bear in mind the admonition laid down in an early judgment of this Court. Thus, in *Basir-ul-Huq* v. *State of West Bengal* (1953) SCR 836, this Court cautioned (at page 846):

"Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it."

44. Equally important to remember is that ***if in the course of the same transaction two separate offences are made out, for one of which Section 195 of the CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the CrPC must be followed***. .....

3. ***Raghav Gupta v. State (NCT of Delhi) and Another, 2020 SCC OnLine SC 713***

Decided on:

Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(If relevant information under Rule 32(e)of the Prevention of Food Adulteration Rules, 1955 with regard to the lot/code/batch identification to facilitate it being traced to the manufacturer are available in the barcode and can be decoded by a barcode scanner, prosecution for violation of Rule 32(e) is not sustainable)

Facts

The appellant questions his prosecution under Rule 32(e) of the Prevention of Food Adulteration Rules, 1955 (hereinafter called as "the Rules") framed under the Prevention of Food Adulteration Act, 1954 (in short "the Act").

The Food Inspector purchased sealed samples of Snapple Juice Drink on 03.05.2011 for analysis. The report of the Public Analyst dated 30.05.2011, held that the sample confirmed to standards but was misbranded being in violation of Rule 32(e), lacking in necessary declaration of lot/batch numbers. The appellant was stated to be one of the Directors of M/s. V & V Beverages Pvt. Ltd. which imported the drink from foreign manufacturer Schweppes International Rye Brook duly cleared by the Customs department.

A complaint case no. 4 of 2012 was lodged by the Food Inspector on basis of the report dated 30.05.2011. Notices were issued to the appellant under Section 251 of the Criminal Procedure Code (hereinafter referred to as 'the Code'). The appellant preferred an application for discharge under Section 294 of the Code read with Section 192 of the Act inter alia on the ground that the product had the necessary barcode on it and which contained all the relevant information as required by Rule 32(e) such as batch no./code no./lot no. The application having been rejected, the appellant raised the same ground before the High Court which also failed to consider the same

Decision and Observations

> **7.** That the barcode was available on the sample is not in dispute. In view of the fact that the relevant information under Rule 32(e) with regard to the lot/code/batch identification to facilitate it being traced to the manufacturer are available in the barcode and which can be decoded by a barcode scanner, we are of the considered opinion that no useful purpose is going to be served by allowing the present prosecution to continue and it will be an abuse of the process of law, causing sheer waste of time, causing unnecessary harassment to the appellant, if the prosecution is allowed to continue.

4. *New India Assurance Company Limited v. Somwati and Others, 2020 SCC OnLine SC 720*

Decided on: 07.09.2020
Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy

(The judgment of *Pranay Sethi* cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife in Motor Accident cases.

No compensation can be awarded under the head 'loss of love and affection'.)

Facts

All these appeals have been filed by three Insurance Companies, i.e., New India Assurance Company Limited, Cholamandalam MS General Insurance Company Ltd. and The Oriental Insurance Company Ltd. questioning the judgments of the High Courts arising out of the award by Motor Accident Claims Tribunal (MACT) with regard to the compensation awarded in favour of the claimants under two heads, i.e., "Loss of Consortium" and "loss of love and affection."

Issue

With regard to 'consortium', the question is as to whether it is only the wife who is entitled for consortium or the consortium can be awarded to children and parents also.

Decision and Observations

A three-Judge Bench in *United India Insurance Company Ltd.* v. *Satinder Kaur alias Satvinder Kaur*, 2020 SCC OnLine SC 410, from paragraph 53 to 65, dealt with three conventional heads i.e. Loss of estate, Loss of consortium and Funeral expenses. The Three-Judge Bench in the above case approved the comprehensive interpretation given to the expression 'consortium' to include spousal consortium, parental consortium as well as filial consortium. Three-Judge Bench however further laid down that 'loss of love and affection' is comprehended in 'loss of consortium', hence, there is no justification to award compensation towards 'loss of love and affection' as a separate head.

> **35.** The Constitution Bench in *Pranay Sethi* has also not under conventional head included any compensation towards 'loss of love and affection' which have been now further reiterated by three-Judge Bench in *United India Insurance Company Ltd.* (supra). It is thus now authoritatively well settled that no compensation can be awarded under the head 'loss of love and affection'.

38. Learned counsel for the appellant has submitted that *Pranay Sethi* has only referred to spousal consortium and no other consortium was referred to in the judgment of *Pranay Sethi*, hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in *Pranay Sethi* has referred to amount of Rs. 40,000/- to the 'loss of consortium' but the Constitution Bench had not addressed the issue as to whether consortium of Rs. 40,000/- is only payable as spousal consortium. The judgment of *Pranay Sethi* cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.

39. The Three-Judge Bench in *United India Insurance Company Ltd.* (Supra) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.

5. ***Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI and Another, 2020 SCC OnLine SC 739***

Decided on: 08.09.2020
Bench: 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(In case of exoneration in adjudication proceedings on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases)

Facts

The case arises out of an FIR that was registered on 09.12.2009 as regards a MSME Receivable Finance Scheme operated by the Small Industries Development Bank of India (SIDBI). It was found that since some vendors were complaining of delay in getting their payments, SIDBI, in consultation with Tata Motors Limited, advised the vendors of Tata Motors Limited to furnish RTGS details for remittance of funds. It was found that for making payments in RTGS for various purchases made by Tata Motors Limited from one Ranflex India Pvt. Ltd. (hereinafter referred to as "vendor"), 12 payments amounting to Rs. 1,64,17,551/- (Rupees one crore sixty four lakhs seventeen thousand five hundred fifty one only) were made through RTGS by SIDBI in the vendor's account with Federal Bank, Thriupporur. Ultimately, SIDBI was informed by the vendor that it has an account with Central Bank, Bangalore and not with Federal Bank, Thriupporur. On account of this diversion of funds, an FIR was lodged in which a number of accused persons were arrested. We are concerned with the role of the appellant who is Accused no. 9 in the aforesaid FIR.

A charge-sheet was then filed on 26.07.2011 in the Court of Special Judge, CBI cases in which it was alleged that the appellant had received an email on 25.05.2009 containing the RTGS details for the account with Federal Bank, Thripporur, which he then forwarded to Accused No. 5 (Muthukumar) who is said to be the kingpin involved in this crime and is since absconding. Apparently, based on Muthukumar's approval, the appellant then signed various cheques which were forwarded to other accounts.

By an order dated 27.06.2012 passed by the learned Special Judge, CBI (ACB), Pune, it was found that since no sanction was taken under the Prevention of Corruption Act, offences under that Act cannot, therefore, be proceeded with against this accused and he was discharged to that extent. So far as sanction under Section 197 of Cr.P.C is concerned, the Special Judge came to the conclusion that there was no need for sanction in the facts of this

case. Finding that there was a prima facie case made out against the appellant, the Special Judge refused to discharge the appellant from the offences under the IPC.

By the impugned judgment dated 11.07.2014, the High Court agreed with the learned Special Judge that there was no need for sanction under Section 197 Cr.P.C.

Decision and Observations

In ***P.S. Rajya v. State of Bihar***, (1996) 9 SCC 1, the question before the Court was posed as follows:—

> "**3.** The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(*e*) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission."

