



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAW



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# INDEX

<b>S.No.</b>	<b>IMPORTANT CASE LAW</b>	<b>PAGE No.</b>
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	05
3	High Court - Civil Cases	09
4	High Court - Criminal Cases	14

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Subraya M.N. vs. Vittala M.N.	(2016) 8 SCC 705	05.07.2016	Family and Personal Laws – Partition – Family Arrangement – Settlement	01
2	Union of India vs. Indusind Bank Ltd.	2016 (5) CTC 674	15.09.2016	Contract Act – Section 28 – Agreement in restraint of Legal Proceedings	02
3	Nagarpalika Thakurdwara vs. Khalil Ahmed	2016 (5) CTC 741	28.09.2016	Suit for Injunction – Levy of house tax	02
4	Nitu vs. Sheela Rani	2016 (5) CTC 876	28.09.2016	Hindu Succession Act – Section 8 – Entitlement to Pension	03
5	A.Ayyasamy vs. A.Paramasivam	2016 (5) CTC 746	04.10.2016	Arbitration and Conciliation Act – Sections 8, 34(2)(b) and 48(2) – Allegations of fraud	03

## ***SUPREME COURT - CRIMINAL CASES***

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
1	Mohd. Jalees Ansari vs. Central Bureau of Investigation	(2016) 4 MLJ (CrI) 18 (SC)	11.05.2016	Prevention of terrorism – Confession – Admissibility	05
2	Surinderjit Singh Mand vs. State of Punjab	(2016) 8 SCC 722	05.07.2016	Sanction for Prosecution – Sections 197 and 319 Cr.P.C.	06
3	Muthuramalingam vs. State	(2016) 8 SCC 313	19.07.2016	Sentence of imprisonment – Multiple sentences of life imprisonment – Distinctive applicability and Scope of Sub-Section of (1) and (2) of Section 31 Cr.P.C.	06
4	Sudhir Chaudhary vs. State (NCT of Delhi)	(2016) 3 SCC (CrI) 253	29.07.2016	Criminal trial – Identification by voice – Directions to carry out Procedure	07
5	State of Haryana vs. Ram Mehar	(2016) 8 SCC 762	24.08.2016	Fair and Speedy trial – Doctrines and Maxims	08

## ***HIGH COURT - CIVIL CASES***

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
1	T.Elamurugan vs. Dr.G.Jayachitra	2016 (5) CTC 486	12.07.2016	Rent Control – Eviction	09
2	G.V.Sampath vs. Vellore Institute of Technology	(2016) 6 MLJ 531	28.07.2016	Civil Procedure	09
3	T.Krishna Pandian vs. K.S.Bharath Kumar	2016 (5) CTC 339	29.07.2016	Eviction – Owner’s Occupation	10
4	R.Mahaboob Ali vs. S.Gnaneswaran	2016 (2) TN MAC 518 (DB)	05.08.2016	Motor accident claim – Permanent disability – future medical expenses	10
5	Managing Director vs. R.Manoharan	(2016) 6 MLJ 667	09.08.2016	Property laws – Status of Franchise Agreement – Injunction	10
6	A.Annapporani vs. A.Mani & others	2016-4-L.W. 715	19.08.2016	Will and Settlement deed – Difference of – Proof of	11
7	Ravishankar Prasad A. (deceased) and others vs. Prasad Production Private Ltd. and others	2016-4-L.W. 739	26.08.2016	Setting aside of ex parte decree – Condonation of delay	11
8	Sundarajan vs. Dr.K.Chandrasekaran	(2016) 7 MLJ 229	12.09.2016	Civil Procedure – Additional Written Statement – Discretion of Court	12
9	D.Dhanasekaran vs. V.Damodharan (Died)	(2016) 7 MLJ 280	20.09.2016	Property Laws – Settlement deeds – Undue Influence – Unsound Person	12
10	Ashokarajan vs. Dr.Padmarajan	2016 (5) CTC 622	21.09.2016	Joint Family Property – Will – Family arrangement – Settlement deed – Interpretation of deeds and documents	13

