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IMPORTANT CASE LAWS

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A. **Arbitration and Conciliation Act, 1996 – Ss. 2(2), 2(1)(f) & 2(4), (5) & (7), 1, 9, 42, 37, Pt. I and Pt. II – International commercial arbitration whose juridical or legal seat of arbitration is outside India (foreign-seated (ICA) – Inapplicability of Pt. I – Application for interim relief in courts in India in respect of foreign-seated IVA – Non-maintainability of, under any provision of law – Clause in arbitration agreement which purports to apply Pt. I to foreign-seated ICAs – Extent to which effective.**

- **Held, Pt. I applies only to arbitrations (domestic as well as international) that have their juridical or legal seat within territory of India – If upon a construction thereof, the arbitration agreement is held to provide for seat of arbitration outside India, Pt.I would be inapplicable to the extent inconsistent with arbitration law of seat of arbitration, even if the arbitration agreement purports to provide that 1996 Act shall govern arbitration proceedings [See in detail Shortnote B] – Awards made in foreign-seated ICAs are subject to jurisdiction of Indian courts only when same are sought to be enforced in India in accordance with, and only to the extent provided for by, provisions of PT.II [See in detail Shortnotes M to S] – Further, no application for interim relief and no suit for interim injunction simpliciter is**

maintainable in India in respect of foreign-seated ICAs [See in detail Shortnotes V to Z] – Bhatia International, (2002] 4 SCC 105 and Venture Global Engg., (2008) 4 SCC 190, overruled prospectively - Reasons for, discussed in extensor.

- **Law declared in this case, held, shall apply prospectively to all arbitration agreements executed after 6-9-2012 – Civil Procedure Code, 1908 – Ss. 94 and 151 and Or. 39 Rr. 1 & 2 – Specific Relief Act, 1963 – Ss. 14(2), 37 and 38.**

B. Arbitration and Conciliation Act, 1996 – Ss. 2(2), 20, 7 and Pt. I – Juridical or legal seat of arbitration – Whether inside India or outside India – Construction of arbitration agreement to determine – Arbitration agreement designating foreign country as seat/place of arbitration and also purporting to select 1996 Act as curial law/law governing arbitration proceedings.

- **Resolution of such a situation to determine seat/place of arbitration and hence applicable curial law, held, is a matter of construction of the individual arbitration agreement – Court has to undertake a detailed examination to discern from arbitration agreement and surrounding circumstances, intention of parties as to whether particular place mentioned refers merely to a venue or does it refer to juridical seat of arbitration.**

- **Pt. I of 1996 Act would be applicable, held, only if arbitration agreement is construed to provide for juridical seat of arbitration in India (the foreign "seat" thus only being a choice of venue and not really the juridical seat, curial law in fact thus being 1996 (Act)**
- **On the other hand, if arbitration agreement on its construction is held to provide for juridical seat of arbitration outside India, Pt. I would be inapplicable to the extent inconsistent with arbitration law of juridical seat of arbitration, even if arbitration agreement purports to provide that 1996 Act shall govern arbitration proceedings – Choice of another country as juridical seat of arbitration imports an acceptance that law of that country relating to conduct and supervision of arbitrations will apply [See also Shortnote V, below] – Evidence Act, 1872, Ss. 91 and 92.**

C. Arbitration and Conciliation Act, 1996 – Ss. 2(2), (4) & (5), - Relative scope and inter-relationship between Ss. 2(2), (4) & (5), explained in detail - Scope of phrases "every arbitration under any other enactment for the time being in force" in S. (24) and "all arbitrations": in S. 2(5), explained – Held, said phrases do not make Pt. I of 1996 Act applicable to foreign-seated arbitrations i.e. arbitrations whose juridical seat is outside India – There is no colnflict between S. 2(2) and Ss. 2(4) & (5) – "Any other enactment" in S. 2(4) contemplates only an Act made by arbitrations whose juridical seat of arbitration is in India, but which may be governed partially or wholly by some other Indian statute or law, other than 1996 Act – Ss. 2(4) & (5) merely recognize that other than consensual arbitrations, there may be other types of arbitrations whose seat might be in India – Pt. I only applies to arbitrations whose juridical seat is in India – Telegraph Act, 1885 – S. 7 – Constitution of India – Art.245 – Extraterritorial operation of Indian laws – When may be inferred.

D. Arbitration and Conciliation Act, 1996 – Ss. 2(2). 2(1)(f), 2(7), 20 and 42 – Seat/Place/Situs of arbitration – Curial law/Proper law governing arbitration – Territorial relationship between place of arbitration and law governing said arbitration – UNCITRAL Model Law – Applicability of territorial principle to 1996 Act – Discussed – Law of seat or place of arbitration, held, is normally the law to govern that arbitration – Effect of omission of word "only" from S. 2(2) of 1996 Act as contrasted with Art. 1(2) of UNCITRAL Model Law, held, is irrelevant in coming to conclusion that Pt. I of 1996 Act applies only to arbitrations whose juridical seat is in India – Maxim expressum facit cessare tacitum ("what is expressed makes what is silent cease"), applied – UNCITRAL Model Law, 1985 - Art. 1(2) – Locus arbitri – Civil Procedure Code, 1908 – Ss. 16 to 20 – New York Convention, 1958 – Arts. V(1)(a), (d) & (e) – Words and Phrases – "Only" – When not necessary.

E. Arbitration and Conciliation Act, 1996 – Ss. 20, 2(2), 2(1)(f) and 2(7) – Seat and venue of arbitration – Distinction between – Scheme of S. 20, explained in detail – Held, in international commercial arbitrations having their legal or juridical seat in India, hearings may be conducted outside India at

venue fixed by parties – However, this would not have the effect of changing juridical seat of arbitration, which would remain in India.

F. Arbitration – Jammu an Kashmir Arbitration and Conciliation Act, 1997 (35 of 1997) – Applicability of Pts. I and II of Arbitration and Conciliation Act, 1996 vis-à-vis State of Jammu and Kashmir, explained.

G. **Arbitration and Conciliation Act, 1996 – Ss. 2(1)(e), 9, 17, 20, 34, 36, 37 and 42 – Arbitrations with juridical seat in India – Courts which have jurisdiction – Held, vide scheme of S. 2(1)(e), legislature has intentionally given jurisdiction to two classes of courts: (i) court(s) which have jurisdiction at location(s) where cause of action has arisen, and (ii) court(s) which have jurisdiction where seat of arbitration is located – Illustrative example given – Civil Procedure Code, 1908 – Ss. 16 to 20 – Words and Phrases – "Subject-matter of the arbitration" and "subject-matter of the suit".**

H. Arbitration and Conciliation Act, 1996 – S. 20 – Freedom of parties to agree on "place": or "seat" of arbitration within India when juridical place of arbitration is in India – Extent of – Held, there are no restrictions on the same.

I. **Arbitration and Conciliation Act, 1996 – Ss. 2(1)(e) and 47 – Scheme of conferring jurisdiction under – Contrasted - S. 2(1)(e) which is limited to Pt. I of 1996 Act, confers jurisdiction upon courts where seat of arbitration is located within India – On the other hands, S. 47 which is in Pt. II of 1996 Act defines "Court" as a court having jurisdiction over subject-matter of the award i.e. court within whose jurisdiction asset/person is located, against which/whom enforcement of foreign award (under Pt.II) is sought – Words and Phrases – "Subject-matter of the award".**

J. Interpretation of Statues – Basic Rules - Plain or ordinary meaning – Introduction/Removal of new words – Rewriting/Alteration of language of statute when words of statute are manifestly clear – Supplying casus omissus – Impermissibility – Held, provisions in a statute must be construed by their plain language – Court cannot reconstruct a provision by adding certain words or rewriting said provision.

K. Interpretation of Statutes – Basic Rules – Plain or ordinary meaning – Plain construction – Redundancy or tautology – Held, courts should not impute redundancy or tautology to Parliament.