In ***Radheshyam Kejriwal v. State of West Bengal***, (2011) 3 SCC 581, after referring to various judgments, the Apex Court culled out the ratio of those decisions in paragraph 38 as follows:—

> "**38.** The ratio which can be culled out from these decisions can broadly be stated as follows:
> (*i*) Adjudication proceedings and criminal prosecution can be launched simultaneously;
> (*ii*) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
> (*iii*) Adjudication proceedings and criminal proceedings are independent in nature to each other;
> (*iv*) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
> (*v*.) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
> (*vi*) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
> (*vii*) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."
>
> **39.** In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

The Apex Court in this judgment held as follows:

15. From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.

16. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22.12.2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.

6. *Stalin v. State Represented by the Inspector of Police, 2020 SCC OnLine SC 723*

Decided on: 09.09.2020

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out.

When there are definite evidence proving an incident and eye-witness account prove the role of accused, absence in proving of the motive by prosecution does not affect the prosecution case.)

Facts

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.01.2017 passed by the Madurai Bench of the High Court of Judicature at Madras in Criminal Appeal (MD) No. 122 of 2016 by which the High Court has dismissed the said appeal and has confirmed the Judgment and Order of conviction and sentence passed by the learned IV Additional District and Sessions Court, Tirunelveli in Sessions Case No. 354 of 2012, convicting the appellant herein - the original accused for the offence punishable under Section 302 IPC, the original accused has preferred the present appeal.

At the outset, it is required to be noted that vide order dated 01.04.2019, this Court has issued a notice in the present appeal limited to the extent as to whether the conviction ought to have been under Section 304 Part II or Section 302 IPC. Therefore, this Court is required to consider whether the appellant herein - the original accused has been rightly convicted for the offence punishable under Section 302 IPC or is to be convicted for any other lesser offence, viz. Section 304 Part II IPC.

Decision and Observations

It was argued on behalf of the appellant – accused that as it is a case of single injury, Section 302 IPC shall not be attracted and the case would fall under Section 304 Part II IPC. On this point the Court referred to its decisions in*Mahesh Balmiki* **v.** *State of M.P.,* **(2000) 1 SCC 319;***DhirajbhaiGorakhbhai Nayak* **v.** *State of Gujarat,* (2003) 9 SCC 322;*PulicherlaNagaraju* **v.** *State of A.P.,* (2006) 11 SCC 444;*SingapaguAnjaiah* **v.** *State of A.P.*, (2010) 9 SCC 799;*State of Rajasthan* **v.** *Kanhaiya Lal,* (2019) 5 SCC 639 ; *BavisettiKameswara Rao* **v.** *State of A.P.,* (2008) 15 SCC 725 and stated the following:

> **19.** From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. ***It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out***. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence.

It was argued on behalf of the accused that the motive alleged is of the incident prior to four months of the present incident. On this point, the Apex Court referred to case of ***Jafel Biswas* v. *State of West Bengal***, (2019) 12 SCC 560, wherein it was said that the absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. ***When there are definite evidence proving an incident and eye-witness account prove the role of accused, absence in proving of the motive by prosecution does not affect the prosecution case.***

Further, the Apex Court concluded:

> **24.** Now, the next question which is posed for consideration of this Court is whether the case would fall under Section 304 Part II IPC? Considering the totality of the facts and circumstances of the case and more particularly that the accused inflicted the blow with a weapon like knife and he inflicted the injury on the deceased on the vital part of the body, it is to be presumed that causing such bodily injury was likely to cause the death. Therefore, the case would fall under Section 304 Part I of the IPC and not under Section 304 Part II of the IPC.
>
> **25.** In view of the above and for the reasons stated above, the appeal is allowed in part. The impugned judgment and order passed by the High Court confirming the conviction of the accused for the offence punishable under Section 302 IPC is hereby modified from that of under Section 302 IPC to Section 304 Part I IPC. The accused is held guilty for the offence punishable under Section 304 Part I IPC and sentenced to undergo 8 years R.I. with a fine of Rs. 10,000/- and, in default, to further undergo one year R.I. The appeal is allowed to the aforesaid extent.

7. *Rizwan Khan v. State of Chhattisgarh, 2020 SCC OnLine SC 730*

Decided on: 10.09.2020

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M. R. Shah

(To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial.)

Facts

The facts leading to the present appeal are, that the appellant - accused no. 1 and one another - Pukhraj were charged for the offence under Section 20(b)(ii)(B) of the NDPS Act, having in their possession 20 kg each prohibited Narcotic Substance - Ganja. As per the case of the prosecution, 20 kg of Ganja was recovered from the possession of the appellant from the motor cycle. Nothing objectionable was found from the person of the accused. Accused were informed about Section 50 of the NDPS Act through a notice and were also told about their legal rights that if they want their search was to be done either by a Gazetted Officer or Judicial Magistrate of First Class or any other investigating officer. After giving permission that the search can be conducted by any investigating officer, accused was asked to open the sack kept on his motor cycle and on opening the same, a bag of Ganja weighing 20kg was found. Panchnama was made of seizure. Samples of narcotics recovered from the accused were tested by smelling, burning and tasting it and was found to be Ganja. An identification panchnama was prepared. The Ganja recovered from the accused was about 20 kg, out of which two packets each of about 100 gm were made for sampling and then the weight panchnama was made. The samples were sealed and an entry was made in the seizure list on which sample seal was marked. Samples were marked as 'B1' and 'B2' and rest of the seized substance was marked as 'B'. The accused was arrested along with the other accused from whom also the contraband narcotic substance was found. After conclusion of the trial and on appreciation of the evidence on record, the learned Special Judge held the accused guilty for the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo five years rigorous imprisonment with fine of Rs. 25,000/-, in default, to undergo further one year's rigorous imprisonment.

Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, the appellant herein preferred an appeal before the High Court. Before the High Court, one of the main submissions on behalf of the appellant was that as ASI J.K. Sen (PW4), who seized the articles and lodged FIR also participated in investigation and therefore the complainant and the investigator being the

same, in view of the decision of this Court in the case of *Mohan Lal* v. *State of Punjab* reported in (2018) 17 SCC 627, the accused is entitled to acquittal.

After having noted that ASI J.K. Sen (PW4) only seized the articles and lodged the FIR and thereafter no further investigation was carried out by him and the further investigation was carried out by PW5 - Ashish Shukla, the decision in the case of *Mohan Lal* (supra) shall not be applicable. After considering the submissions made on behalf of the respective parties, by the impugned judgment and order, the High Court has dismissed the said appeal preferred by accused no. 1 and has confirmed the judgment and order of conviction and sentence passed by the learned Special Judge. Hence, the present appeal.

Decision and Observations

It was submitted on behalf of the accused that out of the eight witnesses examined, the independent witnesses have not supported the prosecution story and were declared hostile.On the point of the non- corroboration by the independent witness of the testimony of the official witness, the Apex court referred to ***Surinder Kumar* v. *State of Punjab,*** (2020) 2 SCC 563 and stated the following:

> **23.** It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case, [see *State of Himachal Pradesh* v. *Pradeep Kumar*, (2018) 13 SCC 808].

Further, it has been submitted on behalf of the accused that the ownership of the vehicle has not been established. On this point, the Apex Court was of the following opinion:

> **30.** Now so far as the submission on behalf of the accused that the ownership of the motor cycle (vehicle) has not been established and proved and/or that the vehicle has not be recovered is concerned, it is required to be noted that in the present case the appellant and the other accused persons were found on the spot with the contraband articles in the vehicle. ***To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial***. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act. Therefore, merely because of the ownership of the vehicle is not established and proved and/or the vehicle is not recovered subsequently, trial is not vitiated, while the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot.