## ***HIGH COURT - CRIMINAL CASES***

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
1	Pramilakumari vs. State	(2016) 3 MLJ (CrI) 711	13.04.2016	Murder – Suspicion	14
2	M.Loganathan vs. State	(2016) 3 MLJ (CrI) 755	02.06.2016	POCSO Act – Sexual assault – Penetrative Sexual assault – Unnatural Offences	15
3	V. Arul vs. State	(2016) 3 MLJ (CrI) 728	09.06.2016	Murder – Culpable homicide	15
4	Manikandan vs. State	(2016) 4 MLJ (CrI) 240	16.06.2016	Suicide – Abetment to Suicide – Mens Rea	16
5	A.Radhakrishnan vs. Inspector of Police	(2016) 4 MLJ (CrI) 232	20.06.2016	Discharge	16
6	Yuvaraj vs. State by the Inspector of Police	(2016) 4 MLJ (CrI) 96	21.06.2016	Murder – Presumption of facts – Sections 302 and 392 IPC and 114 of Evidence Act	17
7	Gopi @ Gopinath vs. State	(2016) 4 MLJ (CrI) 172	15.07.2016	Murder – Absence of Corroboration	17
8	Rathnavel vs. State	(2016) 4 MLJ (CrI) 1	26.07.2016	Murder – Appreciation of Evidence – Sections 302 IPC and 25(1-B) of Arms Act	18
9	Parthiban vs. State	(2016) 4 MLJ (CrI) 248	23.08.2016	Murder – Unlawful assembly	18
10	Prabhu [A1] and another vs. State Rep. by The Inspector of Police, J.J. Nagar Police Station, Chennai	2016-2-L.W. (CrI.) 385	31.08.2016	Rule of hearsay evidence – Acceptance of mobile phone details – Section 65B of Evidence Act	19

## SUPREME COURT CITATIONS CIVIL CASES

**(2016) 8 SCC 705**

**Subraya M.N. vs. Vittala M.N.**

**Date of Judgment : 05.07.2016**

A. Family and Personal Laws – Partition/Family Arrangement/Settlement – Concept, Effect of and Mode of effectuating Partition or Family Arrangement – When amounts to transfer of property/Need for Registration/Requirements/Validity/Oral partition

- Family arrangement/settlement – In respect of joint family immovable property worth more than Rs.100/- – Probative value – When orally made, no registration is required and would be admissible in evidence – But when reduced in writing, registration is essential, without which it is not admissible in evidence – But even without registration, written document of family settlement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties – Registration Act, 1908 – Ss.17 and 49 – Evidence Act, 1872 – S.91 – Property Law – Transfer of Property Act, 1882, S.9.

B. Family and Personal Laws – Partition/Family Arrangement/Settlement – Revocation/Cancellation/Reunion/Blending/Surrender/Relinquishment/Renunciation – Relinquishment of right in respect of joint family property – proof

- Unregistered document of family arrangement by way of corroborative evidence explaining nature of arrangement arrived at between parties, conduct of plaintiff members in receiving money from defendant members of the family in lieu of relinquishing their interest in certain family properties and oral evidence considered – Having regard to the aforesaid evidence and material facts and circumstances, held, relinquishment of rights by plaintiffs made out

C. Constitution of India – Art.136 – Supreme Court’s interference with concurrent findings of courts below – Scope of power – Where findings of court below vitiated by misappreciation of evidence, ignorance of weight of evidence on record or dealing with evidence in perfunctory manner or gross or palpable error or perversity, Supreme Court’s interference under Art.136 is called for

D. Family and Personal Laws – Hindu Law – Family Property, Succession and Inheritance – Joint Family Property/HUF Property vis-à-vis Self-acquired Property/Individual Income – Presumption/Burden of proof – Joint family property or individual property

- Evidence showing suit land possessed and cultivated by joint family but patta in respect thereof granted in name of one of the members of the family (defendant) – Held, patta was granted for benefit of entire family – Concurrent finding of courts below on this aspect correct