2012 - 4 -L.W 613

Vishwanath S/o Sitaram Agrawalu
Vs
Sau. Sarla Vishwanath Agrawal

Hindu Marriage Act (1955), Section 13(1)(ia)/'Mental Cruelty', Alimony, interim orders,

Respondent-wife had made allegation that the husband had an illicit relationship – Whether such an allegation has actually been proven by adducing acceptable evidence.

She had publicized in the news-papers that he was a womanizer and a drunkard.

Respondent-wife had humiliated him and caused mental cruelty – Evidence establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable – His brain and the bones must have felt the chill of humiliation – He is entitled to a decree for divorce.

Amount that has been paid to the respondent-wife towards alimony is to be ignored as the same had been paid by virtue of the interim orders passed by the courts.

(2012) 6 MLJ 755 (SC)

Bhau Ram
Vs
Janak Singh and Ors

Code of Civil Procedure (5 of 1908), Order 7 Rule 11 – Application under – While considering an application under Order 7 Rule 11 Code of Civil Procedure, 1908 Court has to examine averments in the plaint – Pleas taken by defendants in written statements would be irrelevant.

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SUPREME COURT CITATIONS
CRIMINAL CASES

2012 (4) CIJ 490

M. Sarvana @ K.D. Saravana
Vs
State of Karnataka

(A) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 154 – Criminal trial – Appreciation of evidence – Hostile witness – Dying declaration – FIR – Informant – Appellant was accused of committing murder and was found guilty by the trial Court and convicted and his appeal was also dismissed by the High Court against which he preferred appeal – While the appellant contended that the FIR was not lodged by an eye witness, dying declaration recorded by the police was not admissible, and the evidence of a hostile witness could not be relied on which plea was resisted by the State – Held, even in case of hostile witness, that part of the statement which was reliable could be relied on by the Court-FIR could be lodged by anyone and the FIR lodged by the doctor who had admitted the deceased in the hospital was perfectly valid – Dying declaration was properly recorded by the police and found reliable and could be acted upon for convicting the appellant – Appeal was dismissed.

(B) Code of Criminal Procedure, 1973 (2 of 1974) – Sec.154 – Criminal trial – Investigation – FIR – Informant – FIR can be lodged by any person, even by telephonic information. It is not necessary that an eyewitness alone can lodge the FIR.

(C) Indian Evidence Act, 1872 (1 of 1872) – Sec.3 – Criminal trial – Appreciation of evidence – Hostile witness – In criminal trial, the court can take into consideration the part of the statement of a hostile witness which supports the case of the prosecution.

(D) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Criminal trial – Appreciation of evidence – Dying declaration – The dying declaration, if found reliable, could form the sole basis of conviction.

(E) Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Criminal trial – Appreciation of evidence – Dying declaration – Corroboration – Dying declaration is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival – Once dying declaration has been made voluntarily, it is deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction.

RATIOS:

a) **FIR can be lodged by any person, even by telephonic information. It is not necessary that an eyewitness alone can lodge the FIR.**
b) **In criminal trial, the court can take into consideration the part of the statement of a hostile witness which supports the case of the prosecution.**

c) **The dying declaration, if found reliable, could form the sole basis of conviction.**

d) **Dying declaration is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival.**

e) **Once dying declaration has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction.**

(2012) 3 MLJ (Crl) 573 (SC)

Ushaben
Vs
Kishorbhai Chunilal Talpada and Ors

Indian Penal Code (45 of 1860), Sections 494, 498-A-Code of Criminal Procedure, 1973 (2 of 1974), Section 190(1) – Cognizance of offence by Magistrate on Police Report challenged – Appeal – Complaint port challenged – Appeal – Complaint contains allegation of offence under Section 498-A IPC which is cognizable offence – Court can take cognizance there of even on a Police Report – Appeal disposed of.

RATIO DECIDENDI: If a complaint contains allegation about commission of offence under Section 498A IPC which is cognizable offence, apart from allegation abut the commission of offence under Section 494 IPC, Court can take cognizance there of even on a police report.

(2012) 7 Supreme Court Cases 621

SANGEETABEN MAHENDRABHAI PATEL
Vs
STATE OF GUJARAT AND ANR

✌ **Constitution of India - Art. 20(2) – Plea of double jeopardy under – When not tenable – Appellant having been convicted under S. 138 NI Act further tried under Ss. 406/420 r/w S. 114 IPC – Plea of double was convicted under S. 138 NI Act held, is not tenable – Ingredients of offence under S. 138 NI Act are entirely different from offence under S. 420 IPC – For offences under IPC there is no legal presumption of antecedent liability against drawer of cheque and no fine is imposed to meet a legally enforceable liability (as is presumed and done for an offence under S. 138 NI Act) – Rather offence under S. 420 IPC is a serious one as 7 yrs' RI can be imposed – Further, for an offence under IPC, issue of mens rea might be relevant – Criminal Trial – Defence – Plea of autrefois convict or autrefois acquit or double jeopardy – When not tenable – Criminal Procedure Code, 1973 – Ss. 482 and 300 – Penal Code, 1860 – S. 71 and Ss. 406/420 r/w S. 114 – General Clauses Act, 1897 – S. 26 – Negotiable Instruments Act, 1881 – S. 138 – Compared with offence under S. 420 IPC – Held, not the same.**

✌ **Constitution of India – Art. 20(2) Double jeopardy – Test for applicability of, stated – To attract Act. 20(2) i.e. doctrinie of autrefois acquit or S. 300 CrPC or S. 71 IPC or S. 26, General Clauses Act, ingredients of offences in the earlier case as well as in the latter case, held, must be the same and not different - Both S. 300 CrPC and S. 26, General Clauses Act employ the expression "same offence" – For attracting Art. 20(2) there must be identity of ingredients as distinguished from identity of allegations – Thus for example, if an issue of fact is decided in favour of an accused it would not bar trial or conviction of the accused for a different offence – Criminal Procedure Code, 1973 – S. 300 – Penal Code, 1860 – S. 71 – General Clauses Act, 1897 – S. 26 – Maxims – Nemo debet bis punier pro uno delicto (i.e. no one ought to be punished twice for one offence) – Test for applicability – Criminal Trial – Defence – Civil Procedure Code, 1908 – S. 11 –**

Principles of res judicata and estoppels distinguished from principle of double jeopardy – Evidence Act, 1872 – S. 115 – Estoppel, Acquiescence and Waiver.

(2012) 2 MLJ (Crl) 627 (SC)

Rattiram and Ors
Vs
State of M.P. through Inspector of Police and Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 193 – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1(x) – Objection relating to non-compliance of Section 193 of Code of Criminal Procedure, 1973 (2 of 1974) – Cognizance by Special Judge – Cognizance by Special Judge under the Schedule caste and the Schedule Tribes Act (33 of 1989) does not vitiate that trial – On the said ground alone conviction cannot be set aside – Appeal placed before appropriate bench for hearing on merit.

(2012) 7 Supreme Court Cases 646

SHYAMAL GHOSH
Vs
STATE OF WEST BENGAL

A. Penal Code, 1860 – S. 302 r/w S. 34 and Ss. 201, 379 and 411 – Murder trial – Circumstantial evidence – Eyewitnesses to significant parts of chain of circumstances – Last seen together – Recovery of dismembered corpse and weapons of offence and other crime articles – Conviction confirmed.