8. *Pravin Kumar v. Union of India and Others,2020 SCC OnLine SC 729*

Decided on: 10.09.2020

Bench: 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice S. Abdul Nazeer
3. Hon'ble Mr. Justice Surya Kant

(Unlike in criminal cases, in matters of disciplinary proceedings Courts only interfere on grounds of proportionality when they find that the punishment awarded is inordinate to a high degree, or if the conscience of the Court itself is shocked. Thus, whereas imposition of major penalty (like dismissal, removal, or reduction in rank) would be discriminatory and impermissible for trivial misdeeds; but for grave offences there is a need to send a clear message of deterrence to the society. Charges such as corruption, misappropriation and gross indiscipline are prime examples of the latter category, and ought to be dealt with strictly.)

Facts

The present civil appeal is directed against the order dated 05.05.2009 passed by a Division Bench of the High Court of Bombay in WP No. 1001/2001, whereby appellant's plea for quashing disciplinary proceedings and setting-aside a dismissal order on charges of corruption and extra-constitutional conduct while employed as a paramilitary officer, was rejected.

Decision and Observations

The Apex Court deliberated upon few questions related to service jurisprudence in this matter as listed below:

Scope of Judicial Review in Service Matters

On this point the Apex court said, "The power of judicial review discharged byConstitutional Courts under Article 226 or 32, or when sitting in appeal under Article 136, is distinct from the appellate power exercised by a departmental appellate authority. It would be gainsaid that judicial review is an evaluation of the decision-making process, and not the merits of the decision itself. Judicial Review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice; or in case of bias or gross unreasonableness of

outcome." These principles were also elucidated upon in ***BC Chaturvedi v. Union of India***[1]and also reiterated in the following decisions :

(i) ***State of Tamil Nadu v. S Subramaniam***, (1996) 7 SCC 509.

(ii) ***Lalit Popli v. Canara Bank***, (2003) 3 SCC 583.

(iii) **Himachal Pradesh State Electricity Board Ltd. v. Mahesh Dahiya**, (2017) 1 SCC 768.

Appropriateness of procedure and Principles of Natural Justice

> **31.** Significant emphasis has been placed by the appellant on the fact that the enquiry officer put his own questions to the prosecution witness and that he cross-examined the witnesses brought forth by the defence. This, it is claimed, amounts to making the prosecutor the judge, in violation of the natural justice principle of "*nemo judex in sua causa*". However, such a plea is misplaced. ***It must be recognized that, under Section 165, Evidence Act, judges have the power to ask any question to any witness or party about any fact, in order to discover or to obtain proper proof of relevant facts. While strict rules of evidence are inapplicable to disciplinary proceedings, enquiry officers often put questions to witnesses in such proceedings in order to discover the truth. Indeed, it may be necessary to do such direct questioning in certain circumstances.*** Further, learned counsel for the appellant, except for making a bald allegation that the enquiry officer has questioned the witnesses, did not point to any specific question put by the officer that would indicate that he had exceeded his jurisdiction. No specific malice or bias has been alleged against the enquiry officer, and even during the enquiry no request had been made to seek a replacement; thus, evidencing how these objections are nothing but an afterthought.

Effect of criminal enquiry on disciplinary proceedings

In the present case, in addition to appointment of enquiry officer, the authorities also registered a criminal complaint with the CBI. After investigation, the CBI though did not find adequate material to launch criminal prosecution against the appellant. While discarding the appellant's contention that he should be exonerated in the present proceedings as no criminal chargesheet was filed by the CBI after enquiry, the Apex court said:

> **34.** It is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances.

[1] (1995) 6 SCC 749

Punishment and plea of leniency

36. In our considered opinion, the appellant's contention that the punishment of dismissal was disproportionate to the allegation of corruption, is without merit. It is a settled legal proposition that the Disciplinary Authority has wide discretion in imposing punishment for a proved delinquency, subject of course to principles of proportionality and fair play. Such requirements emanate from Article 14 itself, which prohibits State authorities from treating varying-degrees of misdeeds with the same broad stroke. Determination of such proportionality is a function of not only the action or intention of the delinquent, but must also factor the financial effect and societal implication of such misconduct. But ***unlike in criminal cases, in matters of disciplinary proceedings Courts only interfere on grounds of proportionality when they find that the punishment awarded is inordinate to a high degree, or if the conscience of the Court itself is shocked. Thus, whereas imposition of major penalty (like dismissal, removal, or reduction in rank) would be discriminatory and impermissible for trivial misdeeds; but for grave offences there is a need to send a clear message of deterrence to the society. Charges such as corruption, misappropriation and gross indiscipline are prime examples of the latter category, and ought to be dealt with strictly.***

37. Applying these guidelines to the facts of the case in hand, it is clear that the punishment of dismissal from service is far from disproportionate to the charges of corruption, fabrication and intimidation which have unanimously been proven against the appellant. Taking any other view would be an anathema to service jurisprudence. If we were to hold that systematic corruption and its blatant cover-up are inadequate to attract dismissal from service, then the purpose behind having such major penalties, which are explicitly provided for under Article 311 of the Constitution, would be obliterated.

9. *Jeet Ram v. Narcotics Control Bureau, Chandigarh, 2020 SCC OnLine SC 735*

Decided on: 15.09.2020

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M. R. Shah

(Principles relating to the jurisdiction of the High Court while deciding the appeal against acquittal reiterated.)

Facts

The appellant-accused was tried for a charge punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The Sessions Judge, Shimla by judgment dated 30.06.2003 acquitted the accused by recording a finding that the case of prosecution was not free from doubt and there were many infirmities in the case of the prosecution to hold that the accused was found to be in possession of *charas*, as alleged by the prosecution. The present appeal has been filed by the sole accused, in Sessions Trial No. 7-5/2002 of 2001 on the file of Sessions Judge, Shimla, aggrieved by the judgment of conviction dated 11.12.2012 and further order of sentencing the appellant, dated 31.12.2012, passed by the High Court of Himachal Pradesh, Shimla in Criminal Appeal No. 493 of 2003.It is mainly contended by learned counsel for the appellant that the well considered judgment of the trial court acquitting the appellant from the charge, is reversed by the High Court without recording cogent reasons. It is submitted that having regard to evidence on record, the view taken by the trial court was possible view, and even assuming that other view is possible, same is no ground to interfere with the judgment of the trial court.

Decision and Observations

The relevant extract from the judgment are as follows wherein the Apex Court dealt with the principles relating to the jurisdiction of the High Court while deciding the appeal against acquittal:

> **12.** For the aforesaid reasons, we are of the clear view that the view taken by the trial court was not at all possible, having regard to the evidence on record and findings which are erroneously recorded contrary to evidence on record were rightly set aside by the High Court. As submitted by the learned Additional Solicitor General appearing for the prosecution, it is always open to the appellate court to reappreciate the evidence, on which the order of acquittal is founded, and appellate

courts are vested with the powers to review and come to their own conclusion. The judgments in the case of *Sanwat Singh,*(1961) 3 SCR 120; *Damodarprasad Chandrikaprasad,*(1972) 1 SCC 107 ;and *Vinod Kumar,*(2015) 3 SCC 138;also support the case of the respondent. It is relevant to refer to paragraphs 17 and 18 of the judgment in the case of *Vinod Kumar*which read as under:

"17. Before we dwell upon the factual score whether the prosecution has proven the case to warrant a conviction, we think it apt to recapitulate the principles relating to the jurisdiction of the High Court while deciding the appeal against acquittal. In this context, reproducing a passage from *Jadunath Singh* v. *State of U.P.* [(1971) 3 SCC 577 : 1971 SCC (Cri) 726] would be profitable : (SCC p. 582, para 22)

> "*22*. This Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in *Sheo Swarup* v. *King Emperor* [(1933-34) 61 IA 398 : (1934) 40 LW 436 : AIR 1934 PC 227 (2)] and *Nur Mohammed* v. *King Emperor* [(1945) 58 LW 481 : AIR 1945 PC 151]. These two decisions have been consistently referred to in the judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals : see *Surajpal Singh* v. *State* [AIR 1952 SC 52 : 1952 Cri LJ 331] and *Sanwat Singh* v. *State of Rajasthan* [AIR 1961 SC 715 : (1961) 1 Cri LJ 766]."

