JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(MAY,2020)

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1. *Sonu @ Sunil v. State of Madhya Pradesh*

Decided on : -29.05.2020

Bench :- 1. Hon'ble Mr.JusticeS.K. Kaul
2. Hon'ble Mr. JusticeK. M. Joseph

(In the case of recovery of an article from an accused person when he stands accused of committing offences other than theft also, (in this instance murder), what are the tests;

Section 34: No law that a person accompanying the principal culprit shares his intention in respect of every act which the latter might eventually commit.)

Facts

The appellant was tried with 4 others and was convicted under Sections 394, 460 and 302 read with Section 34 of the Penal Code, 1860 (hereinafter referred to as, 'the IPC', for short). He was also found guilty of offences under Sections 11 and 13 of the Madhya Pradesh DakaitiAvamVyapharanAdhiniyam, 1981 (hereinafter referred to as, 'Madhya Pradesh Adhiniyam'). The appellant was, in fact, sentenced to death for the offence under Section 302 read with Section 34 of the IPC along with two other accused apart from a fine of Rs. 5000/-. He was sentenced to 10 years Rigorous Imprisonment in regard to the offence under Section 460 of the IPC. He was also handed down a sentence of 10 years for the offence under Section 394 read with Section 34 of the IPC. Still further, he was also sentenced to 7 years for the offence under Sections 11 and 13 of the Madhya Pradesh Adhiniyam. By the impugned judgment, the High Court answered the death reference by holding that in the circumstances, the death penalty was not warranted. In place of death penalty, the High Court sentenced the appellant and two other accused to life imprisonment and enhanced the fine to Rs. 25,000/-. The appeal filed by the appellant was dismissed otherwise.

The circumstances, which can be culled out from the judgment are as follows:

> The deceased died in his house where he was living alone, as a result of shock and hemorrhage from 6 incised wounds as noticed and proved by medical evidence. The death is homicidal too. There were valuable articles, namely, a silver necklace, gold earring and two mobile phones which were found missing too. These articles have been recovered from the accused as already mentioned. A knife stood recovered from Kalli, one of the accused. The other valuable articles identified by the closed relative, namely, his wife and his son stood recovered. From the articles so recovered, one mobile phone was recovered from the appellant.

Decision and Observations

On the issue as to what is the effect of recovery of the mobile, proceeding on the basis that it belonged to the deceased, the Apex Court referred to illustration (a) of section 114 of the Evidence Act and also emphasized upon the extracts from the judgments in ***Sanwant Khan v. State of Rajasthan***, AIR 1956 SC 54 and ***Baiju v. State of Madhya Pradesh***, (1978) 1 SCC 588 : AIR 1978 SC 522 and stated the following:

> **33.** In the case of recovery of an article from an accused person when he stands accused of committing offences other than theft also, (in this instance murder), what are the tests:
>
> i. The first thing to be established is that the theft and murder forms part of one transaction. The circumstances may indicate that the theft and murder must have been committed at the same time. But it is not safe to draw the inference that the person in possession of the stolen property was the murderer [See *Sanwant Khan v. State of Rajasthan,*AIR 1956 SC 54];
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> ii. The nature of the stolen article;
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> iii. The manner of its acquisition by the owner;
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> iv. The nature of evidence about its identification;
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> v. The manner in which it was dealt with by the accused;
>
> vi. The place and the circumstances of its recovery;
>
> vii. The length of the intervening period;
>
> viii. Ability or otherwise of the accused to explain its possession [See *Baiju* v. *State of Madhya Pradesh,* (1978) 1 SCC 588 : AIR 1978 SC 522]
>
> **34.** In this case, applying the tests as above, we find as follows:
>
> I. The appellant has not given any explanation as to how he came by possession of the mobile. He has no explanation in his questioning under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the CrPC', for short);
>
> II. As far as length of the intervening period is concerned, recovery was effected on 02.11.2008 whereas the date of the incident is 08.09.2008. That means, a gap of less than two months. The arrest of the appellant was effected on 01.11.2008, i.e., a day before the recovery;
>
> III. As far as nature of the article is concerned, it was a mobile phone which was capable of being transferred by mere delivery. No doubt, it would contain a sim which may connect the phone with the previous owner or person in possession. It is also common knowledge, however, that it may be open to the person, who possesses the mobile, to equip it with a new sim;

> IV. As far as identification is concerned, we have already seen the nature of the evidence;
>
> V. It is not in dispute that the two mobile phones were kept and they were not mixed with any other similar looking mobile phones.

Further, the Apex court referred to ***Arun v. State by Inspector of Police, Tamil Nadu***[1]wherein the Court relied upon the tests laid down in ***Dharam Pal v. State of Haryana***[2]which is as follows:

> "14. It may be that when some persons start with a pre-arranged plan to commit a minor offence, they may in the course of their committing the minor offence come to an understanding to commit the major offence as well. Such an understanding may appear from the conduct of the persons sought to be made vicariously liable for the act of the principal culprit or from some other incriminatory evidence but the conduct or other evidence must be such as not to leave any room for doubt in that behalf.
>
> 15. A criminal court fastening vicarious liability must satisfy itself as to the prior meeting of the minds of the principal culprit and his companions who are sought to be constructively made liable in respect of every act committed by the former. *There is no law to our knowledge which lays down that a person accompanying the principal culprit shares his intention in respect of every act which the latter might eventually commit*. The existence or otherwise of the common intention depends upon the facts and circumstances of each case. The intention of the principal offender and his companions to deal with any person who might intervene to stop the quarrel must be apparent from the conduct of the persons accompanying the principal culprit or some other clear and cogent incriminating piece of evidence. In the absence of such material, the companion or companions cannot justifiably be held guilty for every offence committed by the principal offender."
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> (Emphasis Supplied in original)

It was concluded as:

> **40.** In the facts of this case, we are inclined to think that it would not be safe to uphold the conviction of the appellant. He would be entitled to the benefit of doubt. We allow the appeal. The impugned judgment in so far as it relates to the appellant will stand set aside and he will stand acquitted. The appellant's bail bond shall stand discharged. He will be set at liberty if his custody is not required in connection with any other case.

[1] (2008) 15 SCC 501
[2] (1978) 4 SCC 440

2. ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited v. Rabindranath Choubey,2020 SCC OnLine SC 470***

Decided on : -27.05.2020

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Mr. Justice M. R. Shah
3. Hon'ble Mr. Justice Ajay Rastogi

(whether is it permissible in law for the appellant (employer) to withhold the payment of gratuity of the respondent (employee), even after his superannuation from service, because of the pendency of the disciplinary proceedings against him?)

Issues

whether is it permissible in law for the appellant (employer) to withhold the payment of gratuity of the respondent (employee), even after his superannuation from service, because of the pendency of the disciplinary proceedings against him?

Facts

While the respondent-employee was in service and posted as Chief General Manager, he was served with the chargesheet dated 1.10.2007. There was very serious allegation of misconduct alleging dishonestly causing coal stock shortages amounting to Rs. 31.65 crores and thereby causing substantial loss to the employer. The employee was thereafter suspended from service on 09.02.2008 under Rule 24.1 of the CDA Rules, pending departmental enquiry against him. This suspension however was revoked from 27.02.2009 without prejudice to the departmental enquiry. On completion of 60 years of age, the respondent-employee was superannuated with effect from 31.07.2010. However, at the time of superannuation, the departmental enquiry which was initiated against the employee remained pending. Therefore, the appellant - employer withheld the gratuity due and payable to the respondent-employee.

The respondent herein submitted an application dated 21.09.2010 to the Director (Personnel) for payment of gratuity. On the same date, he also submitted an application before the Controlling Authority under the Payment of Gratuity Act for payment of gratuity. Notice was issued to the appellant to appear. The appellant appeared and stated that the payment of gratuity was withheld due to the reason that the disciplinary proceedings are pending against him. The Controlling Authority held that in that view of the matter, the claim of the respondent was pre-mature.