- **Accused persons visited house of deceased several times for demanding money and, on 27-9-2003 threatened him that if their demand for ₹ 40,000 was not fulfilled within a day, they would murder him – Deceased refused to succumb to this illegal demand – On 29-9-2003, at about 9.00 p.m., victim started from his house on his bicycle to visit C – He started back at about 11.00 p.m. to return to his home but on his way back, he was restrained and assaulted by accused persons at about 11.30 p.m. – Accused persons strangulated deceased and subsequently severed head, legs and hands from body by a sharp-cutting weapon and left them near highway in gunny bags – There were eyewitnesses who had seen scuffling persons and also loading of mutilated body parts of deceased contained in gunny bags into Maruti van**

  - **Trial court relied on direct evidence in relation to altercation between accused and deceased and subsequent strangulation of deceased, dismembering of corpse and its disposal by accused persons, recoveries of weapon of offence, vehicle used by accused persons for carrying mutilated body parts and deceased persons, cycle owned by deceased in furtherance of statement of accused, and found eight accused guilty – High Court sustained their conviction under S. 302 r/w S.34 – Held, evidence completes chain of events and establishes case of prosecution beyond any reasonable doubt – Facts right from departure of deceased from his house to up to recovery of mutilated body of deceased, have been proved by different witnesses, including some eyewitnesses – All accused were identified by witnesses in court – Medical evidence corroborated prosecution evidence – No reason to interfere with judgment of High Court – Evidence Act, 1872, S. 27.**

B. Criminal Trial – Circumstantial Evidence – Generally – Appreciation of – Principles reiterated – Presence of eyewitnesses at significant parts of chain of circumstances.

C. Penal Code, 1860 – S. 34 and S. 34 r/w S. 302 – Circumstantial evidence – Common intention – Vicarious liability – Inference of – Appreciation of evidence – S. 34 carves out an exception from general law that a person is responsible for his own act – S. 34 applies where two or more accused are present, and common intention of those accused to commit crime in question is established – Furthermore, if common intention is proved is proved but no overt act was committed, S. 34 can still be invoked – Common intention means a pre-oriented plan and acting in pursuance of the plan, thus,

common intention must exist prior to commission of act in a point of time – Common intention to give effect to a particular act may even develop on spur of moment between a number of persons with reference to facts of a given case – In present case all ingredients of S. 34 were present – Hence, appellants rightly convicted under S. 34 r/w S. 302 were present – Hence, appellants rightly convicted under S. 34 r/w S. 302 even though it was a case of circumstantial evidence.

D. **Criminal Trial - Circumstantial Evidence – Last seen together – Theory of – Applicability – Time of death – Reversal of onus of proof after "last seen" established – Where prosecution is relying upon last seen theory, it must essentially establish time when accused and deceased were last seen together as well as time of death of deceased – Last seen theory requires a possible link between the time when the deceased was last seen alive and fact of death of deceased coming to light – Reasonable proximity of time between these two events is a necessary ingredient – Principle is to be applied depending upon facts and circumstances of a given case – As far as death of deceased in present case is concerned, there was hardly any time gap between two incidents i.e. of victim being last seen alive with appellants and fact of death of deceased becoming known – All events occurred between 11.00 p.m. to 12.00 a.m. during night of 29-9-2003/30-9-2003 – Defence contention raised on this ground is entirely without any merit – Once last seen theory comes into play, onus was on accused to explain as to What happened to deceased after they were together seen alive – Accused persons have failed to render any reasonable/plausible explanation in this regard.**

E. **Criminal Procedure Code, 1973 – Ss. 154, 161 and 162 – FIR – Omissions in FIR – Effect of – Relevance of use of word "may" in S. 162 Expln. – Every omission cannot be considered a contradiction in law – Discrepancies or omissions have to be material ones and then alone they may amount to contradiction of some serious consequence – Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect core of prosecution case should not be taken to be a ground to reject prosecution evidence in its entirety.**

F. **Criminal Trial – Appreciation of Evidence – Contradictions, inconsistencies, exaggerations or embellishments – Need for holistic appreciation of testimony of witness – Material contradictions alone are relevant and can affect case of party concerned – Every variation may not be enough to adversely affect case of prosecution – No statement of a witness can be read in part and/or in isolation – Court should examine statement of a witness in its entirety and read said statement along with statement of other witnesses in order to arrive at a rational conclusion – Court has to see whether variations are material and affect prosecution case substantially**

- **Variations pointed out as regards time of commission of crime are quite possible in facts of present case – Witnesses concerned were rickshaw pullers or illiterate or not highly educated persons – Their statements were recorded after more than two years from incident – It will be unreasonable to attach motive to witnesses or term variations of 15-20 minutes in timing of a particular event as a material contradiction – It probably may not even be expected of these witnesses to state these events with relevant timing with great exactitude, in view of attendant circumstances and manner in which incident took place – Statements of all these witnesses clearly show one motive i.e. illegal demand of money coupled with warning of dire consequences to deceased in case of default – Hence, conviction confirmed.**

G. **Criminal Trial – Witnesses – Hostile witness – Evidentiary value of hostile witness – Statement of a hostile witness, reiterated, can be relied upon by court to the extent it supports case of prosecution – Mere fact that two witnesses had turned hostile in present case would not affect prosecution case adversely – Moreover, even statements of these witnesses, who had turned hostile, partially supported case of prosecution.**

H. **Criminal Procedure Code, 1973 – S. 161 – Delay in examination of witnesses – Effect of – If explanation offered for delayed examination of a particular witness is plausible and acceptable, there is no reason to interfere with conclusion arrived at by courts below – Delay in examination of witnesses is a variable**

factor – It would depend upon a number of circumstances – Non-availability of witnesses, investigating officer being preoccupied in other serious matters, investigating officer spending his time in arresting accused who are absconding, being occupied in other spheres of investigation of same case which may require his attention urgently and importantly, etc. – Submission on behalf of State was that delay had been explained and though investigating officer was cross-examined at length, not even a suggestion was put to him as to the reason for such delay and, thus, held, accused cannot take any benefit thereof before Supreme Court.

I. **Penal Code, 1860 – S. 302 – Murder trial – Identification for first time in court – Failure to hold test identification parade does not by itself render evidence of identification in court inadmissible or unacceptable – Identification parade is a tool of investigation and is used primarily to strengthen case of prosecution and to make sure that persons named as accused in case are actually the culprits – Identification parade primarily belongs to stage of investigation by police – Fact that a particular witness has been able to identify accused at an identification parade is only a circumstance corroborative of identification in court – Thus, it is only a relevant consideration which may be examined by court in view of other attendant circumstances and corroborative evidence with reference to facts of a given case – Mere fact that accused S was not identified by M is not of great relevance in present case – Firstly, for reason that M was never examined as a witness in court and even his statement under S. 164 CrPC was not relied upon by prosecution – Secondly, not only one, but all other witnesses i.e. PWs 7, 8, 9, 11, 17 and 19 had duly identified accused S in court – Evidence Act, 1872, S.9.**

J. Criminal Trial – Witnesses – Related witness – Testimony of – Credibility – Reiterated, court has to be very careful in evaluating evidence given by witnesses who are closely related to deceased – Mechanical rejection of evidence on sole ground that it is that of an interested witness would inevitably relate to failure of justice – In present case there was no reason to disbelieve testimony of family members implicating accused – Conviction confirmed.

K. Criminal Trial – Investigation – Defective or illegal investigation – Discrepancies in investigation – Every discrepancy in investigation does not weight with court to an extent that it necessarily results in acquittal of accused – There are certain discrepancies in investigation in present case, but they are not fatal – Investigating officer failed to send bloodstained gunny bags containing parts of body of victim and other recovered weapons to FSL, to take photographs to shops in question, prepare site plan thereof, etc. – Of course, it would certainly have been better for prosecution case if such steps were taken by IO – However, these are discrepancies/lapses of immaterial consequence – Criminal Procedure Code, 1973, Ss. 157 and 179.

L. Criminal Trial – Abscondence – Reasonable excuse – Whether necessary – It is true that merely being away from residence having an apprehension of being apprehended by police is not very unnatural conduct of an accused – Even innocent persons may run away for fear of being falsely involved in criminal cases – Accused were absconding immediately after date of occurrence – Accused had not reasonable excuse for being away from their normal place or residence – In fact, they had left village and were not available for days together – Absconding in such a manner and for such a long period is a relevant consideration – In present case, in view of circumstances of present case which have been established by prosecution, it is clear that absconding of accused not only goes with hypothesis of guilt of accused but also points a definite finger towards them.