Similar view has been expressed in *DamodarprasadChandrikaprasad* v. *State of Maharashtra* [(1972) 1 SCC 107 : 1972 SCC (Cri) 110], *Shivaji SahabraoBobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033], *State of Karnataka* v. *K. Gopalakrishna* [(2005) 9 SCC 291 : 2005 SCC (Cri) 1237], *Anil Kumar* v. *State of U.P.* [(2004) 13 SCC 257 : 2005 SCC (Cri) 178], *Girja Prasad* v. *State of M.P.* [(2007) 7 SCC 625 : (2007) 3 SCC (Cri) 475] and *S. Ganesan* v. *Rama Raghuraman* [(2011) 2 SCC 83 : (2011) 1 SCC (Cri) 607].

18. In this regard, we may fruitfully remind ourselves the principles culled out in *Chandrappa* v. *State of Karnataka* [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] : (SCC p. 432, para 42)

> "*42*. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(*2*) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(*3*) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(*5*) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

The Apex Court concluded that the judgment of the High Court does not suffer from any infirmity so as to interfere with the judgment of conviction.

10. Abhilasha v. Parkash and Others, 2020 SCC OnLine SC 736

Decided on: 15.09.2020

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(Whether a Hindu unmarried daughter is entitled to claim maintenance from her father under Section 125 Cr.P.C. only till she attains majority or she can claim maintenance till she remains unmarried)

Facts

Application under Section 125 Cr.P.C. was filed on 17.10.2002 by the applicants including the appellant as applicant No. 4 against Parkash, father of the appellant. The date of birth of the appellant being 26.04.1987, she was minor at the time when the application was filed. Learned Judicial Magistrate allowed the application of the appellant for maintenance till she attains majority. Learned Revisional Court has also affirmed the judgment with modification that appellant was entitled to receive maintenance till 26.04.2005 instead of 07.02.2005, which is date when she attains majority.

Issue

- Whether the appellant, who although had attained majority and is still unmarried is entitled to claim maintenance from her father in proceedings under Section 125 Cr.P.C. although she is not suffering from any physical or mental abnormality/injury?
- Whether the orders passed by learned Judicial Magistrate as well as learned Revisional Court limiting the claim of the appellant to claim maintenance till she attains majority on 26.04.2005 deserves to be set aside with direction to the respondent No. 1 to continue to give maintenance even after 26.04.2005 till the appellant remains unmarried?

Decision and Observations

> **32.** After enactment of Family Courts Act, 1984, a Family Court shall also have the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of Cr.P.C. relating to order for maintenance of wife, children and parents. Family Courts shall have the jurisdiction only with respect to city or town whose population exceeds one million, where there is no Family Courts, proceedings under Section 125

Cr.P.C. shall have to be before the Magistrate of the First Class. In an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under Section 20 of the Act, 1956 shall only be before the District Court or any subordinate Civil Court.

33. There may be a case where the Family Court has jurisdiction to decide a case under Section 125 Cr.P.C. as well as the suit under Section 20 of Act, 1956, in such eventuality, Family Court can exercise jurisdiction under both the Acts and in an appropriate case can grant maintenance to unmarried daughter even though she has become major enforcing her right under Section 20 of Act, 1956 so as to avoid multiplicity of proceedings as observed by this Court in the case of *Jagdish Jugtawat* (supra). However the Magistrate in exercise of powers under Section 125 Cr.P.C. cannot pass such order.

34. In the case before us, the application was filed under Section 125 Cr.P.C. before Judicial Magistrate First Class, Rewari who passed the order dated 16.02.2011. The Magistrate while deciding proceedings under Section 125 Cr.P.C. could not have exercised the jurisdiction under Section 20(3) of Act, 1956 and the submission of the appellant cannot be accepted that the Court below should have allowed the application for maintenance even though she has become major. We do not find any infirmity in the order of the Judicial Magistrate First Class as well as learned Additional Magistrate in not granting maintenance to appellant who had become major.

36. *The purpose and object of Section 125 Cr.P.C. as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 Cr.P.C. to determine the claims contemplated by Act, 1956*

11. Neetu Kumar Nagaich v. State of Rajasthan and Others , 2020 SCC OnLine SC 741

Decided on: 16.09.2020

Bench: 1. Hon'ble Mr. Justice R. F. Narima
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair)

Facts

The deceased aged 21 years, a 3rd year student at the National Law University Jodhpur, was the only son of the petitioner. She seeks justice to unravel the mystery of her son's homicidal death, dissatisfied with the investigation carried out by the State Police. The investigation has reached a dead end without identification of the offenders. The prayer in the writ petition is therefore for a mandamus to transfer the investigation in FIR No. 155 of 2018 dated 29.06.2018 registered under Section 302 of the Indian Penal Code at the Mandore Police Station, Jodhpur City, Rajasthan to the Central Bureau of Investigation.

Decision and Observations

Regarding power of the Constitutional court to direct reinvestigation, the Apex court stated the following:

> **9.** Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a proper and objective manner, as observed in *Kashmeri Devi* v. *Delhi Administration*, 1988 Supp SCC 482, fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. The power may also be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice direct de novo investigation as observed in *Babubhai* v. *State of Gujarat*, (2010) 12 SCC 254. ***A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair***. ...

The Apex court relied upon ***Bharati Tamang v. Union of India***, (2013) 15 SCC 578, wherein relief was sought in a writ petition to quash the charge sheet and the supplementary charge sheet coupled with a mandamus for a *de novo* investigation by a Special Investigation Team of competent persons having impeccable credentials to unravel the conspiracy. The relevant extract from the judgment are as follows:

> "38. Therefore, at times of need where this Court finds that an extraordinary or exceptional circumstance arise and the necessity for reinvestigation would be imperative in such extraordinary cases even de novo investigation can be ordered.
>
> *****
>
> 41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courtshave to deal with the same with an iron hand appropriately within the framework of law.
>
> *****
>
> 41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.
>
> *****
>
> 41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.
>
> 41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo."

Therefore, the Apex court concluded:

> **14.** We, therefore, set aside the closure report and direct a de novo investigation by a fresh team of investigators to be headed by a senior police officer of the State consisting of efficient personnel well conversant with use of modern investigation technology also. No officer who was part of the investigating team leading to the closure report shall be part of the team conducting de novo investigation. Much time has passed and there is undoubtedly an urgency in the matter now. We therefore direct that such fresh investigation must be concluded within a maximum period of two months from today and the police report be filed before the court concerned whereafter the matter shall proceed in accordance with law.