The respondent-employee challenged the order by filing the writ petition. The learned Single Judge dismissed the writ petition holding that in view of the existence of an appellate forum against the order passed by the Controlling Authority, the respondent may file an appeal before the Appellate Authority. However, instead of filing an appeal before the Appellate Authority, the respondent-employee then filed Intra Court Writ Appeal before the Division Bench of the High Court.

The Division Bench of the High Court has held that the writ petition was maintainable. On merits and relying upon the decision of this Court in the case of *Jaswant Singh Gill* v. *Bharat Coking Coal Ltd.*, reported in (2007) 1 SCC 663, the High Court ruled that the disciplinary proceedings against the respondent were initiated prior to the age of superannuation. However, the respondent retired from service on superannuation and hence the question of imposing a major penalty of removal from service would not arise. The Division Bench of the High Court has further held that the power to withhold payment of gratuity as contained in Rule 34(3) of the CDA Rules shall be subject to the provisions of the Payment of Gratuity Act, 1972. The Division Bench of the High Court has further held that the statutory right accrued to the respondent to get gratuity cannot be impaired by reason of the Rules framed by the Coal India Limited which do not have the force of a statute. Consequently, direction is given to the appellant-employer to release the amount of gratuity payable to the respondent-employee. Hence, the present appeal.

Decision and Observations

The Apex Court referred to section 4 of the Payment of Gratuity Act,1972.[3]

[3]Section 4 - Payment of gratuity

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,--

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.--For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(6) Notwithstanding anything contained in sub-section (1),--

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer' shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited]—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

Answering the question in the affirmative, the Apex court stated the following:

> **26.** Indisputably, the respondent was governed by the CDA Rules. Therefore, Rules 34.2 and 34.3 of the CDA Rules shall be applicable and the respondent-employee shall be governed by the said provisions. Rule 34 permits the management to withhold the gratuity during the pendency of the disciplinary proceedings. Rule 34.2 permits the disciplinary proceedings to be continued and concluded even after the employee has attained the age of superannuation, provided the disciplinary proceedings are instituted while the employee was in service. It also further provides that such disciplinary proceedings shall be deemed to be the proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. Therefore, as such, on a fair reading of Rule 34.2 of the CDA Rules, an employee shall be deemed to be continued in service, after he attains the age of superannuation/retired, for the limited purpose of continuing and concluding the disciplinary proceedings which were instituted while the employee was in service. Therefore, at the conclusion of such disciplinary proceedings any of the penalty provided under Rule 27 of the CDA Rules can be imposed by the authority including the order of dismissal. If the submission on behalf of the employee that after the employee has attained the age of superannuation and/or he has retired from service, despite Rule 34.2, no order of penalty of dismissal can be passed is accepted, in that case, it will be frustrating permitting the authority to continue and conclude the disciplinary proceedings after retirement. If the order of dismissal cannot be passed after the employee has retired and/or has attained the age of superannuation in the disciplinary proceedings which were instituted while the employee was in service, in that case, there shall not be any fruitful purpose to continue and conclude the disciplinary proceedings in the same manner as if the employee had continued in service.
>
> *****
>
> **28.** Once it is held that a major penalty which includes the dismissal from service can be imposed, even after the employee has attained the age of superannuation and/or was permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, sub-section 6 of Section 4 of the Payment of Gratuity Act shall be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded.
>
> *****

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

30. It is required to be noted that in the present case the disciplinary proceedings were initiated against the respondent-employee for very serious allegations of misconduct alleging dishonestly causing coal stock shortages amounting to Rs. 31.65 crores and thereby causing substantial loss to the employer. ***Therefore, if such a charge is proved and punishment of dismissal is given thereon, the provisions of sub-section 6 of Section 4 of the Payment of Gratuity Act would be attracted and it would be within the discretion of the appellant-employer to forfeit the gratuity payable to the respondent. Therefore, the appellant-employer has a right to withhold the payment of gratuity during the pendency of the disciplinary proceedings***.

(Emphasis supplied)

3. ***Ombir Singh v. State of Uttar Pradesh and Another, 2020 SCC OnLine SC 467***
Decided on : -26.05.2020

Bench :- 1. Hon'ble Mr. Justice N.V. Ramana

2. Hon'ble Mr. Justice M. M. Shatanagoudar

3. Hon'ble Mr. Justice Sanjiv Khanna

(Delay in compliance of Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant)

Facts

The appellant Ombir Singh has challenged the judgment dated 27.10.2009, by the Allahabad High Court, confirming his conviction under section 302 read with Section 34 of the Indian Penal Code, 1860 ('IPC', for short) and section 27 of the Arms Act, 1959, for the murder of Abhaiveer Singh Bhadoria @ Munna on 15.07.1999 at about 9 am. The appellant has also challenged the sentence of life imprisonment and fine of Rs. 11,000/- imposed by the Trial Court and confirmed by the High Court.

Decision and Observations

Regarding the delay in compliance of section 157 of the Criminal Procedure Code, the hon'ble Apex Court stated the following:

> **4.** There was undoubtedly a delay in compliance of section 157 of the Code, as the FIR was received in the office of the Chief Judicial Magistrate with a delay of 11 days. Effect of delay in compliance of Section 157 of the Code and its legal impact on the trial has been examined by this court in *Jafel Biswas* v. *State of West* Bengal [(2019) 12 SCC 560] after referring to the earlier case laws, to elucidate as follows:
>
> "18. In *State of Rajasthan* [*State of Rajasthan* v. *Daud Khan*, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] in paras 27 and 28, this Court has laid down as follows: (SCC pp. 620-21)
>
> "27. The delay in sending the special report was also the subject of discussion in a recent decision being *Sheo Shankar Singh* v. *State of U.P.* [*Sheo Shankar Singh* v. *State of U.P.*, (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It

was held, relying upon several earlier decisions as follows: (SCC pp. 549-50, paras 30-31)

'30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court [*Sarvajit Singh* v. *State of U.P.*, 2003 SCC OnLine All 1214 : (2004) 48 ACC 732] as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in *Sandeep* v. *State of U.P.* [*Sandeep* v. *State of U.P.*, (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62-63: (SCC p. 132)

"62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in *Pala Singh* v. *State of Punjab* [*Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in *Pala Singh* [*Pala Singh* v. *State of Punjab*, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in

the case of the prosecution on that score. In fact the above decision was subsequently followed in *Sarwan Singh* v. *State of Punjab* [*Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646], *Anil Rai* v. *State of Bihar* [*Anil Rai* v. *State of Bihar*, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] and *Aqeel Ahmad* v. *State of U.P.* [*Aqeel Ahmad* v. *State of U.P.*, (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11]"'

28. It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR. [*Sudarshan* v. *State of Maharashtra*, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. [*Meharaj Singh* v. *State of U.P.*, (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [*Rattiram* v. *State of M.P.*, (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635]"

19. The obligation is on the IO to communicate the report to the Magistrate. The obligation cast on the IO is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.

20. In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

21. This Court in *Anjan Dasgupta* v. *State of W.B.* [*Anjan Dasgupta* v. *State of W.B.*, (2017) 11 SCC 222 : (2017) 4 SCC (Cri) 280] (of which one of us was a member, Hon'ble Ashok Bhushan, J.) had considered Section 157 CrPC. In the above case also, the FIR was dispatched with delay. Referring to an earlier judgment [*Rabindra Mahto* v. *State of Jharkhand*, (2006) 10 SCC 432 : (2006) 3 SCC (Cri) 592] of this Court, it was held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown.