(2012) 3 MLJ (Crl) 664 (SC)

Nihali Devi
Vs
State Government of NCT of Delhi and Anr

Negotiable Instruments Act (26 of 1881), Dishonour of cheque – Conviction and sentence – Appeal – Accused is a victim of tragic circumstances and she never intended not to repay the amount for which she issued

two cheques – Sentence of imprisonment is unduly harsh – Held, Sentence of imprisonment set aside substituting it by fine – Appeal disposed of.

(2012) 3 MLJ (Crl) 665 (SC)

Rampal Singh
Vs
State of U.P.

Indian Penal Code (45 of 1860), Section 302, and 304 – Conviction and sentence – Appeal – Accused committed offence without any premeditation of mind – Intention to cause bodily injury which resulted in death of deceased – Case falls under Section 304 Part 1 of the Criminal Procedure Code – Conviction under Section 302 modified to 304 part 1 – Appeal disposed of.

RATIO DECIDENDI: When the act is committed with the clear intention to kill the other person it will be a murder within meaning of Section 300 of the Code and punishable under Section 302 of the Code but when the Act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the exceptions to Section 300 of the Code and is punishable under Section 304 of the Code.

(2012) 3 MLJ (Crl) 680 (SC)

Alagupandi @ Alagupandian
Vs
State of Tamil Nadu

Indian Penal Code (45 of 1860), Section 302 – Offence of murder – Conviction and sentence – Appeal – Evidence of child witness – A child witness can be competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence – Statement fully corroborated by witnesses, expert evidence and the medical evidence – Order of conviction sustainable – No interference in appeal – Appeal dismissed.

RATIO DECIDENDI: A Child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence.

2012 (2) CIJ 689

Yogendra Pratap Singh
Vs
Savitri Pandey & Anr

A. **Negotiable Instruments Act, 1881 (26 of 1881) – Sec.138, 142-Code of Criminal Procedure, 1973(2 of 1974) – Sec. 190 – Chequedishonour-Complaint-Filing-Notice-Premature-Cognizance-Validity-Appellant had filed the complaint for the dishonor of the cheque before the expiry of 15 days from the date of receipt of notice by the respondent but was taken cognizance by the Magistrate after 15 days-When the respondent sought to quash the cognizance of the complaint on the ground that the complaint was premature which could not be taken cognizance subsequently, the High Court accepted the plea and quashed the cognizance against which the appellant preferred SLP-While the appellant contended that even if the complaint was presented before the expiry of 15 days form the date of receipt of notice by the accused, cognizance of it would not be bad if it was noticed the divergent views of two coordinate benches and various High Courts on that question of law and referred the matter for decision by a larger bench.**

B. **Negotiable Instruments Act, 1881 (26 of 1881)-Sec.138, 142-Code of Criminal Procedure, 1973(2 of 1974)-Sec. 190-Cheque dishonor-Complaint-Filing-Notice-Premature-Cognizance-Validity – A**

premature complaint is no complaint in the eyes of law and no cognizance could be taken on the basis thereof.

Ratio: A premature complaint is no complaint in the eyes of law and no cognizance could be taken on the basis thereof.

(2012) 3 MLJ (Crl) 689 (SC)

Raghuvansh Dewanchand Bhasin
Vs
State of Maharashtra and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 342 and 345 – Issuance of non bailable warrant – Order of High Court cancelling the said warrant – Appeal – Accused remained absent in criminal case – Magistrate not authorized to issue non-bailable warrant or arrest even when accused fails to appear before the Court – Issuance of non-bailable warrant was manifestly unjustified – Abuse of process of law – No interference in appeal Impugned order confirmed – Appeal dismissed.

RATIO DECIDENDI: Issuance of non bail able warrant or arrest even when accused fails to appear before the Court is abuse of process of law and is manifestly unjustified.

(2012) 7 Supreme Court Cases 723

THOTI MANOHAR
Vs
STATE OF ANDHRA PRADESH

A. **Penal Code, 1860 – S. 34 r/w S. 302 and Ss. 452, 326 and 324 – Vicarious liability under S. 34 r/w S. 302 – When may be imposed – Common intention – Inference of - Degree of participation – Case 1 : Active participation in causing death, but falling short of inflicting fatal blows, and Case 2 : Minimal participation – Culpability for – A-2 convicted under S. 34 r/w S. 302 as his case fell under Case 2 (but convicted under Ss. 452 and 324) – Sustainability of**

– A-2 and A-1 had an inimical relationship with deceased and his family and had threatened deceased with dire consequences – Despite a consensus being arrived at, A-1 and A-3 armed with iron road and A-2 armed with a billhook trespassed into house of deceased – A-1 and A-2 armed with a billhook trespassed into house of deceased – A-1 and A-2 caught hold of deceased and his son and dragged them out of house – A-1 assaulted deceased with iron road on his head, neck and all over his body – When PWs 3, 4, 5 and 6 tried to intervene they were also attacked and injured by accused persons with their weapons – Though A-2 did not give and blow to deceased, but his participation from beginning till end, held, clearly reveals that he shared common intention with his brother A-1 to murder deceased – A-2 had also assaulted other witnesses who tried to intervene – However, on the other hand, A-3 was a distant cousin of A-1 and A-2 and belonged to a different village – He had no role to play with genesis of occurrence and subsequent cavil – He had neither participated in dragging of deceased out of his house nor did he assault him – A-3 remained at a distance throughout the occurrence – PW 3, wife of deceased graphically stated active role played only by A-1 and A-2 – All other injured witnesses deposed about assault by A-1 and beatings by A-2 to other injured persons who intervened – Acquittal of A-3 under S. 34 r/w S. 302 by High Court, affirmed – However, conviction of A-3 under Ss. 452 and 324 and of A-2 under Ss.426 and 326, remained undisturbed

B. **Criminal Trial – Witnesses – Related witness – Credibility of – Related witnesses were natural witnesses in present case – Occurrence took place in part inside the house and rest of it slightly outside the premises of deceased – Under these circumstances family members and close relatives are bound to be natural witnesses – They intervened and sustained injuries – Their sustaining of injuries has got support from ocular evidence as well as medical evidence – Their version is consistent and nothing has been suggested to bring any kind of inherent improbabilities into their testimonies –**

They have relay not embellished or exaggerated prosecution case – By no stretch of imagination can it be stated that presence of said witnesses at scene of crime and at time of occurrence was improbable – Appellant's submission that they were interested witnesses, is rejected – Evidence Act, 1872, S. 3

C. **Criminal Trial – Appreciation of Evidence – Minor discrepancies – Minor discrepancies to be ignored – Duty of court is to appreciate evidence with vision of prudence and acceptability of deposition regard being had to substratum of prosecution story – No evidence can ever be perfect, for man is not perfect and man lives in an imperfect world – Giving undue importance to discrepancies would amount to adopting a hypertechnical approach – Court, while appreciating the evidence, should do not shake the basic version of prosecution case are to be ignored**

Criminal Trial – Injuries, Wounds and Weapons – Failure/Non-explanation of injuries on accused – Effect of – Reiterated, not always fatal to prosecution case – Appellants said to have received injuries at hands of deceased – Injures superficial in nature – Accused were not sent for medical examination – There is no suggestion as regards injuries sustained by them to any of the PWs – Defence story built up as regards fight between two groups does not remotely appeal to common sense in present case – In absence of any evidence supporting it, said story is worthless.