**2016 (5) CTC 674**

**Union of India vs. Indusind Bank Ltd.**

**Date of Judgment : 15.09.2016**

Contract Act, 1872 (9 of 1872), Section 28 – Agreement in restraint of Legal proceedings – Distinction between Amended and Original provision – Nature and Scope – Applicability – Enforcement of Bank Guarantee beyond time stipulated in Contract – Bank Guarantee executed on 31.01.1996 – Terms of Contract stipulates that Bank Guarantee could be invoked only upto 30.04.1997 – Appellant invoked Bank Guarantee on 15.05.1997 and Bank refused to pay on ground that Guarantee cannot be invoked beyond stipulated period – Legality – Contention of Appellant that in light of Amendment to Section 28 of Act, which came into force on 08.01.1997, Bank was not absolved of its obligation to make payment – Whether Amended provision would apply retrospectively – Amended provision made substantial change in law which would apply prospectively – Essential conditions for invocation of unamended provision – Unamended provision contemplates that (a) party should be restricted absolutely from enforcing his rights under or in respect of any Contract (b) such absolute restriction should be to approach by way of usual Legal proceedings, ordinary Tribunals set up by State (c) absolute restriction may also relate to limiting of time within which party may, thus, enforce its rights – Bank Guarantee executed between parties prior to amendment would not be hit by amended provision of Section 28 of Act – Appeals dismissed.

Contract Act, 1872 (9 of 1872), Section 28 – Agreement in restraint of Legal proceeding – Substantial Amendment made to provision – Applicability – Retrospective or Prospective – Amendment does not purport to be either Declaratory or Clarificatory – Object of Amendment – Amendment adumbrates that even where Agreement extinguishes rights or discharges liability of any party to Agreement, so as to restrict such party from enforcing his rights on expiry of specified period, such Agreement would become void to that extent – Amendment seeks to set aside distinction made in Case-law up to date between Agreements which time within which remedies can be availed and Agreements which do away with right altogether in so limiting time – Amended law made substantial changes, which are remedial in nature and cannot have retrospective effect.

**2016 (5) CTC 741**

**Nagarpalika Thakurdwara vs. Khalil Ahmed**

**Date of Judgment : 28.09.2016**

Code of Civil Procedure, 1908 (5 of 1908), Section 102 – Second Appeal – Applicability of Section 102 – House Tax levied on property of Respondents – Contention of Respondents that their House was not within limits of Appellant-Nagar Pallika – Suit for Injunction restraining Appellants from levying tax on property of Respondents and for declaration that Respondents not liable to pay any tax to Nagar Pallika – Second Appeal filed by Nagar Pallika, dismissed by High Court on ground that claim in Second Appeal was less than Rs.25,000/- and same was barred under Section 102 – *Held*, instant Suit not a mere Suit for recovery of money but also for Declaration and Permanent Injunction – Maintainability of Suit, Municipal limits of Suit property, etc. issues to be determined in Suit – Amount sought to be recovered though only Rs.11,000/-, final outcome of Suit to have far reaching consequences – Section 102 applicable only in cases where subject matter of Suit is recovery of money – Instant Suit being much more than a Suit for recovery of money, not barred by Section 102 – Judgment of High Court set aside – Matter remanded for speedy disposal.

**2016 (5) CTC 876**

**Nitu vs. Sheela Rani**

**Date of Judgment : 28.09.2016**

Hindu Succession Act, 1956 (30 of 1956), Section 8 – Punjab Family Pension Scheme, 1964, Clause 4(ii) – Mother of deceased Employee – Pension – Entitlement to – Clause 4(ii) of 1964 Scheme defining term ‘family’ – As per sub-clause (f), parent of an unmarried officer ‘family’ for purpose of grant of Pension – Parents of married officer not included in definition of family – Section 8 of 1956 Act makes mother class of heir of deceased Hindu male, and entitled to a share in his Estate – Decision of Apex Court in *Violet Issaac vs. UoI*, 1991 (1) SCC 725, Pension does not form Estate of deceased and employee not empowered to execute a Will directing grant of Pension to someone, who is not legally entitled to same – deceased being married, his widow entitled to Pension as per 1964 Scheme – Mother of deceased, *held*, not entitled to any share in Pension of deceased – Order of High Court directing grant of 50% share in Pension in favour of Respondent mother erroneous and set aside – Appeal allowed.

**2016 (5) CTC 746**

**A. Ayyasamy vs. A. Paramasivam**

**Date of Judgment : 04.10.2016**

Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 8, 34(2)(b) & 48(2) – Act does not specifically exclude any specific nature of dispute non-arbitrable – Non-arbitrable is one ground to set aside Award – Certain category of disputes as non-arbitrable – Fraud is one category – *Radhakrishnan’s case* expressed fraud is not arbitrable – Allegations of fraud to come under such category should be of serious nature which make virtual case of Criminal offence or where allegations of fraud are so complicated that it can be adjudicated only by appreciating voluminous evidence – Simple allegations of fraud touching upon internal affairs of parties, do not affect operation of Section 8 – Non-arbitrable disputes are carved out by Courts keeping in mind Principle of Common Law that certain disputes, which are of Public nature, are not arbitrable – Such disputes are to be decided by Public Fora and not Private Forum – *Radhakrishnan case* explained.