12. *Jugut Ram v. State of Chhattisgarh, 2020 SCC OnLine SC 742*

Decided on: 16.09.2020

Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter)

Facts

The appellant assails his conviction under Section 302 of the Indian Penal Code (in short, "IPC") and the consequent sentence of life imprisonment, upheld by the High Court. The Counsel for the appellant, submitted that all the four witnesses are related to the deceased. The two independent witnesses were not examined. The serological report with regard to the blood group of the deceased matching that alleged to have been found on the lathi have not been established. The recovery of the lathi has not been properly proved. The deceased did not die immediately, but succumbed to the injuries in the hospital. The assault was at spur of the moment with no premeditation. The appellant had also suffered injuries.

Decision and Observations

The relevant extract of the judgment are as follows:

> 7. ***A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter.*** In a case like the present, of an assault on the head with a lathi, it is always a question fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. The circumstances, manner of assault, nature and number of injuries will all have to be considered cumulatively to decipher the intention or knowledge as the case may be. We do not consider it necessary to dilate on the first principles laid down in this regard in *Virsa Singh* v. *The State of Punjab*, 1958 SCR 1495, which stand well established. Suffice it to notice from precedents that in *Joseph* v. *State of Kerala*, 1995 SCC (Cri) 165, the appellant dealt two blows on the head of the deceased. The deceased died two days later. The post mortem report found lacerated injury on the head and internal examination revealed fracture to the occipital bone extended up to the temporal bone. The High Court convicted the appellant under Section 302 IPC holding that the injury caused by the lathi was sufficient to cause death of the deceased. This Court observed as follows:
>
> > "3. ....The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient (*sic*). At the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the

> death. In which case the offence committed by him would be culpable homicide not amounting to murder. We accordingly set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under Section 304 Part II IPC and sentence him to five years' RI."

The Apex court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II, IPC after considering the following cases:

> **9.** In *Gurmukh Singh* v. *State of Haryana*, (2009) 15 SCC 635, the deceased died three days later after an assault on the head with a lathi opined to be sufficient in the ordinary course of nature to cause death. Holding that the assault was made on the spur of the moment without premeditation the conviction was altered from one under Section 302 to Section 304 Part II and a sentence of seven years was handed. Similarly in *Mohd. Shakeel* v. *State of A.P.*, (2007) 3 SCC 119, the appellant had caused only one injury and had suffered injury himself also. Altering the conviction from under Section 302 IPC to 304 Part II, the appellant was sentenced to the period undergone since 1999.

13. Pappu Deo Yadav v. Naresh Kumar and Others, 2020 SCC OnLine SC 752

Decided on: 17.09.2020

Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Krishna Murari
3. Hon'ble Mr. Justice S. Ravindra Bhat

(Whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too.

The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application.)

Facts

On 18.05.2012, the appellant was injured in a motor accident while travelling to Hapur as a passenger in a bus, having paid the requisite fare. At about 1.30 pm when the bus reached village Sadikpur, Hapur, Uttar Pradesh, the driver of the offending bus (the first respondent) sought to overtake the bus in which the appellant was travelling, from the wrong side, and zipped the appellant's bus, scratching it. This rash and negligent act caused a dent in the bus where the appellant was seated, as a result of which he suffered injuries. The appellant was removed to Dr. Khan's Rehan hospital and thereafter, AIIMS Trauma Center. The appellant claimed compensation, impleading the owner, the driver of the vehicle, and the insurer. During the course of proceedings before the Motor Accident Claims Tribunal, he applied for ascertainment of his disability. The disability report (Ex. PW-1/9 dated 01.04.2014 issued by Pandit Madan Mohan Malviya Hospital, during the motor vehicles compensation claim proceedings) showed that he suffered 89% disability in relation to his right upper limb, which had to be amputated. A first information report (FIR) regarding the accident was registered (FIR No. 57/12), as case Crime No. 255/12, Hazifpur Police Station, Hapur, Uttar Pradesh, under Sections 279 and 338 of the Indian Penal Code, 1860.

The appellant, at that time unmarried, was working as a data entry operator/typist at Tis Hazari Courts. Prior to the injury, he earned an amount of Rs. 12,000 per month. He had applied for grant of compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988, (hereafter "the Act") claiming a sum of Rs. 50 lakhs with interest at the rate of 12% per annum against the first respondent, (the driver of the bus at the time of the accident), the second respondent (owner of the vehicle), and third respondent (the insurer). While assessing loss of earning capacity, the Tribunal took the appellant's income to be Rs. 8000 per month, and added 50% towards future prospects. The High Court, to which the claimant appealed (and the insurer cross appealed), revised this head of compensation by doing away with the addition of 50% towards future prospects, and reassessed the compensation for loss of earning capacity as Rs. 7,77,600.

Decision and Observations

The questions that arose for consideration were one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, *apart from* compensation for future loss of income, amounts for future prospects too; and two, the extent of disability.

Regarding the first questions, the Apex court said:

> **7.** [....] This court is of the opinion that there was no justification for the High Court to have read the previous rulings of this court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of *Pranay Sethi*[11] is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.
>
> ******
>
> **12.** In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the *Pranay Sethi* principle).

While assessing the quantum of permanent disablement, the Apex Court referred to following decisions:***Neerupam Mohan Mathur v. New India Assurance Company, (2013) 14 SCC 15; Jakir Hussein v. Sabir, (2015) 7 SCC 252; Anthony Alias Anthony Swamy v. Managing Director, K.S.R.T.C, 2020 SCC OnLine SC 493; Syed Sadiq v. Divisional Manager, United Insurance Company Limited, (2014) 2 SCC 735; Arvind Kumar Mishra v. New India Assurance Co. Ltd, (2010) 10 SCC 254*** .

The Apex Court then stated the following:

> **20.** Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some '*proportionate*' principle, which was illogical and is unsupportable in law. ***What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or***

business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.

While awarding a compensation of Rs. 19,65,600/- payable for the disability of loss of an arm (assessed at 65%), the Apex Court stated the following:

22. In parting, it needs to be underlined that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim.

23. The High Court's assessment of amounts payable under other heads (such as compensation for medical expenses, compensation for pain and suffering, compensation for special diet and attendant, conveyance charges, loss of amenities and enjoyment of life, disfigurement and loss of income during treatment), do not call for interference. In view of the above conclusions, the impugned judgment is hereby modified; the sum of Rs. 19,65,600/- shall be substituted in place of the amount of Rs. 7,77,600/-, considering the enhancement towards loss of earning capacity and future prospects.

14. Beli Ram v. Rajinder Kumar and Another, 2020 SCC OnLine SC 769

Decided on: 23.09.2020

Bench: 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. hon'ble Mr. Justice Aniruddha Bose
3. Hon'ble Mr. Justice Krishna Murari

(Whether in case of a valid driving licence, if the licence has expired, the insured is absolved of its liability.)

Facts

The first respondent herein, met with an accident on 20.5.1999 while driving a truck owned by the appellant herein, under whom he was gainfully employed. The consequence for the first respondent was 20 per cent permanent disability. The first respondent herein filed a petition under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Compensation Act') before the Commissioner, Sadar, Bilaspur on 17.2.1999 seeking compensation of an amount of Rs. 5,00,000/-, impleading the appellant and second respondent herein - the insurance company which had insured the vehicle. These proceedings resulted in an award by the Commissioner on 8.12.2004 granting Rs. 94,464/- for the injuries suffered and Rs. 67,313/- towards medical expenses of the first respondent. The amounts awarded were to carry interest @ 9 per cent per annum from the date of filing of the application till the date of payment. The compensation amount was mulled on to the second respondent as insurer, while the interest was directed to be paid by the appellant herein.