2012 (2) CIJ 730

Ram Dhan
Vs
State of U.P. & Anr

A. **Code of Criminal procedure, 1973 (2 of 1974)-Sec.195, 340-Indian Penal Code, 1860(45 of 1860)-Sec.177, 181, 182, 195-False information-FIR-Prosecution-Perjury-Complaint-Maintainability-On the information lodged by the appellant that his son was kidnapped by another, the accused was prosecuted and convicted-Later, when the appellant had disclosed to others that his son was working in another State and he had lodged a false information with the police, the convicted accused had lodged FIR against the appellant-After investigation final report was filed against the appellant for an offence under Secs.177, 181, 182, and 195 IPC-Appellant had sought for discharge on the ground that as the offence was committed in Court, the accused could not be a complainant under Sec.195, 340 Cr.P.C. which was negative by the Magistrate and when the revision against that order was also dismissed, appellant preferred SLP-Appellant stood by his stand-Held, offence under Sec.177, 181 and 182 did not take place in the Court and so Sec.195 Cr.P.C was not attracted-Offence under Sec.195 IPC could also take place outside the Court proceeding not attracted-As the offence alleged took place outside the Court proceeding, Se.195 Cr.P.C. was not attracted-Appellant had also concealed his petition before the High Court under Sec.482 Cr.P.C. which warranted rejection of his claim-Appeal was dismissed.**

B. **Code of Criminal Procedure, 1973(2 of 1974) - Sec.195, 340 - Indian Penal Code, 1860(45 of 1860) -Sec.177, 181, 182, 195 - False information-FIR-Prosecution-Perjury-Complaint-Maintainability-To prosecute a person for an offence under Sec.177, 182 IPC, Sec.195 Cr.P.C. is not a bar and a private person could lodge a report in this regard to the police-Offence under Sec.195 IPC could also take place outside the Court and in such an event, provision of Sec.195 Cr.P.C. is not attracted.**

Ratio:

a. **To prosecute a person for an offence under Sec. 177, 182 IPC, Sec.195 Cr.P.C. is not a bar and a private person could lodge a report in this regard to the police.**

b. Offence under Sec.195 IPC could also take place outside the Court and in such an event, provision of Sec. 195 Cr.P.C. is not attracted.

2012 (2) CIJ 754

Bhajju @ Karan Singh
Vs
State of M.P

A. **Indian Evidence Act, 1872(1 of 1872)-Sec.3, 32, 154 – Criminal trial - Dying declaration-Reliability-Corroboration-Appreciation of evidence-Hostile witness-Appellant was accused of murdering his wife by pouring kerosene over her and set her on fire-Immediately after her admission in the hospital, her statement was recorded by the doctor, tahsildar and police which implicated the appellant – Though the other witnesses had turned hostile, by relying upon the dying declaration, the appellant was convicted by the trial Court which was affirmed by the High Court against which the appellant preferred appeal-While the appellant contended that the dying declaration was not reliable and based upon it conviction could not be granted and the affidavit of the deceased notarised later exonerated the appellant which pleas were resisted by the respondent-Held, even when a witness turned hostile, the portion of the statement which supported the party calling such witness could be used provided it was reliable-When consistent and natural, conviction could be granted based solely upon the dying declaration of the deceased-Affidavit allegedly signed by her and notarised was disbelieved-Judgments of the trial Court and the High Court was confirmed and the appeal was dismissed.**

B. **Indian Evidence Act, 1872(1 of 1872)-Sec.3, 32-Criminal trial-Dying declaration-Reliability – Corroboration-Appreciation of evidence- If the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused.**

C. **Indian Evidence Act, 1872 (1 of 1872)-Sec. 3, 8, 32 – Criminal trial-Dying declaration-Relevancy-Expectation of death-Civil suit-Under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration – The dying declaration is admissible not only in the case of homicide but also in civil suits.**

D. **Indian Evidence Act, 1872(1 of 1872)-Sec.3, 32-Criminal trial-Dying declaration-Reliability-Appreciation of evidence – A dying declaration, if found reliable, can form the basis of a conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence – Dying declaration has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighting of evidence.**

E. **Indian Evidence Act, 1872(1 of 1872)-Sec.3-Criminal trial-Appreciation of evidence-Hostile witness-Evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident.**

Ratios:

a. **If the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused.**

b. **Under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration.**

c. **The dying declaration is admissible not only in the case of homicide but also in civil suits.**

d. A dying declaration, if found reliable, can form the basis of a conviction.

e. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence.

f. Dying declaration has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighting of evidence.

g. Evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident.

2012 (2) CIJ 765

Govindaraju @ Govinda
Vs
State by Sriramapuram P.S. & Anr

A. Indian Evidence Act, 1872(1 of 1872)-Sec.3, 134 –Code of Criminal Procedure, 1973 (2 of 1974)-Sec.378-Criminal trial-Appreciation of evidence-Police officer-Number of witness-Sole witness-Appeal against acquittal – Perversity-Accused-Innocence-Presumption-Material witness-Non examination-Appellant was accused of murdering a person in a public street which was witnessed by a sub inspector- In the trial, except that sub-inspector, all other eye witnesses turned hostile and so the trial Court acquitted the appellant by disbelieving the evidence of the Sub-Inspector-In the appeal against acquittal preferred by the State, the High Court reversed the acquittal holding that the other view was also possible against which the appellate preferred SLP-While the appellant contended that acquittal could be interfered by the appellate Court only in case of perversity of finding and not on a mere ground of possibility of contra view and the evidence of the police officer, without corroboration could not be accepted for conviction-State contended that mere fact that the witness was a police officer would not warrant the rejection of his evidence and justified the judgment of the High Court-Held, if reliable and cogent, conviction could be based upon the sole testimony of a police officer who witnessed the occurrence-There was no rule of law that the evidence of a police officer could not be relied on for conviction – In case of appeal against acquittal, mere possibility of another view could not be a ground for interference – In criminal cases based on sole eye witness, the non examination of material witnesses assume significance-As the evidence of the police officer who allegedly saw the occurrence was not reliable and other material witnesses like doctor who had conducted the post mortem were not examined and the other witnesses had turned hostile, the interference by the High Court into the acquittal was set aside-Appeal was allowed and the judgment of acquittal passed by the trial Court was restored.

B. Code of Criminal Procedure, 1973(2 of 1974)-Sec. 378-Criminal trial-Acquittal-Appeal against acquittal-Appreciation of evidence-Appellate Court-Power-In an appeal against an order of acquittal, an appellate Court has every power to re-appreciate, review and reconsider the evidence before it, as a whole.

C. Code of Criminal Procedure, 1973(2 of 1974)-Sec.378-Criminal trial-Appeal against acquittal-Court-Power-Appreciation of evidence-Once leave is granted, there is hardly any difference between a normal appeal and an appeal against acquittal.

D. **Code of Criminal Procedure, 1973(2 of 1974)-Sec.378-Criminal trial-Appeal against acquittal-Perversity-High Court-Duty-While dealing with appeal against acquittal, the High Court has to specifically deal with the perversity in applying the law or in appreciation of evidence by the trial Court.**

E. **Indian Evidence Act, 1872 (1 of 1872)-Sec.3, 134-Criminal trial-Appreciation of evidence-Police officer-Number of witness-Sole is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case.**

F. **Indian Evidence Act, 1872 (1 of 1872) – Sec. 3, 114-Criminal trial-Appreciation of evidence-Accused-Innocence-Presumption-In criminal trial, presumption cannot be raised against the accused either of fact or in evidence.**

G. **Indian Evidence Act, 1872(1 of 1872() –Sec. 3, 27 – Criminal trial-Appreciation of evidence-Police officer-Recovery-Independent witness-Mere absence of independent witnesses when the Investigating Officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recover at the instance of the accused.**

Ratios:

a. **In an appeal against an order of acquittal, an appellate Court has every power to re-appreciate, review and reconsider the evidence before it, as a whole.**

b. **Once leave is granted, there is hardly any difference between a normal appeal and an appeal against acquittal.**

c. **While dealing with appeal against acquittal, the High Court has to specifically deal with the perversity in applying the law or in appreciation of evidence by the trial Court.**

d. **If the testimony of a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case.**

e. **In criminal trial, presumption cannot be raised against the accused either of fact or in evidence.**

f. **Mere absence of independent witnesses when the Investigating Officer recorded the Statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recover at the instance of the accused.**