Words & Phrases – “Fraud” – Fraud is knowing misrepresentation of truth or concealment of material fact to induce another to act to his detriment.

Jurisprudence – Precedents – Decision rendered appointing Arbitrator under Section 11, not precedent – Ratio laid down in *State of West Bengal vs. Associated Contractors*, followed and affirmed.

*Per Dr. D.Y. Chandrachud* [Concurring with Justice A.K. Sikri]

Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 7 & 11 – Arbitrability of Dispute – Disputes capable of being adjudicated by Civil Court are capable of being adjudicated by Arbitral Tribunal – Where jurisdiction of Civil Court is excluded by conferment of exclusive jurisdiction on Special Court or Tribunal as matter of Public Policy, such dispute would not be capable of resolution by Arbitration.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 7 – Arbitration Agreement – Arbitration is voluntary assumption of obligation by contracting Parties to resolve disputes through Arbitration – Court should lend sense of business efficacy to such Commercial understanding – Arbitration Agreement is independent of main Contract, which contains Arbitration Clause – Invalidity of main Contract does not validate Arbitration Clause.

Arbitration Act, 1940 (10 of 1940), Section 20 – Arbitration and Conciliation Act, 1996 (26 of 1996), Section 8 -1940 Act gave wide discretion to Court in appointing Arbitrator – 1996 Act leaves no option with Judicial Authority under Section 8 except to refer parties to Arbitration.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 8 – Allegations of Fraud – Scope of referring Parties to Arbitration – Judicial Authority under positive obligation to refer Parties to Arbitration, if Agreement exists – Allegations of fraud *ipso facto* not ground for Judicial Authority to deny relief of reference to Arbitration – Decision in *Radhakrishnan* does not lay down that mere allegation of fraud is sufficient to deny relief under Section 8 – Judicial Authority to carefully scrutinize allegations of fraud and determine whether such allegations are pretext to avoid Arbitration – Ratio in *Radhakrishnan case* applies where serious issues of fraud involving Criminal wrongdoing are found – Court must discourage strategies designed to avoid recourse to Arbitration – Invalidity of main Contract does not *ipso jure* result in invalidity of Arbitration Agreement – *Radhakrishnan's case* explained.

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## SUPREME COURT CITATIONS CRIMINAL CASES

**(2016) 4 MLJ (CrI) 18 (SC)**

**Mohd. Jalees Ansari vs. Central Bureau of Investigation**

**Date of Judgment : 11.05.2016**

(A) Prevention of Terrorism – Confessional Statements – Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 1987), Sections 3(2)(i), 3(2)(ii), 3(3), 5, 6(1), 20A(1) and 20A(2) – Indian Penal Code, 1860 (Code 1860), Sections 302, 307, 326, 324, 436 and 120B – Explosive Substances Act (ES Act), Sections 3 and 4 – Explosives Act (Act), Section 9B – Railways Act, 1890 (Act 1890), Sections 150, 151 – Prevention of Damage to Public Property Act (PDPP Act), Section 4 – Arms Act (Arms Act), Section 25(1-B)(a) – Appellants/accused Nos.1 to 5, 7 to 11 and 13 to 16, along with other accused were tried for offences under Act 1987 and other enactments in connection with bomb blasts in various trains – Designated Court found prior approval under Section 20A(1) of Act 1987 and orders of sanction under Section 20A(2) of Act 1987 to be valid – Designated Court further convicted accused for various offences under Act 1987 and other enactments, as they were found guilty – Appeal against convictions by accused Nos.1 to 5, 7 to 11 and 13 to 16 – Whether conviction imposed on Appellants sustainable – *Held*, confession of accused Nos.1, 2, 3, 4, 7, 14, 15 and 16 which were found to be admissible were sufficient to establish case of prosecution against them and corroboration available through confessions of co-accused – Role of accused No.5 is evident from confessions of accused Nos.1, 3, 4 and 16 which lend corroboration and also get support from testimony of PW-41 – Without referring to his confession, role of accused No.5 in conspiracy established – Apart from reference to his role as stated in confession of accused No.1, nothing on record against accused No.8 – In absence of other material on record to lend semblance of corroboration to confession of accused No.1, difficult to sustain conviction of accused No.9 on basis of confession of accused No.1 – Accused No.10's role is neither referred to in confession of accused No.1 or 15 nor material other than confession of accused No.10 himself on record – Confessions of accused Nos.1 and 15 consistent and show that bomb given by accused No.1 to accused No.11 who in turn, gave it which was meant for train in question – Association of accused No.11 in confession of accused No.1 corroborated by confession of accused No.15 – to effect that when he went to house of accused No.11, accused No.13 was also present – Apart from that, no reference about accused No.13 – Confession of accused No.1 also does not make reference nor attributes role to accused No.13 – Case of prosecution established against accused Nos.1, 2, 3, 4, 7, 14, 15 and 16 – Conviction against accused Nos.8, 9, 10 and 13 was not sustainable, same set aside – Appeals filed by accused Nos.1, 2, 3, 4, 5, 7, 11, 14, 15 and 16 dismissed – Appeals filed by accused Nos.8, 9, 10 and 13 allowed.