The parties to the proceedings all filed appeals aggrieved by different aspects of the award. An intrinsic part of the consideration by the High Court was the issue raised about the validity of the driving licence of the first respondent at the time of the accident. The driving licence was endorsed by the Superintendent of R&LA Office, Udaipur but the licence expired on 6.9.1996 and there was no endorsement for renewal thereafter. Thus, the first respondent was driving the vehicle as the driver of the appellant herein for almost three years without the licence being renewed.

The aforesaid aspect of the non-validity of the driving licence weighed with the High Court while passing the impugned judgment dated 3.3.2009, absolving the insurance company of any liability and fastening the same upon the appellant herein on account of there being a material breach of the insurance policy.

Decision and Observations

On the issue of an expired driving license, the Apex court took note of the judgments of the different High Courts:

(i)The Delhi High Court in ***Tata AIG General Insurance Co. Ltd. v. Akansha***, 2015 SCC OnLine 6758, (2015) 2 TAC 52

(ii) The Allahabad High Court in ***The Oriental Insurance Co. Ltd.* v. *Manoj Kumar***,(2015) 111 ALR 275

(iii) The Himachal Pradesh High Court in ***National Insurance Co. Ltd.* v. *Hem Raj***, 2012 ACJ 1891

The Apex court stated that while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. Then the Apex court reproduced the para 18 of the decision in ***National Insurance Co. Ltd.* v. *Hem Raj*** wherein it was said:

> "18. When an employer employees a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section- 5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

The Apex court was in complete agreement with the views taken by the three different High Courts and stated the following:

> **22.** We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the *Hem Raj* case.
>
> **23.** When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires. And here it was a commercial vehicle being a truck. ***The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years.*** The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent driver. ***We are, however, dealing***

with the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issues could be debated in other proceedings.

24. The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case. The relevant provision reads as under:

"3. Employer's liability for compensation.-

....."

25. We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming the amount. Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person.

15. *Union of India and Others v. G.S. Chatha Rice Mills and Another, 2020 SCC OnLine SC 770*

Decided on: 23.09.2020

Bench: 1. Hon'ble Mr. Justice D. Y. Chandrachud
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Mr. Justice K.M. Joseph

(Whether the amendment to the First Schedule of the Customs Tariff Act, 1975 takes effect from the time at which it is uploaded/notified in the gazette or from the first moment of the day/date on which it was issued/published in the gazette)

Facts

The facts pertaining to the writ petitions are:

(i) the goods were imported in the ordinary course of trade from Pakistan;

(ii) the goods entered Indian territory through the Attari border at Amritsar before 18 : 00 hours on 16 February 2019;

(iii) the importers had filed bills of entry under Section 46 of the Customs Act, before the close of working hours, seeking clearance of the goods for home consumption;

(iv) the value and description of the goods were declared;

(v) the importers had self-assessed the goods in terms of the prevailing notifications and had filed the bills of entry in the EDI system;

(vi) the declarations were subject to verification by the customs department which did not dispute them and generated duty payment TR-6 challans;

(vii) since 16 February 2019 was a Saturday, the customs' office was closed after 18 : 00 hours and was to open on Monday, 18 February 2019;

(viii) some of the importers paid the duty online through TR-6 challans on 16 February 2019 while in the case of others, the payment of duty was in progress;

(ix) Notification 5/2019 was issued at 20 : 46 : 58 hours on 16 February 2019 following the Pulwama terrorist attack as a result of which the rate of duty on goods originating in Pakistan was enhanced to 200 per cent irrespective of the fact that some of the products had hitherto been exempt from customs duty; and

(x) the customs authorities refused to release the goods on the basis of the bills of entry which were self-assessed at the pre-existing rate and proceeded to recall them and re-assess the goods to the enhanced rate of duty applicable under notification 5/2019.

Before the High Court, the submission of the importers was that before notification 5/2019 was issued (at 20 : 46 hours on 16 February 2019 in order to discourage the import of goods from Pakistan), (i) they had placed orders; (ii) the goods had entered into the territory of India; (iii) the goods were fully or partially exempt from basic customs duties, but subject to IGST at the time of the filing of the bills of entry; (iv) the exporters from Pakistan received payment of the consideration on the basis of which the goods had been supplied; and (v) the object of the notification was to discourage imports from Pakistan and not to penalize Indian importers who had placed orders and had imported goods into India, *bona fide* relying on the policy which was applicable before the notification was issued in the late hours of the day.

On the issues of law, it was urged that after the presentation of the bills of entry for home consumption, self-assessment and duty payment challans had been generated, it was not open to the customs authorities to levy the enhanced rate of duty which came into force later, from 20 : 46 hours on 16 February 2019. The application of notification 5/2019 would, it was urged, have retrospective effect since the bills of entry for home consumption had been filed electronically on the customs' automated platform before the issuance of the notification and they were self-assessed.

On the other hand, the contention of the Union government before the High Court was that under Section 15 of the Customs Act, 1962 the relevant date for determining the rate of duty is the *date* of the presentation of the bill of entry. The submission was that the amended rate of duty under notification 5/2019 came into force on 16 February 2019; hence, the importers were liable to pay duty on the basis of the amended rate. The submission was that the customs authorities were entitled to re-assess the bills of entry under Section 17(4).

The High Court, after analyzing the provisions of Sections 8A and 11A of the Customs Tariff Act, 1975 and Sections 12, 15, 17, 46 and 47 of the Customs Act, 1962 held that:

(i) The relevant date for the determination of duty is the date of the presentation of the bill of entry, which, in the facts of this case, corresponds to the date of the entry of the vehicle carrying the goods into India;

(ii) The bills of entry were presented on 16 February 2019 before the issuance of notification 5/2019;

(iii) The dual requirements of Section 15 namely, the filing of the bill of entry and the entry of the vehicle were fulfilled before the publication of notification 5/2019;

(iv) The amended rate of duty was not applicable;

(v) The absence of customs' clearance under Section 47 had no bearing on the rate applicable;

(vi) Notification 5/2019 having been released after working hours, it would apply from the next day as held in the decision of this Court in *Union of India* v. *Param Industries Limited*; and

(vii) A notification under Section 8A of the Customs Tariff Act, 1975 cannot apply retrospectively.

The Union of India is in appeal.

Decision and Observations

With regard to the effect of notifications issued in e-gazettes, the Apex Court mentioned the decisions of the various High Courts on this point.

The Delhi High Court in ***M.D. Overseas Industries* v. *Union of India***,[2]regarded the time of publication as the relevant marker for determining the enforceability of the notifications

[2] W.P. (C) 7838/2017 decided on 15 October 2019 (Delhi High Court)

The issue of determining the starting point for the enforceability of a notification in the electronic gazette was considered by the Andhra Pradesh High Court in ***Ruchi Soya Industries* v. *Union of India.***[3]

The Madras High Court dealt with a similar situation in ***Ruchi Soya Industries* v. *Union of India***.[4]

The Apex Court then stated :

> **106.** With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20 : 46 : 58 hours on 16 February 2019.

[3] W.P. No. 4533 and 4534 of 2019 decided on 28 September 2019 (Andhra Pradesh High Court)
[4] W.P. No. 21207 of 2018 decided on 14 July 2020 (Madras High Court).