(2012) 5 Supreme Court Cases 777

RAMESH HARIJAN
Vs
STATE OF UTTAR PRADESH

A. **Penal Code, 1860 – Ss. 302 and 376(2)(f) – Paedophilia – Rape and murder of minor girl of 5-6 yrs – Reversal of acquittal by High Court, confirmed – Acquittal by trial court based on undue importance given by trial court to insignificant inconsistencies, held, had resulted in miscarriage of justice – Evidence Act, 1872, S. 114 Ill. (g) and S. 106.**

B. **Criminal Trial – Witnesses – Hostile witness – Evidence of – Credibility – Reiterated, evidence of hostile witness must be subjected to close scrutiny – Any portion of evidence consistent with case of prosecution or defence version, held, can be relied upon – Seizure/recovery witnesses though turning hostile, but admitting their signatures/thumb impressions on recovery memo – Thus, they could be relied on by prosecution – Evidence Act, 1872, S. 154.**

C. Criminal Trial – Appreciation of Evidence – Contradictions, inconsistencies, exaggerations or embellishments – Duty of courts – Reiterated – Held, it is duty of court to unravel the truth under all circumstances – Undue importance not to be given to minor discrepancies which do not shake basic version of prosecution case – Entire evidence must be evaluated by excluding exaggerated version as witnesses keep adding embellishments to their testimony – If a witness is otherwise trustworthy, then his evidence should not be disbelieved – If major portion is found to be deficient and residue is sufficient to establish guilt of accused, then courts must separate grain from chaff – It has to be appraised in each case as to what extent evidence is admissible – If courts consider some portion of evidence as insufficient or unworthy, it does not mean as a matter of law that entire evidence must be disregarded in all respects.

D. Criminal Procedure Code, 1973 – Ss. 378 and 386 – Appeal against acquittal – Interference by appellate court – When justified – Principles reiterated – Held, only in exceptional cases where there are compelling circumstances and acquittal of accused appears to be perverse can appellate court interfere – Present case was such a case, and High Court rightly reversed acquittal.

E. **Criminal Trial – Appreciation of Evidence – Credibility of witness – Maxim falsus in uno, falsus in imnibus – Inapplicability and effect of, if omnibus has no application in Indian and a witness cannot be branded as a liar – Falsity of witness or material particular at some portion would not ruin testimony from beginning to end – If that maxim is applied then in all the cases it is to be feared that administration of criminal justice would come to a dead stop.**

F. Criminal Trial – Witnesses – Inimical witness – Enmity between parties – Appreciation of evidence – Method of – Held, evidence of such witnesses required to be examined by considering attending circumstances and particularly taking into consideration proximity of time leading to alleged enmity.

G. **Criminal Trial – Proof – Proof beyond reasonable doubt – Meaning of, and duty of court while applying principle of reasonable doubt – Reiterated – Held, reasonable doubt is not an imaginary trivial or sense – Doctrine of benefit of doubt particularly in every case must not nurture fanciful doubts or lingering suspicion, thus destroying social defence – Courts must give paramount importance to ensure that miscarriage of justice is avoided.`**

(2012) 8 Supreme Court Cases 785

DEEPAK ALIAS WIRELESS
Vs
STATE OF MAHARASHTRA

A. **Penal Code, 1860 – Ss. 395, 396 and 397 – Dacoity with murder – Appreciation of evidence – Sole severely injured eyewitness – Recovery of bloodstained clothes – Identification of accused – Conviction confirmed.**

- **Time of occurrence was 2 to 2.30 a.m. during night of 13-6-2004/14-6-2004 – Seizure of bloodstained trousers and shirt worn by appellant, a motorcycle key, a knife from appellant in between 9 a.m. and 10 a.m. of 14-6-2004 – Appellant was unhesitatingly identified by PW 9 a.m. and 10 a.m. of witness in court – Trial court convicted appellant and same was confirmed by High Court – Appellant contended that offence of dacoity per se was not made out as: (i) basic**

ingredient of five persons conjointly committing offence of robbery and murder was not made out; (ii) that no comparison of blood group found in clothes of appellant was carried out with blood group of deceased – Held, version of PW 9 a seriously injured witness, is fully corroborated by her husband PW 2 (brother of deceased victim of dacoity), recovery of bloodstained clothes of accused as well as medical evidence – Fact of involvement five accused persons established – The other accused who participated in dacoity were absconding or were juveniles who were being proceeded against separately – Conviction for offences alleged against appellant of his involvement in dacoity with murder with four others as found proved and as confirmed by High Court does not call for any interference.

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B. Evidence Act, 1872 – S. 9 – Identification – Identification of accused by victim in court in absence of a TIP – Evidentiary value – PW 9 witnessed act of killing of her brother-in-law by being beaten up severely by appellant, and she was also assaulted severely by appellant – PW 9 was able to observe conduct of appellant and other accused so closely giving no scope for any doubt as to her unhesitant identification of appellant made in the presence of Presiding Officer of the trial court at the time of trial – Penal Code, 1860 – Ss. . 395, 396 and 397 – Dacoity with murder.

C. Penal Code, 1860 – Ss. 395, 396, 397 and 392 – Dacoity with murder - Ingredients – Robbery/Theft- Proof of – PW 9, sole injured eyewitness did not mention removal of either cash or ornaments from her person – Nothing was recovered form appellant or other accused – PW 2, husband of PW 9 stated that assailants had taken away a sum of ₹ 4000 to 5000 cash as well as ornaments worn by PW 9 on her neck and hands – Whether a material discrepancy.

- **PW 2 was not present at the time when occurrence took place – Spot panchnama recorded in presence of PW 2 disclosed that there was blood every where and cupboard of room was open and curtains were thrown here and there and household articles were lying all over and window was forcibly opened and was found broken – Spot panchnama was relied upon by court below to hold that appellant and other accused relieved victim of cash and other jewels while committing murder of deceased – PW 9 was so very seriously injured that she was hospitalized for two to three moths after occurrence – There was obviously a slip on part of PW 9 in referring to removal of stolen articles – There is definite evidence of PW 2 who is none other than PW 9's husband who specifically stated which articles were stolen by appellant and other accused – Two other accused were absconding hence, recovery of stolen articles could not be made – Held, in absence of anything brought out in cross-examination of PW 2 as regards stolen articles, in peculiar facts of this case, said evidence was sufficient for court below to hold that there was really an act of theft committed by appellant and other accused.**

D. Penal Code, 1860 - Ss. 395, 396 and 397 – Dacoity with murder – Ingredients – Number of participants – Proof of – Appellant alone was prosecuted in this case – Three out of five persons were said to have been taken into custody – Two accused other than appellant were juveniles, hence were proceeded against separately – Two other accused were absconding – In order to prove participation of five persons, reliance was placed upon sole deposition of PW 9, victim who suffered severe injuries at the hands of accused – PW 9, in her chief examination stated that four to five thieves entered their house - She described features of those persons as belonging to age group of 18 to 25 yrs, their apparel, that they were of medium height and dark in complexion – PW 9 is stated to have informed police that four to five persons indulged in said offence – In cross-examination by defnece, however, PW 9 came out with a definite answer that number of persons involved in said offence was five – Held, such a definite answer in cross-examination should bind appellant and, therefore, there is no reason to discard said version of PW 9 – Criminal Trial – Identification of accused – Number of accused.

(2012) 2 MLJ (Crl) 831 (SC)

Helios & Matheson Informatin Technology Ltd. and Ors
Vs

Rajeev Sawhney and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 202 – Indian Penal Code (45 of 1860), Section 417, 420, 465, 468, 471 read with 120-B – Cognizance of offences allegedly committed by Accused – Alleged non observance of the provision of Section 202 – Special Leave Petition – Provision of Section 202 had been complied by Magistrate while taking cognizance and issuing process – No violation of provision of Section 202 to warrant interference – Special Leave Petition dismissed.

(2012) 2 MLJ (Crl) 836 (SC)

Mano Dutt and Anr
Vs
State U.P.

Indian Penal Code (45 of 1860), Section 302 read with 34 – Conviction and sentence – Appeal – Common intention established – Oral evidence fully corroborated – On the basis of the documentary and ocular evidence, Prosecution has been able to prove its case beyond reasonable doubt – Order of conviction upheld – Appeal dismissed.