(B) Cognizance of Offence – Orders of Sanction – Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 1987), Sections 20A(1) and 20A(2) – Whether provisions of Act 1987 validly invoked under Section 20A(1) of Act 1987 – Whether orders of sanction issued under Section 20A(2) of Act 1987 valid – *Held*, registration of FIR under provisions of Act 1987 was prompt – Contemporaneous documentation shows clear invocation of provisions of Act 1987 right at inception – When cases made over to CBI for investigation, that was only crime which already stood registered under provisions of Act 1987 – Cross-examination of PW-117 does not raise doubt – Registration of

crime under provisions of Act 1987 accepted as valid and proper and was correct exercise of power – Endorsement at foot of report in handwriting of PW-62 which document was valid exercise of power invoking provisions of Act 1987 – Orders invoking provisions of Act 1987 were valid – Contemporaneous record also established and supports that part and submission that those approvals were brought about subsequently rejected – Nothing found on record to doubt correctness of disclosure coming from interrogation of accused No.1 – No inconsistency or infirmity found in invocation of provisions of Act 1987 – Orders of sanction issued under Section 20(A) 2 of TADA Act must be considered – Testimony of witnesses show that there was no infirmity in their assessment and exercise of power – Orders of sanction were not questioned by accused whose major emphasis was regarding prior approvals.

(C) Confession – Admissibility – Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 1987), Sections 15 and 15(1) – Terrorist and Disruptive Activities (Prevention) Rules (Rules), Rule 15 – Whether confession given by Appellants admissible – *Held*, apart from Recording Officers’ testimony as stated that confessions were recorded by them, nothing on record to lend semblance of support that matters taken to logical culmination in trial under Act 1987 – Difficult to rely on confessions of accused Nos.5 and 8 as substantive pieces of evidence – Unlike confessions of accused Nos.9, 10, 11 and 13 which cannot be considered for want of legal sanction as described, confession of accused No.1 can be taken into account, if it is otherwise admissible in law – Confession recorded under Section 15(1) of Act 1987 in accordance with statutory requirements and conditions in Rule 15 of Rules is admissible against maker, co-accused, abettor or conspirator subject to conditions stipulated in Proviso to Section 15(1) of Act 1987 – Having gone through material on record including certification and satisfaction about voluntariness of confessions of accused No.1, 2, 3, 4, 7, 14, 15 and 16, same were in conformity with recruitments of law – Format of confessions was also consistent with requirements of Rule 15 of Rules – Confessional statements of those accused accepted to be correctly recorded and held to be admissible in law.