5. Therefore, ***delay in compliance of Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant***.

(emphasis supplied)

4. *Guru Nanak Industries, Faridabad and Another v. Amar Singh (Dead) Through Lrs ,2020 SCC OnLine SC 469*

Decided on : -26.05.2020

Bench :- 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice Sanjiv Khanna
3. Hon'ble Mr. Justice Krishna Murari

(When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm)

Facts

Four persons, including two brothers, Swaran Singh and Amar Singh, both of whom have since died and are represented by their legal representatives, had constituted a partnership firm - Guru Nanak Industries, on 2nd May 1978. On 6th May 1981, a fresh partnership deed was executed between Swaran Singh and Amar Singh as the other two partners had resigned. The partnership firm was primarily in the business of manufacture and sale of print machinery for paper, polythene etc. Initially, profits and losses were to be divided in the ratio of 69:31 between Swaran Singh and Amar Singh. However, with effect from 1st April 1983, profit and loss sharing ratio was altered between Swaran Singh and Amar Singh to 60:40 respectively.

On 29th March 1989, Guru Nanak Industries and Swaran Singh filed a civil suit against Amar Singh claiming that the latter had retired from partnership with effect from 24th August 1988 and had voluntarily accepted payment of his share capital of Rs. 89,277.11p. In addition, he had been advanced loan from the funds of the partnership firm on the same date. Amar Singh had agreed that he would not be entitled to profits and liabilities of the firm. In support, reliance was placed upon intimation dated 5th October 1988 sent by Amar Singh to Bank of India, the bankers of the partnership firm. It was stated that Amar Singh was paid amounts of Rs. 1,00,000/- and Rs. 50,000/- by way of pay orders and another amount of Rs. 1,00,000/- in cash for which he had executed receipt dated 17th October 1988 (Exhibit P-9). Further, Amar Singh, after retirement, had floated a proprietorship concern, namely, Guru Nanak Mechanical Industries with effect from 14th September 1988 and was manufacturing and selling the same machinery.

Amar Singh contested the suit and on 29th April 1989, filed a suit for dissolution of partnership and rendition of accounts. The plea and contention of Amar Singh was that he had never resigned. Some disputes had arisen between him and Swaran Singh on 19th August 1988 when he had written a letter to the bankers to stop operation of the bank

account. Subsequently, he had written another letter dated 24th August 1988 (Exhibit P-5) as a partner, which letter was also signed by Swaran Singh as a partner, stating that the dispute between the partners had been settled and the bank may allow operation of the account. Amar Singh had pleaded that the receipt dated 17th October 1988 is forged and has been manipulated as he had signed and given papers to Swaran Singh.

The trial court dismissed the suit filed by Amar Singh and partly decreed the suit filed by Guru Nanak Industries and Swaran Singh primarily by relying upon letter dated 24th August 1988 (Exhibit P-5) and also the receipt dated 17th October 1988 (Exhibit P-9) observing that there is discrepancy in the two versions given by Amar Singh, the first version being that his signature on the letter dated 17th October 1988 (Exhibit P-9) was forged and the second version being that the receipt had been manipulated by adding the last sentence.

Two appeals preferred by Amar Singh were accepted by the first appellate court observing that the receipt dated 17th October 1988 (Exhibit P-9) was certainly manipulated by adding the last sentence. Letter dated 24th August 1988 (Exhibit P-5), in fact, supported the case of Amar Singh that he had not resigned as the letter was signed by both Amar Singh and Swaran Singh, wherein Amar Singh has been described as a partner. Official records in the Sales Tax Department and Income Tax Department also support the case of Amar Singh that the partnership firm was not dissolved on 24th August 1988. Accordingly, Amar Singh was held to be entitled to the prayer for partition of movable and immovable property wherein 40% belonged to Amar Singh and 60% belonged to Swaran Singh. The accounts would be rendered and settled as on the date of institution of the suit for dissolution of partnership, that is, 29th April 1989. Amar Singh would also be entitled to interest @ 9% per annum.

Swaran Singh, who had died when the civil suits were pending before the trial court and represented by his widow, filed two appeals before the Punjab and Haryana High Court which have been dismissed by the impugned judgment dated 18th May 2009.

Decision and observations

> **12.** The primary claim and submission of the appellants is that Amar Singh had resigned as a partner and, therefore, in terms of clause (10) of the partnership deed (Exhibit P-3) dated 6th May 1981, he would be entitled to only the capital standing in his credit in the books of accounts. However, the argument has to be rejected as in the present case there were only two partners and there is overwhelming evidence on record that Amar Singh had not resigned as a partner. On the other hand, there was mutual understanding and agreement that the partnership firm would be dissolved. This is apparent from even the version put forward by Swaran Singh and deposed to by his son, Sukhdev Singh (PW-2). Even the letter dated 5th October 1988 refers to the fact that Amar Singh is to completely withdraw the share and accounts which means that the things were yet to be settled. The receipt Exhibit P-9 dated 17th October 1988 refers to part payment of Rs. 1,00,000/- towards settlement

between the two partners. It also refers to the date of dissolution as 24th August 1988, which clearly indicates that payments were still to be made whereupon the two sides would have completely severed their relationship although there was a mutual agreement that the date of dissolution was 24th August 1988.

13. There is a clear distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. On retirement of the partner, the reconstituted firm continues and the retiring partner is to be paid his dues in terms of Section 37 of the Partnership Act. In case of dissolution, accounts have to be settled and distributed as per the mode prescribed in Section 48 of the Partnership Act. When the partners agree to dissolve a partnership, it is a case of dissolution and not retirement [See - Pamuru Vishnu Vinodh Reddy v. Chillakuru Chandrasekhara Reddy, (2003) 3 SCC 445]. In the present case, there being only two partners, the partnership firm could not have continued to carry on business as the firm. A partnership firm must have at least two partners***. When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm*** [See - *Erach F.D. Mehta* v. *Minoo F.D. Mehta*, (1970) 2 SCC 724].

14. Therefore, in view of the aforesaid discussion, we dismiss the appeals and uphold the judgment and decree dated 24th September 2004 passed by the Additional District Judge, Faridabad and sustained by the High Court, except that the date of dissolution of the firm would be taken as 24th August 1988 and not 31st of March 1989.

5. *Arnab Ranjan Goswami v. Union of India and Others, 2020 SCC OnLine SC 462*

Decided on : -19.05.2020

Bench :- 1. Hon'ble Mr. Justice D. Y. Chandrachud
2. Hon'ble Mr. Justice M. R. Shah

(The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI.)

Facts

The petitioner is the Editor-in-Chief of an English television news channel, Republic TV. He is also the Managing Director of ARG Outlier Media Asianet News Private Limited which owns and operates a Hindi television news channel by the name of R Bharat. The petitioner anchors news shows on both channels.

On 16 April 2020, a broadcast took place on Republic TV. This was followed by a broadcast on R Bharat on 21 April 2020. These broadcasts led to the lodging of multiple First Information Reports and criminal complaints against the petitioner. They have been lodged in the States of Maharashtra, Chhattisgarh, Rajasthan, Madhya Pradesh, Telangana and Jharkhand as well as in the Union Territories of Jammu and Kashmir. In the State of Maharashtra, an FIR was lodged at Police Station Sadar, District Nagpur City.

The genesis of the FIRs and complaints originates in the broadcasts on Republic TV on 16 April 2020 and R Bharat on 21 April 2020 in relation to an incident which took place in Gadchinchle village of Palghar district in Maharashtra. During the course of the incident which took place on 16 April 2020, three persons including two sadhus were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. The incident was widely reported in the print and electronic media. The petition states that a video recording of the incident is available in the public domain. In his news show titled "*Poochtahai Bharat'* on 21 April 2020 on R Bharat, the petitioner claims to have raised issues in relation to the allegedly tardy investigation of the incident.