RATIO DECIDENDI: When on the basis of the documentary and ocular evidence the prosecution has been able to prove its case beyond reasonable doubt and has brought home the guilt of the accused, Order of conviction can be sustained.

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HIGH COURT CITATIONS
CIVIL CASES

2012 (4) TLNJ 230 (Civil)

Marie Theresa Helene
Vs
V. Ludovic Spielmann and Ors

Civil Procedure Code 1908 as amended – Second suit was for partition and separate possession – pleading of fraud committed in earlier proceedings made subsequently and many facts suppressed in plaint – plaint sought to be struck off – on revision High Court held that as fraud not pleaded a at the time of filing of the suit but by amending alleged fraud subsequently cannot taken into account – the parties should not be allowed to litigate the matter repeatedly and re-litigation cannot be permitted – plaint struck off – CRP allowed.

2012 (4) TLNJ 479 (Civil)

Marry @ Crusemary and Ors
Vs
Vasanthi

Limitation Act, 1963, Section 5 – Exparte decree of declaration and consequential injunction granted – execution petition filed and delivery ordered and recorded – subsequently judgment debtor filed petition to set aside exparte decree with a petition to condone delay of 924 days - dismissed by trial court – on revision High Court held that exparte decree cannot be set aside after such development as it would create only multiplicity of proceedings and erase accrued right obtained by decree holder (para 12) – CRP (NPD) is dismissed.

(2012) 4 MLJ 670

Divisional Manager, New India Assurance Co. Ltd., Cuddlaore
Vs
District Superintendent of Police, Vellore District, Vellore – 9 and Ors

Motor Vehicles Act (59 of 1988), Section 173 – Fixing of negligence – Head on collusion – In every head on collusion, Negligence cannot be fixed on both drivers – Direction of vehicle shown in rough sketch alone cannot be a decisive factor to fix negligence.

RATIO DECIDENDI: Direction of vehicle shown in rough sketch alone cannot be decisive factor to fix negligence.

(2012) 5 MLJ 673

Managing Director, Tamil Nadu State Transport Corporation Ltd
Vs
Sekar

Motor Vehicles Act (59 of 1988) – Accident claim – Award of compensation – Appeal – Functional disability is also a kind of disability – It has been established that victim sustained functional disability also – It means loss of his capacity to earn as a driver – Tribunal rightly awarded him compensation towards loss of future earning capacity – It is compensation for his functional disability – Tribunal rightly awarded compensation under different heads – Award of Tribunal is upheld – Appeal dismissed.

RATIO DECIDENDI: The connotation 'disability' cannot be restricted to physical disability alone. Functional disability is also a kind of disability.

(2012) 5 MLJ 678

A. Vanasundari and Anr
Vs
Metropolitan Transport Corporation Ltd (Division I) rep. by its Managing Director, Chennai - 2

Accident claim – Award of compensation – Appeal – Benefit of granting compensation for loss of future prospects cannot be restricted to persons having stable job – It can be also extended to persons employed in un-organized sector and persons employed in private sector – Award amount modified – Appeal allowed in part.

RATIO DECIDENDI: The benefit of giving compensation for loss of future prospects cannot be restricted to persons having a stable job such as Government servants of Bank Employees, etc. It can be also extended to persons employed in unorganized sector and persons employed in private sector.

(2012) 4 MLJ 701

Kesavan
Vs
Sinnappan @ Sinnappa

Suit for declaration – Suit decreed by trial Court in respect of Items 1 and 2 of suit properties – Appeal by defendant – Held, patta could rightly be relied upon for purpose of proving possession of patta holder – Defendant did not even specifically plead facts constituting his title and possession over properties – Trial Court rightly adhering to principle of burden of proof, decreed suit in favour of plaintiff in respect of Items 1 and 2 of suit properties – Appeal dismissed.

RATIO DECIDENDI: Patta will not confer title, however, patta could rightly be relied upon for the purpose of proving the possession of the patta holder.

2012 (5) CTC 705

S.N.S. Sukumaran
Vs
C. Thangamuthu

With

K.N. Rajendran and Anr
Vs
C. Thangamuthu

With

Thenmozhi and Anr
Vs
Rajam and Ors

With

Sampoornam
Vs
Vidya @ Palaniammal @ Vidya Selvam

With

Selvi and Anr

Vs
Ganesan

With

Gandhi Narayanan
Vs
Karthiresan and Ors

With

Savariyammal
Vs
P. Arul Raj @ Selvaraj and Ors

With

K. Balasubramanian
Vs
Nattanmai Nallathambi @ C.P. Chinnasamy Nadar and Ors

Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 12(2) – Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 2 – Constitution of India, Article 254 – Issue of payment of correct Court-fees, whether to be decided as preliminary issue? – 1955 Act, having received assent of President, to prevail over provisions of Code – When objection is raised by Defendant as to valuation of suit property and payment of Court-fees and Court finds same to be a valid objection, Court to decide said issue as preliminary issue before deciding Suit on merits – Said objection, held, ought to be heard and decided before evidence is recorded on merits of case – However, if found that approach of Defendant is only to procrastinate proceedings, Court shall proceed with hearing of Suit on merits and decide all issues, including one relating to valuation of Suit and adequacy of Court-fees – Decisions of Single Judge taking a view contrary to one expressed above, overruled.

Code of Civil Procedure, 1908 (5 of 1908), Order, 14 Rule 2 – Tamil Nadu Court Fees and Suits Valuation Act, 14 of 1955), Section 12(2) – Constitution of India, Article 254 – Section 12(2) commands a complete different procedure than one contemplated under Order 14, Rule 2 of Code – However, 1955 Act received assent of President on 14.05.1955 – Thus, provisions of Section 12(2) are a valid piece of legislation and are to be complied with.

Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 2 – Effect of Rule pre and post amendment, discussed.

(2012) 6 MLJ 732

Anitha Alfred
Vs
K. Alfred

Family Courts Act (66 of 1984), Section 19(2) – Consent decree – Divorce petition filed by both appellant/wife and respondent/husband – Wife subsequently made an endorsement withdrawing divorce petition, same was dismissed as withdrawn – on the same day appellant is said to have made an endorsement in divorce petition filed by respondent that "I submit to decree" – Divorce petition filed by husband was allowed on ground that averments in petition stands uncontroverted by wife – Question as to whether appellant actually intended to submit to decree and whether impugned order passed by court could be constructed as "decree or order passed by Family Court with consent of parties – Appeal – Held, appellant/wife had filed a detailed counter vehemently denying allegations in petition – Learned trial judge was not right in saying that the averments in the petition remain uncontroverted – Impugned order set aside – Appeal allowed.

RATIO DECIDENDI: No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties.

(2012) 4 MLJ 807

R. Krishnamurthy
Vs
Vel Jayakumar and Ors

Code of Civil Procedure (5 of 1908), Section 96 – Specific Relief Act (47 of 1963), Sections 16(c), 20 – Specific performance – Sale agreement entered into between plaintiff and deceased – Suit for specific performance filed seeking direction to defendants/heirs of deceased to execute sale deed in favour of plaintiff – Defendants contention that Plaintiff not ready and willing to perform his part of contract – Trial Court held plaintiff not entitled to relief of specific performance – Appeal – Plaintiff did not perform his part of contract within reasonable time after expiry of time prescribed in agreement – Conduct of plaintiff has been to delay payment of consideration – Inordinate delay made in paying even advance amount – Mandatory requirement of Section 16(c) not been satisfied by plaintiff – Grant of specific performance not in interest of justice – Dismissal of suit by trial Court justified – Appeal dismissed.

RATIO DECIDENDI: Section 20 of the specific relief Act makes it clear that jurisdiction to decree specific performance is discretionary and there is not obligation on the part of the Court to grant the relief sought merely because it is lawful to do so.