16. Maheshwar Tigga v. State of Jharkhand, 2020 SCC OnLine SC 779

Decided on : 28.09.2020

Bench: 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eyes of law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years)

Issue

whether the prosecutrix consented to the physical relationship under any misconception of fact with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship?

Decision and Observations

> **14.** ***Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eyes of law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years***. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

The Apex Court referred to ***Uday v. State of Karnataka***, (2003) 4 SCC 46 wherein it was said that "It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact." The Apex court also mentioned ***Kaini Rajan v. State of Kerala,*** (2013) 9 SCC 113 which was based on similar facts to the present case. The Apex Court then stated :

> **18.** We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal

obstacles would be overcome, but unfortunately differences also arose whether the marriage was to solemnised in the Church or in a Temple and ultimately failed. It is not possible to hold on the evidence available that the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her.

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20. We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in *Uday* (supra) are considered relevant:

> "25...It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent."

21. In conclusion, we find the conviction of the appellant to be unsustainable and set aside the same. The appellant is acquitted.

17. Subed Ali and Others v. State of Assam, 2020 SCC OnLine SC 794

Decided on : 30.09.2020
Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(The presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. It is therefore not necessary that before a person is convicted on the ground of common intention, he must be actively involved in the physical activity of assault. If the nature of evidence displays a pre-arranged plan and acting in concert pursuant to the plan, common intention can be inferred.)

Facts

The conviction of the appellants under Section 302/34 of the Indian Penal Code (for short, "I.P.C.") by the Sessions Judge, North Lakhimpur, has been affirmed by the High Court, sentencing them to life imprisonment along with fine and a default stipulation. Thus, the present appeal by the appellants. The prosecution alleged that the two deceased, Abdul Motin and Abdul Barek were assaulted on 05.08.2005 at about 06.00 PM while they were returning from the market on bicycles along with others. Abdul Barek died on the spot. Abdul Motin died in the hospital during the course of treatment the same night. Originally there were five named accused persons. Accused nos. 3 and 5 have been acquitted giving them the benefit of doubt.

Decision and Observations

Regarding common intention the Apex court stated the following:

> **13.** That leaves for our consideration the submission of Shri Agrawal that appellant no. 1 is entitled to acquittal as he cannot be said to have shared any common intention with appellants nos. 2 and 3 and who are liable for their individual acts. ***Common intention consists of several persons acting in unison to achieve a common purpose, though their roles may be different. The role may be active or passive is irrelevant, once common intention is established. There can hardly be any direct evidence of common intention. It is more a matter of inference to be drawn from the facts and circumstances of a case based on the cumulative assessment of the nature of evidence available against the participants. The foundation for conviction on the basis of common intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the acts of others with whom he shared the common***

> ***intention. The presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. It is therefore not necessary that before a person is convicted on the ground of common intention, he must be actively involved in the physical activity of assault. If the nature of evidence displays a pre-arranged plan and acting in concert pursuant to the plan, common intention can be inferred***. A common intention to bring about a particular result may also develop on the spot as between a number of persons deducible from the facts and circumstances of a particular case. The coming together of the accused to the place of occurrence, some or all of whom may be armed, the manner of assault, the active or passive role played by the accused, are but only some of the materials for drawing inferences.

The Apex court referred to ***RamaswamiAvyangar v. State of T.N.***, (1976) 3 SCC 779; ***Nandu Rastogi* v. *State of Bihar,*** (2002) 8 SCC 9 ;***Surender Chauhan* v. *State of Madhya Pradesh,*** (2000) 4 SCC 110 wherein it was noticed that absence of a positive act of assault was not a necessary ingredient to establish common intention. A similar view was taken **in *Nand Kishore* v. *State of Madhya Pradesh***, (2011) 12 SCC 120.

The Apex Court concluded:

> **18.** Coming to the facts of the present case, the appellant no. 1 lay in wait along with the other two appellants who were armed. Appellant no. 1 stopped the two deceased who were returning from the market. The assault commenced after the deceased had halted. That there was some dispute with regard to money is apparent from the evidence of the witnesses. Abdul Barek died on the spot as a result of the brutal assault. Abdul Motin was injured in the first assault upon him by appellant no. 3, after which he tried to flee. Appellant no 1 along with the other accused chased him, caught hold of him near the house of Mamud Ali where he was brutally assaulted. Abdul Motin was then dragged by the accused persons to the place where Abdul Barek lay motionless. To our mind no further evidence is required with regard to existence of common intention in appellant no. 1 to commit the offence in question. We, therefore, find no reason to grant any benefit to appellant no. 1 on the plea that there is no role or act of assault attributed to him, denying the existence of any common intention for that reason.
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> **19.** Resultantly, we find no reason to interfere with the conviction and sentence of the appellants. The appeal is dismissed.

18. Satish alias Sabbe v. State of Uttar Pradesh, 2020 SCC OnLine SC 791

Decided on: 30.09.2020

Bench: 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice Hrishikesh Roy

(Length of the sentence or the gravity of the original crime can't be the sole basis for refusing premature release. Any assessment regarding predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses.)

Facts

The petitions have been filed by Satish and Vikky @ Vikendra alias Virendra, seeking special leave to appeal against a common order dated 28.04.2017 of the Allahabad High Court through which their appeal against conviction under Section 364-A of the Indian Penal Code, 1860 (hereinafter, "IPC") and consequential sentence of life imprisonment, was turned down. On 06.09.2019, the Apex Court tacitly declined to interfere with their conviction for kidnapping, and accordingly refrained from granting leave to appeal. However, limited notice was issued to the respondent-State, calling upon them to furnish details regarding the petitioners' entitlement to premature release. Separate counter-affidavits have consequently been filed by the respondent-State on 18.12.2019, inter-alia, informing that Satish's proposal for premature release under Section 2 of the UP Prisoners Release on Probation Act, 1938 was still under consideration; whereas that of Vikky was duly considered and rejected by a Committee headed by the District Magistrate, Ghaziabad on 26.02.2018.

Keeping in mind the long-period of incarceration undergone by the petitioners and infirmities in consideration of their prayers for premature release as highlighted by their counsels, the Apex Court on 08.06.2020 directed fresh consideration of their cases for premature release

It was brought to the notice of the Apex Court on the next date of hearing that the respondent-State had, without due application of mind, passed an unreasoned Order dated 13.07.2020 rejecting premature release of Satish based on an earlier evaluation conducted on 29.01.2018. This was contended to be in contravention of the directions issued by this Court as well as on a misconceived notion of individual dignity. Similar allegations of evasive compliance and mechanical rejection of *Vikky's case* for premature release vide Government Order dated 29.07.2020, despite his long incarceration and good conduct, were reiterated. Restricting their prayer(s) in terms of the order dated 06.09.2019 of this Court, learned counsel(s) for Satish and Vikky have cited some judgments, and relied upon various remission guidelines; to substantiate their plea to set-aside the Orders rejecting petitioner's prayer for premature release. Finding that earlier orders directing fresh consideration of petitioners' cases for premature release had not been faithfully complied with, the Apex

Court on 25.08.2020, once more directed the respondent-State to consider both cases afresh and pass appropriate reasoned orders within a week. Since the petitioner's prayer for premature release has again been declined vide Government Orders dated 01.09.2020, hence learned counsel for the parties have been heard on the afore-stated limited issue.