The petitioner submitted, in the course of his pleadings, that all the complaints and FIRs have incidentally been lodged in States where the governments which were formed owe allegiance to the INC and that he believes that the law enforcement machinery was being set in motion with an ulterior motive. To substantiate this, the petitioner refers to an incident which allegedly took place on 23 April 2020, while he was returning by car from his studio at Worli, Mumbai accompanied by his spouse between 12:30 and 1:00 am. His car was confronted by two individuals on a motor-cycle. Confronted by the security personnel of the petitioner, the two individuals on the motor-cycle are alleged to have disclosed their identity

as members of the INC. An FIR was registered at the behest of the petitioner at NM Joshi Marg Police Station in Mumbai in which the details of the alleged attack on him have been set out.

Decision and Observations

The Apex Court stated that the fundamental basis on which the jurisdiction of the Court has been invoked under Article 32 is the filing of multiple FIRs and complaints in various States arising from the same cause of action. The Apex court then referred to *TT Antony* v. *State of Kerala* wherein the law concerning multiple criminal proceedings on the same cause of action has been analyzed and it was held that "there can be no second FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. The Court held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either under Section 482 of the CrPC or Articles 226/227 of the Constitution.

In *Babubhai* v. *State of Gujarat, it was* held that the relevant enquiry is whether two or more FIRs relate to the same incident or relate to incidents which form part of the same transactions. If the Court were to conclude in the affirmative, the subsequent FIRs are liable to be quashed. However, where the subsequent FIR relates to different incidents or crimes or is in the form of a counter-claim, investigation may proceed.

Therefore, the Apex Court held, "Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime."

The petitioner in this case has sought transfer of investigation to the CBI. While stating that the transfer of an investigation to the CBI is not a matter of routine and also as the precedents emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances", the Apex court adverted to its earlier decisions in ***State of West Bengal* v. *Committee for Protection of Democratic Rights, West Bengal***and***K V Rajendran* v. *Superintendent of Police, CBCID South Zone, Chennai***.

The Apex Court held, "an accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency."

The Apex Court stated the following:

44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In

holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. ***The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI***. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.

(emphasis supplied)

6. *Jagmail Singh and Another v. Karamjit Singh and Others,2020 SCC OnLine SC 456*

Decided on : -13.05.2020

Bench :- 1. Hon'ble Mr. Justice Navin Sinha
2. Hon'ble Mr. Justice Krishna Murari

(Under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence)

Facts

The appellants preferred a suit for declaration to the effect that they are owners to the extent of ½ share each of the land owned by Babu Singh son of Phuman Singh, situated in village Kokri Kalan, Tehsil & District Moga and Mutation No. 9971 dated 28.02.1991 and Mutation No. 9359 dated 25.02.1991 sanctioned by the Assistant Collector Second Grade, Moga in favour of Baldev Singh (predecessors-in-interest of respondent nos. 1 and 2) and Shamsher Singh (respondent No.3) are illegal, null and void, as the said two mutations have been sanctioned on the basis of a forged Will dated 20.03.1988. A further prayer for consequential relief of permanent injunction to restrain the respondents from alienating, transferring or mortgaging the suit property was also sought for.

During pendency of the aforesaid suit, an application under Section 65/66 of the Evidence Act was moved by the appellants seeking permission to prove copy of Will dated 24.01.1989 by way of secondary evidence. The said application was allowed by the Trial Court vide order dated 04.07.2014.

Feeling aggrieved by the said order, respondents preferred Civil Revision No.4645 of 2014 which was allowed by the High Court.

Subsequent thereto, appellants preferred another application under Section 65/66 of the Act, before the Trial Court for issuance of notice under Section 66 of the Act to the revenue officials for production of original Will dated 24.01.1989. The application was made on the ground that the said original Will was handed over by the appellants to revenue officials for sanctioning the mutation in their favour. Both the revenue officials were issued notice for production of the original Will dated 24.01.1989 but they failed to produce the said Will. It was only thereafter, application was dismissed vide order dated 30.09.2015.

Aggrieved by the above order, the appellants approached the High Court by way of a Revision Petition under Article 227 of the Constitution of India. The present appeal is directed against the judgment dated 09.01.2017 passed by the High Court of Punjab and

Haryana at Chandigarh in Civil Revision No. 7271 of 2015 whereby the High Court confirmed the order passed by the Civil Judge (Junior Division) Moga in application filed under Section 65 and 66 of the Indian Evidence Act by the appellants herein seeking permission to prove the copy of the Will dated 24.01.1989 executed by one Babu Singh in their favour by way of secondary evidence, as the original Will which was handed over to the village patwari for mutation could not be retrieved. The High Court while dismissing the application observed that as the pre-requisite condition of existence of Will is not proved, the Will cannot be permitted to be approved by allowing the secondary evidence.

Decision and observations

The Apex court referred to sections 65 and 66 of the Evidence Act,[4]***Ashok Dulichand v. Madahavlal Dube***[5]and***Rakesh Mohindra v. Anita Beri***.[6] *In* ***Rakesh Mohindra*** the following was observed:

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[4]***"65. Cases in which secondary evidence relating to documents may be given.*** *– Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: –*

(a) When the original is shown or appears to be in the possession or power – of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

- In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

- In case (b), the written admission is admissible.

- In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

- In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce – *Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [or to his attorney or pleader] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:*

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: –

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court."

"15. The preconditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted."

The Apex Court then stated the following:

14. ***It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence. In the case of H. Siddiqui (dead) by LRs v. A. Ramalingam [(2011) 4 SCC 240], this Court reiterated that where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established it is not permissible for the court to allow a party to adduce secondary evidence***.

15. In the case at hand, it is imperative to appreciate the evidence of the witnesses as it is only after scrutinizing the same opinion can be found as to the existence, loss or destruction of the original Will. While both the revenue officials failed to produces the original Will, upon perusal of the cross-examination it is clear that neither of the officials has unequivocally denied the existence of the Will. .....

16. In view of the aforesaid factual situation prevailing in the case at hand, it is clear that the factual foundation to establish the right to give secondary evidence was laid down by the appellants and thus the High Court ought to have given them an opportunity to lead secondary evidence. The High Court committed grave error of law without properly evaluating the evidence and holding that the pre-requisite condition i.e., existence of Will remained unestablished on record and thereby denied an opportunity to the appellants to produce secondary evidence.

(emphasis supplied)

[5] (1975) 4 SCC 664
[6] (2016) 16 SCC 483

7. *Assistant Commissioner (CT) LTU, Kakinada &Ors. v. Glaxo Smith Kline Consumer Health Care Limited, 2020 SCC OnLine SC 440*

Decided on : - 06.05.2020

Bench :- 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Dinesh Maheshwari

(If a writ petitioner chooses to approach the High Court after expiry of the maximum limitation period prescribed in an Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course.)

Issue

whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation?

Decision and observations

The Apex Court elaborated upon the powers of the High court under Article 226 of the Constitution and stated the following:

> 11. [...] Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see *Baburam Prakash Chandra Maheshwari* v. *AntarimZila Parishad now Zila Parishad, Muzaffarnagar[*AIR 1969 SC 556*]*and also *Nivedita Sharma* v. *Cellular Operators Association of India* [(2011) 14 SCC 337*]*). In *ThansinghNathmal* v. *Superintendent of Taxes, Dhubri[*AIR 1964 SC 1419*]*, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person.....
>
> **12.** Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a

recent decision of a three-Judge Bench of this Court in *Oil and Natural Gas Corporation Limited* v. *Gujarat Energy Transmission Corporation Limited[*(2017) 5 SCC 42]the statutory appeal filed before this Court was barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in *Singh Enterprises* v. *Commissioner of Central Excise, Jamshedpur[*(2008) 3 SCC 70*]*, *Commissioner of Customs and Central Excise* v. *Hongo India Private Limited[*(2009) 5 SCC 791], *Chhattisgarh State Electricity Board* v. *Central Electricity Regulatory Commission[*(2010) 5 SCC 23*]*and *Suryachakra Power Corporation Limited* v. *Electricity Department represented by its Superintending Engineer, Port Blair[* (2016) 16 SCC 152*]* and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

13. The principle underlying the dictum in this decision would apply *proprio vigore* to Section 31 of the 2005 Act including to the powers of the High Court under Article 226 of the Constitution.....

14. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15.[...] It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. ***However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a***

matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

8. *Punjab National Bank &Ors. v. AtmanandSinghb&Ors., 2020 SCC OnLine SC 433*

Decided on : - 06.05.2020

Bench :- 1. Hon'ble Mr.Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Dinesh Maheshwari

(When a writ petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit.)

Facts

The facts as culled out from the judgment of the Court are as follows:

The writ petitioner had taken a term loan of Rs. 10,000/- from the Bank by way of financial assistance to run a business in the name of "Sanjeev Readymade Store" from Haveli Kharagpur Branch of Punjab National Bank in the district of Munger. The writ petitioner was paid the said sum of Rs. 10,000/- in two instalments of Rs. 4,000/- on 21.07.1984 and Rs. 6,000/- on 01.10.1984. The writ petitioner had yet another savings account in the same branch of the respondents-bank. However, on 14.02.1990, the term loan with interest had mounted upto a figure of Rs. 13,386/-.

In 1989, the writ petitioner, who is Respondent no. 2 in the appeal, was granted two cheques of Rs. 5,000/- each by the Circle Officer, Haveli Kharagpur under the Earthquake Relief Fund. The said two cheques were deposited with the Bank for encashment in the other savings account, but instead, were transferred to the loan account. This was done without any authorization of the writ petitioner and without direction of any competent authority.

Some time thereafter, the writ petitioner's son was afflicted by cancer, which required immediate treatment at All India Institute of Medical Sciences, New Delhi. In order to meet the expenses of the treatment, writ petitioner sold 406 bhars of gold jewellery of his wife's "stridhan" and received Rs. 14,93,268/-. He approached the branch of the respondents-bank with a sum of Rs. 14,93,000/- on 04.08.1989 for issuance of two bank drafts, one in his name and the another in the name of his wife. The then Accountant, Mr. T.K. Palit showed his inability to prepare the drafts on the ground of shortage of staff on that day and requested the writ petitioner to deposit the amount in the savings account No. 1020 in the said branch. The Accountant, after receipt of the money, transferred total amount of Rs. 15,03,000/- to the loan account, whereas in the loan account upto 14.02.1990 outstanding dues of principal and interest was only Rs. 13,386/-. The writ petitioner made grievance before the Branch Manager of the said branch and also filed representations before the Bank authorities. Thereafter, the writ petitioner approached the District Magistrate, Sri Nanhe Prasad, who

ordered the then Circle Officer, Haveli Kharagpur, District Munger, Sri Binod Kumar Singh to make a detailed enquiry into the matter and report.

Accordingly, a Misc. Case No. 4 (DW 1) PNB/1989-90 was initiated and in those proceedings, various officials of the Punjab National Bank, including the then Branch Manager, District Coordination Officer of the Punjab National Bank and the Accountant of the Bank were examined from time to time and reports were submitted to the District Magistrate, Munger. Several witnesses were examined even by the District Magistrate, Munger. There were officers from the Regional Office of the Punjab National Bank, one of them being Sri TejNarain Singh, the Regional Manager of the Punjab National Bank, Regional Office, Patna-B also deposed making reference of what had transpired to the Zonal Office of the Bank. On the basis of these statements, which were recorded by the Circle Officer and / or by the then District Magistrate-cum-Collector, Munger, Sri Gorelal Prasad Yadav, the matter proceeded.

The basic assertion of the writ petitioner having been found correct and the liability having been accepted by the respondents-bank, it was reduced to an agreement dated 27.05.1990, which is Annexure-5B to the writ application between the parties. The agreement was signed by one and all in presence of the Circle Officer and the overall supervision of the District Magistrate. It was duly recorded in writing that the bank had received the deposit amounting to Rs. 15,03,000/- as per deposits made on 02.08.1989, 04.08.1989 and 04.10.1989. It was also recorded that the total term loan and the liability of the writ petitioner up to 14.02.1990 came to Rs. 13,386/- only and the amount of Rs. 14,89,614/- of the writ petitioner would be kept in the Fixed Deposit of the bank and shall be paid with interest by September, 1997. The writ application was filed, when the bank refused to honour this agreement.

The present appeal takes exception to the judgment and order dated 23.2.2017 passed by the Division Bench of the High Court of Judicature at Patna in LPA No. 310/2009, whereby, the LPA filed by the appellants came to be dismissed while affirming the decision of the learned single Judge, dated 10.2.2009 in allowing the Civil Writ Jurisdiction Case (CWJC) No. 867/1999.

Decision and observations

> **14.** Be it noted that on one hand, the case made out by the respondent No. 1 is that he had sold his family gold and the sale proceeds received were deposited in the concerned Branch of the appellant Bank for withdrawal, as the amount was required by him for meeting medical expenses of his ailing son suffering from cancer. At the same time, vide alleged agreement, the respondent No. 1 conveniently agrees to invest the amount for seven (7) years, which circumstance also raises serious doubt about the genuineness of the document. We do not wish to elaborate on the terms set out in the subject agreement except to observe that the plea taken by the appellant-Bank about genuineness of the document is debatable (triable) and is not

a case of admitted position or indisputable fact, so as to proceed against the appellant-Bank by directing payment of the amount claimed by the respondent No. 1 (writ petitioner), on the basis of such an agreement.

15. The judgment of the learned single Judge has completely glossed over these crucial aspects and the writ petition has been disposed of in a very casual manner. The Division Bench of the High Court committed the same error in upholding the decision of the learned single Judge. The Division Bench has not even analysed the efficacy of the affidavits filed in support of the stand taken by the appellant-Bank during the pendency of the LPA. It merely reiterates the view taken by the learned single Judge in just two short paragraphs reproduced in paragraph 6 above. It has not analysed the efficacy of the proceedings in Misc. Case No. 4 (DW1) PNB/1989-90, as well as, the certified copy of the proceedings filed in appeal before it, in the context of affidavits of Bank officials and report of the District Magistrate. The Division Bench was also misled by the voluminous documents relied upon by the respondent No. 1 and assumed that the same could not be a figment of imagination or a piece of fiction.

16. Even if the impugned judgments were to be read as a whole, there is no analysis of the relevant documents and in particular, the stand taken by the appellant-Bank expressly denying the existence of the stated agreement and genuineness thereof, which plea was reinforced from the affidavits of the concerned Bank officials and the report of the District Magistrate. Notably, the District Magistrate in the affidavit filed in compliance of the order dated 18.3.2016 had clearly denied the existence of the stated proceedings for want of contemporaneous official record in that regard. This aspect has not been taken into account by the High Court at all. On facts, therefore, the High Court committed manifest error in disregarding the core jurisdictional issue that the matter on hand involved complex factual aspects, which could not be adjudicated in exercise of writ jurisdiction.

The Apex Court relied upon*ThansinghNathmal v. Superintendent of Taxes, Dhubri*[7]and *Suganmal v. State of Madhya Pradesh*[8]wherein the Court dealt with the scope of jurisdiction of the High Court under Article 226 of the Constitutionand stated the following:

17. [...] We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High

[7]AIR 1964 SC 1419
[8]AIR 1965 SC 1740

Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law.