(2012) 4 MLJ 856

Maniammai
Vs
Kantharoobi Ammal and Ors

Hindu Succession Act(30 of 1956), Section 29-A – Suit for partition and separate possession – Preliminary decree passed by trial Court confirmed by First Appellate Court – Second Appeal – Daughter's equal right in coparcenery property under provisions of amended Hindu Succession Act, 2005 – Held, properties described in plaint schedule are ancestral properties to which joint family was in possession and enjoyment – Plaintiff and 3rd defendant admittedly married women and married prior to 25.3.1989 – They are not entitled to claim benefit of Amendment Act of 2005 which introduced Section 29-A Judgment and decree passed by trial Court which was confirmed by First Appellate Court are not liable to be interfered – Second appeal dismissed.

RATIO DECIDENDI: As per the provisions of the Amendment Act, the benefits would accrue to the women who were not married as on 25.3.1989 and the said amendment was also carried out in Section 29 A of the Hindu Succession Act in the Amendment Act of 2005. Therefore, the requisite for the applicability of the Act is still continued even after the Amendment Act of 2005 which has been a Central Act.

(2012) 5 MLJ 881

K.V. Anantha Narayanan and Anr
Vs
K.G. Radha Krishnan and Anr

Condonation of Delay – Delay of 4 days in filing appeal – Imposition of condition by appellate Court to the effect that entire decreetal amount as contemplated in decree passed by lower Court should be deposited as a sine qua non for getting the appeal numbered – Revision petition – Held, while condoning the meager delay of 4 days, imposition of such onerous condition to the effect that the entire decreetal amount to be deposited is not tenable – Impugned condition has to be set aside and it is set aside – Revision petition disposed of.

RATIO DECIDENDI: If the delay in filing the appeal is meager, deep scrutiny is not warranted and an opportunity has to be given to the aggrieved party to prefer appeal and the appeal remedy is an essential one as per CPC.

(2012) 4 MLJ 931

Thangaraj
Vs
Amuthavalli and Ors

Suit for declaration and recovery of possession – Suit dismissed by trial Court – In appeal, first appellate Court decreed suit – Second Appeal – Plea of adverse possession – Long possession by defendant from date of his occupation as permissive occupier in suit property with electricity connection in his name cannot be deemed as hostile possession against true owners – Finding of trial Court that there was no proof for permissive occupation by defendant was rightly reversed by first appellate Court – Second appeal dismissed.

RATIO DECIDENDI: When it has been found that there was a permissive occupation by the defendant in the suit property, unless such permissive occupation was shown to have been terminated by a distinctive hostile attitude, the adverse possession pleaded by the defendant, cannot be considered.

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HIGH COURT CITATIONS
CRIMINAL CASES

2012 (5) CTC 503

Kavikumar Spinning Mills Pvt Ltd and Ors
Vs
Saravana Trades, Railway Feeder Road, Sattur, through its Proprietor, Arumugasamy, Srivilliputhur District

Negotiable Instruments Act, 1881 (26 of 1881), Sections 5, 6, 138 & 141– Cheque on behalf of Company, issued by Managing Director and Director of Company jointly – Cheque returned by Bank as signature of Director not found on cheque – Held, said cheuqe not having signature of maker would not be a valid cheque for purpose of Act – However, defect in cheque, a mere structural defect and same would not attract penal provision under of Section 138 – Conviction and sentence passed by Lower Courts against Company, Director and Managing Director set aside and Revisions Petitioners acquitted.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 5 & 6 – Bill of Exchange – Cheque – Signature of maker – Significance of.

(2012) 2 MLJ (Crl) 604

Chief Education Officer, Salem and Ors
Vs
K.S. Palanichamy, President, Parent Teachers Association, Salem - 630001

Indian Penal Code (45 of 1860), Sections 500, 501 and 120(b) – Code of Criminal Procedure, 1973 (2 of 1974), Section 482 –Petition to quash Complaint – Accused is an artificial juristic person – An artificial juristic person cannot be prosecuted for an offence under Section 500 Indian Penal Code (45 of 1860) – No allegation found in the complaint to make offence against accused – Complaint is pure abuse of law – complaint quashed – Petition allowed.

RATIO DECIDENDI: In a petition to quash complaint if no allegation of offence is made against accused, quashing of Complaint is proper and justified.

(2012) 2 MLJ (Crl) 617

Vishwanathan and Ors
Vs
Revenue Divisional Magistrate, Devakottai, Sivagangai District and Anr

Code of Criminal Procedure 1973, (2 of 1974), Section 145 – Issuance of notice under – Criminal revision – No material available so as to make out case for subjective satisfaction of fexecutive magistrate and to initiate proceeding under Section 145 – Impugned order set aside – Criminal revision dismissed.

RATIO DECIDENDI: To initiate proceeding under Section 145 of Criminal Procedure Code, 1973, concerned authority should have subjective satisfaction based on the complaint given by police and other materials.

(2012) 2 MLJ (Crl) 624

M. Pattammal
Vs
Inspector of Police, Theppakulam Police Station, Madurai District and Anr

Constitution of India (1950), Article 226 - Juvenile Justice Care and Protection of children Act 2000, Section 16 – Habeas Corpus Petition – Accused was below 18 years when offence was committed – A juvenile in conflict with law cannot be awarded death sentence nor life sentence – Accused spent nearly 10 years in jail – Accused entitled to be released – Habeas Corpus Petition allowed.

RATIO DECIDENDI: In view of Section 16 of Juvenile Justice Care and protection of Children Act 2000 a juvenile in conflict with law cannot be awarded death sentence nor life sentence.

(2012) 3 MLJ (Crl) 660

Elumalai
Vs
State, represented by Inspector of Police, Rasipuram Police Station, Namakkal District

Tamil Nadu Prohibition Act (10 of 1937), Section 4(1)(i) (4(1) (aaa) and (4(1-A) (ii) – Prossessing and selling poisonous liquor – Conviction and sentence – Appeal – Blood Conviction and sentence – Appeal Blood and urine of the accused were not subject to examination for ascertaining the presence of alcohol – Accused entitled for the benefit of doubt – Order of conviction set aside – Accused acquitted – Appeal allowed.

RATIO DECIDENDI: When the blood and urine of the individual were not subjected to examination for ascertaining the presence of alcohol, it would not be safe to convict the accused.

(2012) 2 MLJ (Crl) 737

K.S. Palanichamy
Vs
State rep. by the Inspector of Police, EOW Unit-II, Dindigul

Code of Criminal Procedure, 1973 (2 of 1974), Section 167 – Police custody – Impugned order granting police custody – Criminal Revision – Order of police custody passed after the expiry of 15 days from the date of first remand not legally sustainable – Impugned order set aside – Criminal Revision allowed.

RATIO DECIDENDI: In view of Section 167 Criminal Procedure Code, 1973, Magistrate is empowered to grant police custody for few days if he is satisfied only within 15 days from the date of first remand, after the expiry of 15 days of first remand there is no power to grant police custody.

(2012) 2 MLJ (Crl) 767

A. Mohan and Ors
Vs
State rep. by Sub Inspector of Police, Colleroon Police Station, Trichy and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Section 173(8) – Further Investigation – Impugned order directing further investigation – Criminal revision – Complainant is de facto complainant – Defacto complainant not entitled to seek further investigation under Section 173(8) Code of Criminal Procedure – Jurisdictional error committed by Court in directing further investigation – Impugned order set aside – Criminal revision allowed.

RATIO DECIDENDI: Under Section 173(8) Code of Criminal Procedure 1973, de facto complainant is nto entitled to seek further investigation.

(2012) 3 MLJ (Crl) 770

UBC, rep. by its Managing Partner K.N. Unnikrishnan, Ernakulam, Cochin and Ors
Vs
M.R. Govarthanam

Negotiable Instruments Act (26 of 1881), Section 138 – Dishonour of cheque – Conviction and sentence – Revision – Case was well established against accused under Section 138 of the Negotiable Instruments Act 1881 - No discrepancy found in the order of conviction – Sentence of imprisonment imposed is on higher side – Held, Sentence of imprisonment reduced from two years to three months – Revision disposed of.

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