Decision and Observations

The Apex Court referred to Section 2[5] of UP Prisoners Release on Probation Act, 1938 which lays down the principles upon which such decisions to release on probation are required to be taken, and the Apex court stated:

> **17.** A perusal of the Government Orders displays that the statutory mandate on premature release has been completely overlooked. The three-factor evaluation of (i) antecedents (ii) conduct during incarceration and (iii) likelihood to abstain from crime, under Section 2 of the UP Prisoners Release on Probation Act, 1938, have been given a complete go-by. These refusals are not based on facts or evidence, and are vague, cursory, and merely unsubstantiated opinions of state authorities.
>
> **18.** It would be gainsaid that length of the sentence or the gravity of the original crime can't be the sole basis for refusing premature release. Any assessment regarding predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses. As per the State's own affidavit, the conduct of both petitioners has been more than satisfactory. They have no material criminal antecedents, and have served almost 16 years in jail (22 years including remission). Although being about 54 and 43 years old, they still have substantial years of life remaining, but that doesn't prove that they retain a propensity for committing offences. The respondent-State's repeated and circuitous reliance on age does nothing but defeat the purpose of remission and probation, despite the petitioners having met all statutory requirements for premature release.

The Apex court stated that the petitioners' case is squarely covered by the ratio laid down in ***Shor* v. *State of Uttar Pradesh,***[6] which has later been followed in ***Munna* v. *State of Uttar Pradesh***[7]. Therefore,the Special Leave Petitions were disposed of with a direction that the petitioners be released on probation in terms of Section 2 of the UP Prisoners Release on Probation Act, 1938 within a period of two weeks.

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[5]"**2. Power of Government to release by licence on conditions imposed by them -** Notwithstanding anything contained in Section 401 of the Code of Criminal Procedure, 1898 (Act V of 1898), where a person is confined in prison under a sentence of imprisonment and **it appears to the State Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison**, the State Government may by licence permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner, or such secular institution or such society belonging to the same religion as the prisoner as may be recognized by the State Government for this purpose, provided such other person, institution or society is willing to take charge of him."

[6] 2020 SCC OnLine SC 626

[7]Order dated 21.08.2020 in WP (Crl) 4 of 2020.

19. Kaushik Chatterjee v. State of Haryana and Others ,2020 SCC OnLine SC 793

Decided on: 30.09.2020
Bench: 1. Hon'ble Mr. Justice V. Ramasubramanian

(A proceeding which is void under Section 461 cannot be saved by Section 462. The focus of clause (l) of Section 461 is on the "offender" and not on the "offence". If clause (l) had used the words "tries an offence" rather than the words "tries an offender", the consequence might have been different.)

Facts

The petitioner *herein* was appointed on 04.08.2016 as the Group Chief Risk Officer-Executive Director of the second respondent, which is a non-banking finance company and which happens to be the *de facto* complainant in the criminal cases whose transfer is what is sought in these petitions. It is relevant to note that the petitioner, upon his appointment, joined the Delhi Office of the second respondent-Company on 04.08.2016 and he was transferred to Mumbai on 10.04.2017. The petitioner resigned in July-2018. Three loans sanctioned by the second respondent-Company, during the period when the petitioner was in service, became the subject-matter of three different complaints lodged by the second respondent-Company. All the three complaints were lodged by the second respondent with the Station House Officer, Civil Lines, Gurugram P.S.

After completion of investigation, the police filed a charge-sheet on 14.12.2018 in FIR No. 452/18, for alleged offences under Sections 406, 408, 420, 120-B read with Section 34 of the Indian Penal Code (*hereinafter referred to as the "IPC"*).Similarly, a charge-sheet was filed on 18.07.2019 in FIR No. 748 of 2017 for alleged offences under Sections 114, 120-B, 406, 420, 467, 468, 471 and 216 of the IPC. Likewise a charge-sheet was filed on 24.10.2019 in FIR No. 356/2019 for offences under Sections 120-B, 406, 408, 420, 387 read with Section 34 of the IPC. The police also filed supplementary charge-sheets, on 06.01.2020 in the first case and on 08.11.2019 in the third case.

Contending ***(i)*** that no part of the cause of action arose in Gurugram to enable the *de facto* complainant to lodge a complaint in the Gurugram Police Station; ***(ii)*** that while first loan was sanctioned at Delhi, the second loan was sanctioned at Indore and third loan was sanctioned at Surat, nothing happened in Gurugram, entitling the *de facto* complainant to invoke the jurisdiction of the investigating agency and the Court in Gurugram; ***(iii)*** that the second respondent-*de facto* complainant has deliberately filed the complaint at Gurugram, as the promoter of the *de facto* complainant wields lot of influence at Gurugram and ***(iv)*** that the petitioner will not get a fair trial at Gurugram, the petitioner has come up with the above transfer petitions.

Decision and Observations

The Apex court distinguished between the civil cases and the criminal cases on the question of territorial jurisdiction and said the following:

> **19.** While jurisdiction of a civil court is determined by (i) territorial and (ii) pecuniary limits, the jurisdiction of a criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two-fold.
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> (i) The first is that ***the stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21*** of the Code of Civil Procedure, 1908. There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.
>
> (ii) The second is that in civil proceedings, a plaint can be returned, under ***Order VII, Rule 10, CPC***, to be presented to the proper court, ***at any stage of the proceedings***. But in criminal proceedings, ***a limited power is available to a Magistrate under section 201 of the Code, to return a complaint***. The power is limited in the sense (a) that it is available before taking cognizance, as section 201 uses the words "***Magistrate who is not competent to take cognizance***" and (b) that the power is limited only to complaints, as the word "complaint", as defined by section 2(d), does not include a "police report".

The Apex Court then summarized the principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal Courts in inquiries and trials. Then, the Apex Court discussed the provision 460, 461(l) and 462 of the Cr.P.C. and said the following:

> **26.** A cursory reading of Section 461(l) and Section 462 gives an impression that there is some incongruity. Under Clause (l) of Section 461 if a ***Magistrate not being empowered by law to try an offender***, wrongly tries him, his proceedings shall be void. ***A proceeding which is void under Section 461 cannot be saved by Section 462***. The focus of clause (l) of Section 461 is on the "***offender***" and not on the "***offence***". If clause (l) had used the words "tries an offence" rather than the words "tries an offender", the consequence might have been different.
>
> **27.** It is significant to note that Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word "offence" in three places *namely* clauses (b), (d) and (e). Section 460 does not use the word "offender" even once.
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> **28.** On the contrary Section 461 uses the word 'offence' only once, namely in clause (a), but uses the word "offender" twice namely in clauses (l) and (m). Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings shall be void under Section 461. Section 462 does

not make the principle contained therein to have force notwithstanding anything contained in Section 461.

Before dismissing the transfer petitions, the Apex Court said:

39. From the above discussion, it is possible to take a view that the words "tries an offence" are more appropriate than the words "tries an offender" in section 461(l). This is because, lack of jurisdiction to try an offence cannot be cured by section 462 and hence section 461, logically, could have included the ***trial of an offence*** by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the ***trial of an offender*** by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender (such as in section 27). But Section 461(l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do.

40. But be that as it may, the upshot of the above discussion is (i)that the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence (ii) that if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in sections 177 to 184 of the Code and (iii) that these questions may have to be raised before the court trying the offence and such court is bound to consider the same.

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42. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand, is one of territorial jurisdiction, atleast as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshaled. Hence the transfer petitions are liable to be dismissed. Accordingly, they are dismissed.