9. *State of Rajasthan v. Mehram&Ors., 2020 SCC OnLine SC 442*

Decided on : - 06.05.2020

Bench :- 1. Hon'ble Mr.Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Dinesh Maheshwari

(In the appeal filed against the sentence on the ground of its inadequacy, the accused may plead for his acquittal or for reduction of the sentence.

The two theories (of being aggressors as opposed to exercise of right of private defence) are antithesis to each other.)

Facts

This appeal takes exception to the judgment and order dated 5.11.2007 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 271/1982, whereby the conviction of the respondent No. 1/original accused No. 5 (Mehram S/o Mr. Chhagna Ram) under Section 302 of the Indian Penal Code has been converted into one under Section 326, IPC and the substantive sentence awarded therefor is reduced only to the period already undergone (about five months) the accused No. 5. State was pursuing this appeal only against the accused No. 5 (Mehram S/o Chhagna Ram) for restoration of his conviction under Section 302, IPC and to award him sentence of life imprisonment.

Decision and observations

The Hon'ble Apex court stated the following:

> **6.** The accused No. 5 (Mehram S/o Chhagna Ram) is justified in contending that it is open to the said accused to challenge the finding and order of conviction under Section 326/148, IPC recorded against him in the appeal filed by the State, assailing the impugned judgment of the High Court. ***That being the settled legal position, as expounded in Chandrakant Patil (supra), Sumer Singh (supra) and Ramanand (supra) including Section 377(3) of the Cr.P.C., which predicates that in the appeal filed against the sentence on the ground of its inadequacy, the accused may plead for his acquittal or for reduction of the sentence***. Resultantly, we may have to consider the correctness of the finding of fact recorded by the trial Court and the appeal Court (High Court) against the accused No. 5 (Mehram S/o Chhagna Ram).
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> **9.** After having gone through the relevant evidence and judgments of the trial Court and the appeal Court (High Court), we have no reason to depart from the conclusion reached by the trial Court that there were tangible circumstances and evidence to

indicate that the accused party was the aggressor, who was hiding in the bushes and appeared only after the complainant party arrived on the spot. The accused party had assembled at the spot with lethal weapon(s) and all the accused were waiting for the complainant party to arrive at the spot and started assaulting the complainant party. The blows inflicted by the concerned accused, in particular accused No. 5, were with an intention to kill Bhura Ram (deceased). The death of Bhura Ram was caused due to the blow inflicted by accused No. 5 and was a homicidal death. We have no reason to depart from the said findings recorded by the trial Court and if we may say so, the same remained undisturbed by the High Court. The High Court by its cryptic judgment, proceeded on the erroneous assumption that the accused party had been provoked due to the unauthorised entry of the complainant party on their fields and to defend their possession, they had to resort to right of private defence. While doing so, the accused party, in particular, accused No. 5 (Mehram S/o Chhagna Ram), exceeded his right of private defence. There was no common object because the incident in question occurred due to provocation and spiralled into a free fight, causing injuries to both sides. The fallacy in the reasoning of the High Court is palpable from the evidence of prosecution witnesses, which has been elaborately analysed and rightly accepted as truthful by the trial Court, substantiating the allegations against the accused party of being the aggressors. ***Once it is a case of accused party being the aggressors and they commenced assault on the complainant party and further, the accused No. 5 (Mehram S/o Chhagna Ram) having been found to have assaulted Bhura Ram (deceased) with intention to kill him, the question of invoking the right of private defence does not arise. In fact, no defence evidence was produced to substantiate the plea of exercise of private defence. The two theories (of being aggressors as opposed to exercise of right of private defence) are antithesis to each other.***

(emphasis supplied)

10. Triloki Nath Singhv. Anirudh Singh, 2020 SCC OnLine SC 444

Decided on : - 06.05.2020

Bench :- 1. Hon'ble Mr.Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Ajay Rastogi

(The decree passed on a compromise cannot be challenged by a stranger to the proceedings in a separate suit by virtue of the specific bar under Order XXIII Rule 3A of the CPC.)

Facts

The appellant-plaintiff filed suit before 4th sub-judge, Chapra seeking a declaration that the compromise decree dated 15th September, 1994 passed in Second Appeal No. 495/86 by the High Court is illegal, inoperative and obtained by fraud and misrepresentation and also prayed for injunction against the respondents-defendants restraining them from entering into peaceful possession of the suit property.

The case of the appellant-plaintiff is that the land described in Schedule 1 of the plaint originally belonged to Lakhan Singh who died leaving behind three sons, namely, Din Dayal Singh, Jalim Singh and Kunjan Singh. Din Dayal Singh is said to have died issueless during lifetime of his father and his other brother, namely, Jalim Singh also died leaving behind a son Ram Nath Singh and two daughters Sampatiya and Soniya. As regards the third son Kunjan Singh, he is said to have died issueless but prior to his death he gifted the land of his share to Sampatiya on the basis of a gift deed dated 10th July, 1978 which came on possession over her.

The further case of the appellant is that one Salehari wife of Satyanarayan Prasad claiming herself to be the daughter of late Kunjan Singh filed a partition suit 13/78 in the Court of Munsif, Chapra for setting aside the aforesaid gift and for partition of her share in the ancestral property. In that suit, Sampatiya, Dulari Devi, Ram Nath and Soniya were impleaded as party respondents- defendants. Ram Nath died during pendency of the proceedings and only Sampatiya contested the suit. It was further stated that suit was dismissed and it was held that Salehari was not the daughter of Kunjan Singh and have no right in the properties.

Salehari filed T.A. No. 19/84 which was dismissed on 7th April, 1986. The further case is that a total of 3 Bigha 6 Katha 3 Dhurs was sold by Sampatiya to appellant-plaintiff for a sum of Rs. 25,000/- by a registered sale deed dated 6th January, 1984 and put the appellant-plaintiff in possession over the suit property. In July, 1995, when respondents-defendants started making interference in possession of the suit property of the appellant-plaintiff and on query it revealed that it was claimed on the strength of a compromise decree entered between Sampatiya and Salehari which was filed in second appeal before the High Court of Patna.

Issue

Whether the decree passed on a compromise can be challenged by the stranger to the proceedings in a separate suit, or, whether the suit filed by the appellant-plaintiff in seeking a declaration against the decree of compromise dated 15th September, 1994 passed by the High Court of Patna in Second Appeal was maintainable in view of the provisions of Order 23 Rule 3 and Rule 3A CPC.

Decision and Observations

The Apex court referred to the decisions in*Pushpa Devi Bhagat (Dead) throughLR Sadhna Rai (Smt) v. Raiinder Singh*[9]and *R. Rajanna v. S.R. Venkataswamu*[10]wherein the scheme of Order 23 Rule 3 and Rule 3A has been taken note of.

The Apex court then stated the following:

> **17.** Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3A of Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The Court can be instrumental in having an agreed compromise effected and finality attached to the same. The Court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Rule 3 of Order 23 CPC before the Court.
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> **19.** Thus, after the amendment which has been introduced, neither any appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3A of Order 23 CPC. As such, a right has been given under Rule 1A(2) of Order 43 to a party, who denies the compromise and invites order of the Court in that regard in terms of proviso to Rule 3 of Order 23 CPC while preferring an appeal against the decree. Section 96(3) CPC shall not be a bar to such an appeal, because it is applicable where the factum of compromise or agreement is not in dispute.
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> **21.** Indeed, the appellant was not a party to the stated compromise decree. He was, however, claiming right, title and interest over the land referred to in the stated sale deed dated 6th January, 1984, which was purchased by him from Sampatiya-

[9](2005) 5 SCC 566
[10](2014) 15 SCC 471

judgment debtor and party to the suit. It is well settled that the compromise decree passed by the High Court in the second appeal would relate back to the date of institution of the suit between the parties thereto. In the suit now instituted by the appellant, at the best, he could seek relief against Sampatiya, but cannot be allowed to question the compromise decree passed by the High Court in the partition suit. In other words, the appellant could file a suit for protection of his right, title or interest devolved on the basis of the stated sale deed dated 6th January, 1984, allegedly executed by one of the party(Sampatiya) to the proceedings in the partition suit, which could be examined independently by the Court on its own merits in accordance with law. The trial Court in any case would not be competent to adjudicate the grievance of the appellant herein in respect of the validity of compromise decree dated 15th September, 1994 passed by the High Court in the partition suit.

22. In other words, the appellant can only claim through his predecessor-Sampatiya, to the extent of rights and remedies available to Sampatiya in reference to the compromise decree. Merely because the appellant was not party to the compromise decree in the facts of the present case, will be of no avail to the appellant, much less give him a cause of action to question the validity of the compromise decree passed by the High Court by way of a substantive suit before the civil Court to declare it as fraudulent, illegal and not binding on him. Assuming, he could agitate about the validity of the compromise entered into by the parties to the partition suit, it is only the High Court, who had accepted the compromise and passed decree on that basis, could examine the same and no other Court under proviso to Rule 3 of Order 23 CPC. ***It must, therefore, follow that the suit instituted before the civil Court by the appellant was not maintainable in view of specific bar under Rule 3A of Order 23 CPC as held in the impugned judgment***.

23. In the instant case, the suit was instituted in the year 1995 and 25 years have rolled by now and after the finding has been recorded in reference to issue no. 7 regarding the right, title and interest of the suit property against the appellant by the learned trial Judge devolved on the basis of a stated sale deed dated 6th January, 1984 and not interfered by the Court of Appeal preferred at the instance of the appellant, in the given circumstances, remitting the matter back to the learned trial Court to examine the suit filed at the instance of the appellant-plaintiff independently for protection of his right, title or interest being devolved on the basis of the stated sale deed dated 6th January, 1984 which as alleged to have been executed by one of the party to the compromise(Sampatiya) in the changed circumstances may not serve any purpose more so after the concurrent finding of Courts below have been recorded against the appellant-plaintiff.

24. Consequently, in our view, the appeal is without substance and the same is accordingly dismissed. No costs.

11. *Pandurang Ganpati Chaugulev.Vishwasrao Patil MurgudSahakari Bank Limited, 2020 SCC OnLine SC 431*

Decided on : - 05.05.2020

Bench :- 1. Hon'ble Mr.Justice Arun Mishra
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice Vineet Saran
4. Hon'ble Mr. Justice M.R. Shah
5. Hon'ble Mr. Justice Aniruddha Bose

(The co-operative banks under the State legislation and multi-State co-operative banks are 'banks' under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an essential part of banking; as such, the recovery procedure prescribed under section 13 of the SARFAESI Act, a legislation relatable to Entry 45 List I of the Seventh Schedule to the Constitution of India, is applicable.)

Issue

The issue arises whether the definition of 'banking company' contained in Section 5(c) of the Banking Regulation Act, 1949 (for short, 'the BR Act, 1949') covers cooperative banks registered under the State law and also multi-State co-operative societies under the Multi-State Co-operative Societies Act, 2002 (for short, 'the MSCS Act'). Consequently, (i) whether cooperative banks at State and multi-State level are co-operative banks within the purview of the SARFAESI Act ? and (ii) whether provisions of the SARFAESI Act apply to the co-operative banks registered under the MSCS Act ?

Decision and Observations

(1) Whether 'co-operative banks', which are co-operative societies also, are governed by Entry 45 of List I or by Entry 32 of List II of the Seventh Schedule of the Constitution of India, and to what extent?
The Apex court stated the following in this regard:

> **41.** In our opinion, the framers of the Constitution cannot be said to have confined the meaning of 'banking' to a particular definition, as given in the BR Act, 1949. The word 'banking' has been incorporated in Entry 45 of List I. The decision in *Rustom Cavasjee Cooper* (supra) vividly leaves no room for doubt that banking done by the co-operative bank is covered within the ambit of Entry 45 of List I. The decision in *Gannon Dunkerley& Co., (Madras) Ltd.*. (supra) stands neutralised by introduction of Article 366(29A) of the Constitution of India and the meaning of the said term has been redefined. Entries have to be given full effect in pith and

substance considering forms of business of cooperative banks performing the activities of banking under a licence. The same is covered within the purview of Entry 45 of List I.

70. The concept of regulating non-banking affairs of society and regulating the banking business of society are two different aspects and are covered under different Entries, i.e., Entry 32 of List II and Entry 45 of List I, respectively. The law dealing with regulation of banking is traceable to Entry 45 of List I and only the Parliament is competent to legislate. The Parliament has enacted the SARFAESI Act. It does not intend to regulate the incorporation, regulation, or winding up of a corporation, company, or co-operative bank/cooperative society. It provides for recovery of dues to banks, including co-operative banks, which is an essential part of banking activity. The Act in no way trenches on the field reserved under Entry 32 of List II and is a piece of legislation traceable to Entry 45 of List I. The decision in *Virendra Pal Singh* (supra) has been rendered regarding service regulations. It does not apply to the instant case concerning the regulation of 'banking' covered under Entry 45 of List I. The Court did not deal with the aspect of the regulation of banking in the said decision as it was not required to be decided. Thus, the ratio of the decision operates in a different field. Moreover, the U.P. Co-operative Services Act was saved on the ground of incidental trenching on the subject of another list, i.e., Entry 45 List I, which is permissible.

(2) Whether 'banking company' as defined in Section 5(c) of the BR Act, 1949 covers co-operative banks registered under the State Co-operative Laws and also multi-State co-operative societies?

84. The co-operative banks, which are governed by the BR Act, 1949, are involved in banking activities within the meaning of Section 5(b) thereof. They accept money from the public, repayable on demand or otherwise and withdrawal by cheque, draft, order or otherwise. Merely by the fact that lending of money is limited to members, they cannot be said to be out of the purview of banking. They perform commercial functions. A society shall receive deposits and loans from members and other persons. They give loans also, and it is their primary function. Thus, they are covered under 'banking' in Entry 45 of List I.

(3)(a) Whether co-operative banks both at the State level and multi-State level are 'banks' for applicability of the SARFAESI Act?

(3)(b) Whether provisions of Section 2(c) (iva) of the SARFAESI Act on account of inclusion of multi-State co-operative banks and notification dated 28.1.2003 notifying cooperative banks in the State are *ultra vires*?

85. [...] Since the activity of a co-operative bank is banking regulated by the law enacted within the relatable Entry 45 of List I, we find no reason as to why the

Parliament lacked the competence to enact the SARFAESI Act and to provide a procedure for the speedy recovery of dues. The SARFAESI Act also covers the activities undertaken by the co-operative banks. The co-operative banks are doing banking business under Section 5(b) of the BR Act, 1949, and the exclusion of the co-operative societies from Entry 43 of List I, does not have any bearing regarding the interpretation of Entry 45 of List I.

86. Even assuming for the time being that definition of 'bank' in Section 5(c) of the BR Act, 1949 did not cover the co-operative banks; the expression 'bank' has been defined in the SARFAESI Act under Section 2(1)(c), and the provisions contained in Section 2(1)(c)(v) authorises the Central Government to specify 'such other bank' for that Act. Thus, the notification issued on 28.1.2003 notifying 'cooperative bank' as the 'bank' is covered by Entry 45 of List I as they are regulated by the BR Act, 1949, and the RBI Act. For the 'banking' activity under Entry 45 of List I, the Parliament had the power to enact such a provision defining 'bank' to authorise and prescribe the recovery procedure for such a bank as provided in Section 13 of the SARFAESI Act; However, we are of the view that co-operative societies/banks stand included by incorporation in Section 5(1)(c) of 140 the BR Act and the notification was issued *ex abundanti cautela*. By virtue of Section 56(a), co-operative banks, as defined in Section 56(cci) of the BR Act, 1949, are included in Section 5(1)(c). Similarly, multi-State co-operative banks were also covered.

87. The earlier procedure for recovery of dues was differently provided for general banks and the co-operative banks through the Civil Court or Tribunal. In the SARFAESI Act, a procedure has been prescribed under Section 13 without the intervention of the court/tribunal to keep pace with the time. Thus, the malady of inordinate delay with which the order of civil court suffered as well as of the co-operative tribunals or summary procedure under the Cooperative Societies Act, was sought to be redressed. Apart from that, it is permissible for the Parliament to enact the law to provide recovery procedures for bank dues that have been done by providing speedy recovery of secured interest without intervention of the court/tribunal.

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100. We find that 'banking' relating to co-operatives can be included within the purview of Entry 45 of List I, and it cannot be said to be over inclusion to cover provisions of recovery by co-operative banks in the SARFAESI Act. It cannot be said to be over-inclusion on the anvil of the principles laid down by this Court

The Apex Court concluded the issues in the following words:

103. Resultantly, we answer the reference as under:

(1) (a) The co-operative banks registered under the State legislation and multi-State level co-operative societies registered under the MSCS Act, 2002 with respect to 'banking' are governed by the legislation relatable to Entry 45 of List I of the Seventh Schedule of the Constitution of India.

(b) The co-operative banks run by the co-operative societies registered under the State legislation with respect to the aspects of 'incorporation, regulation and winding up', in particular, with respect to the matters which are outside the purview of Entry 45 of List I of the Seventh Schedule of the Constitution of India, are governed by the said legislation relatable to Entry 32 of List II of the Seventh Schedule of the Constitution of India. 158

(2) The co-operative banks involved in the activities related to banking are covered within the meaning of 'Banking Company' defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949, which is a legislation relatable to Entry 45 of List I. It governs the aspect of 'banking' of co-operative banks run by the co-operative societies. The co-operative banks cannot carry on any activity without compliance of the provisions of the Banking Regulation Act, 1949 and any other legislation applicable to such banks relatable to 'Banking' in Entry 45 of List I and the RBI Act relatable to Entry 38 of List I of the Seventh Schedule of the Constitution of India.

(3) (a) The co-operative banks under the State legislation and multi-State co-operative banks are 'banks' under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an essential part of banking; as such, the recovery procedure prescribed under section 13 of the SARFAESI Act, a legislation relatable to Entry 45 List I of the Seventh Schedule to the Constitution of India, is applicable.

(3) (b) The Parliament has legislative competence under Entry 45 of List I of the Seventh Schedule of the Constitution of India to provide additional procedures for recovery under section 13 of the 159 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with respect to co- operative banks. The provisions of Section 2(1)(c)(iva), of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, adding *"ex abundanti cautela*", 'a multi-State co-operative bank' is not *ultra vires* as well as the notification dated 28.1.2003 issued with respect to the co- operative banks registered under the State legislation.

The civil appeals, writ petitions and the pending applications, if any, are disposed of accordingly.

12. Chellappa v. State, 2020 SCC OnLine SC 432

Decided on : -04.05.2020

Bench :- 1. Hon'ble Mr.Justice N.V. Ramana
2. Hon'ble Mr. JusticeR.Subhash Reddy
3. Hon'ble Mr. Justice B.R. Gavai

(Section 34, IPC is not a substantive offence. Before a person can be held responsible under this section, it must be established that there was a common intention and the person being sought to be held liable must have participated in some manner in the act constituting the offence.)

Facts

The present appeal arises out of the final judgment and order dated 19.12.2007 passed by the High Court of Madras, Bench at Madurai, in Criminal Appeal No. 1 of 2006, whereby the High Court partly allowed the criminal appeal filed by the accused-appellant, along with others, and set aside the conviction imposed on him under Sections 148 and 341 of the Penal Code, 1860 (hereinafter referred to as the "IPC"). Further, the conviction and sentence imposed on him under Section 302 read with Section 149, IPC was converted into the conviction under Section 302 read with Section 34, IPC. However, the conviction imposed on the accused-appellant under Section 324 of the IPC was confirmed by the High Court.

The challenge before the High Court was against the judgment dated 28.10.2005, passed by the Trial Court in S.C. No. 9 of 2005 convicting the accused-appellant under Sections 148, 341, 324 and Section 302 read with Section 149, IPC.

All the accused persons viz., A1 to A5 including accused-appellant being A3, used to eve tease PW2, aged 26 years old, who was the wife of the deceased. PW2 informed her husband about the same and the deceased reprimanded the accused persons. However, on 28.06.2003, at about 7.30 p.m., when the deceased's father (PW1), PW2 and the deceased were nearing the bus stop on their way to the church, PW2 was once again eve teased by the accused persons in front of the deceased. As a result, a quarrel took place, wherein the accused persons, including the accused-appellant, warned the deceased by giving him death threats.

The main incident took place at about 09.30 p.m. on the same day, when the deceased, his father (PW1) and wife (PW2), were returning to their house. On their way towards the Idinthakarai bus stop, they found all the accused persons standing near the bus stop. The deceased, PW1 and PW2 were stopped and attacked by the accused persons. A1 was armed with a knife, while all other accused, including the accused-appellant herein were armed with *aruvals.* A1 scolded the deceased and stabbed him in his stomach. The deceased could not bear the attack and fell down. When, PW1 tried to lift the deceased, he was attacked by the accused-appellant with an *aruval* on the left side of his head. On an alarm being raised by PW1 and PW2, the accused persons fled from the scene. The deceased was immediately taken to his house, wherein he breathed his last.

Decision and Observations

8. It is clear from the record that there is no allegation by the prosecution, or any statement by the two eye witnesses, PW1 and PW2, regarding the infliction of any injury by the accused-appellant on the deceased. As such, the conviction of the accused-appellant under Section 302, IPC was done by initially reading Section 302, IPC with Section 149, IPC, and subsequently, on the acquittal of A2, A4 and A5 of all offences by the High Court, by reading Section 302, IPC with Section 34, IPC.

9. It must be noted that Section 34, IPC is not a substantive offence. Before a person can be held responsible under this section, it must be established that there was a common intention and the person being sought to be held liable must have participated in some manner in the act constituting the offence. The common intention shared by the accused should be anterior in time to the commission of the offence, but may develop on the spot when the crime is committed [See *Virendra Singh* v. *State of Madhya Pradesh*, (2010) 8 SCC 407]. However, from a perusal of the impugned High Court judgment, as well as the submissions of the prosecution, it is clear that no reasoning or evidence has been advanced as to the fulfillment of the requirements for the conviction of the accused-appellant under Section 34, IPC in the present case.

10. Further, a perusal of the circumstantial evidence in the case does not clearly indicate that the accused-appellant had common intention with the main accused to kill the deceased. In fact, from the statement of PW2, it is clear that at the time of the incident the main accused was the only person who reacted to the words of the deceased and his family members asking them to make way, and stabbed the deceased in the spur of the moment. As such, when some doubt exists as to the common intention animating the accused-appellant, the same must inure to the benefit of the accused-appellant.

11. Therefore, after hearing the submissions advanced by the parties and carefully perusing the material placed on record, we are of the opinion that the conviction and sentence of the accused-appellant under Section 302, IPC read with Section 34, IPC deserves to be set aside as the same is not proved beyond reasonable doubt.