**(2016) 8 SCC 722**

**Surinderjit Singh Mand vs. State of Punjab**

**Date of Judgment : 05.07.2016**

A. Criminal Procedure Code, 1973 – S.197 – Sanction for prosecution – Alleged offence, attributed to the accused, if had been committed by the accused “while acting or purporting to act in the discharge of his official duty” – Determination of – Alleged illegal detention of accused N, before his formal arrest, by appellant accused police officers – Sanction if required for prosecution of appellants

B. Criminal Procedure Code, 1973 – Ss.197 and 319 – Sanction for prosecution – Requirement of, before taking cognizance under S.319 CrPC

**(2016) 8 SCC 313**

**Muthuramalingam vs. State**

**Date of Judgment : 19.07.2016**

A. Criminal Procedure Code, 1973 – S.31(1) and Ss.432 to 433-A – Person convicted of several offences at one trial -

I. Sentences that may be awarded;

II. Whether they are to run consecutively or concurrently when –

*Case 1:* Multiple sentences awarded, none of them being life imprisonment;

*Case 2:* Multiple sentences awarded, some being term sentences and one sentence of life imprisonment;

*Case 3:* Multiple sentences of life imprisonment only;

*Case 4:* Multiple sentences awarded some being term sentences and multiple sentences of life imprisonment;

III. Effect of remission/commutation of one sentence of life imprisonment when multiple sentences of life imprisonment are imposed

B. Criminal Procedure Code, 1973 – S.31(1) – Person convicted of several offences at one trial and sentenced to multiple sentences of life imprisonment – Held, the same cannot be directed to run consecutively – They can only run concurrently – In law they stand superimposed on each other

C. Criminal Procedure Code, 1973 – Ss.432 to 433-A and S.31(1) – Person convicted of several offences at one trial and sentenced to multiple sentences of life imprisonment – Effect of remission/commutation of one sentence of life imprisonment – Held, in such a case multiple sentences of life imprisonment stand superimposed on each other to run concurrently – Thus, in case prisoner is granted benefit of remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other

D. Criminal Procedure Code, 1973 – Ss.31(1) and (2) – Distinctive applicability and scope of sub-sections (1) and (2), explained

**(2016) 3 SCC (CrI) 253**

**Sudhir Chaudhary vs. State (NCT of Delhi)**

**Date of Judgment : 29.07.2016**

Criminal Trial – Identification – Identification by voice – Voice sample – Process for drawing – Protection from self-incrimination

- Held, said process should be fair and reasonable, having regard to mandate of Art.21 of the Constitution – But, it is not open to accused to dictate course of investigation – Reading out of some words which are a part of disputed inculpatory recorded conversation in obtaining voice sample, so as to better enable matching of voice sample with recording concerned – Permissibility of – Difference between reading out *some words* from inculpatory statement vis-à-vis reading out *sentences* therefrom – Appropriate directions given by Supreme Court for carrying out aforesaid procedure, in all fairness to accused

**(2016) 8 SCC 762**

**State of Haryana vs. Ram Mehar**

**Date of Judgment : 24.08.2016**

A. Constitution of India – Art.21 – Fair and Speedy trial – Fair trial and speedy trial – Often conflicting requirements of – Doctrine of balance i.e. interests of victim/the collective (represented through the prosecution) and accused must be balanced, explained and its adherence to, by courts, emphasized – Concept of fair trial cannot be limitlessly stretched – Doctrines and Maxims – Balance/Balancing

B. Criminal Procedure Code, 1973 – Ss.311/231(2), 309 and 482 – Recall of witnesses – Ambit and scope of S.311 and duty of court under – Principles reiterated – Doctrine of balance, explained – Held, interests of victim/the collective (represented through the prosecution) and accused must be balanced – Concept of fair trial cannot be limitlessly stretched to permit recall of witnesses endlessly on ground of magnanimity, etc.

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## HIGH COURT CITATIONS CIVIL CASES

**2016 (5) CTC 486**

**T. Elamurugan vs. Dr. G. Jayachitra**

**Date of Judgment : 12.07.2016**

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Sections 2(6), 2(8) & 10 – Pleadings and Proof – Eviction – Whether can be granted on basis of pleadings in Petition – Suit for Eviction on ground of willful default – Plea of Tenant that no Landlord-Tenant relationship existed between parties as they had entered into Agreement of Sale of Suit property and Suit for Specific Performance is pending – No oral or documentary evidence let in by Landlady – *Held*, eviction cannot be ordered merely on basis of averments in Petition – When claim of Landlady is negatived by Tenant, burden is on Landlady to prove her case by adducing oral and documentary evidence – Landlady ought to have entered Witness Box to substantiate her case – Decree of Eviction granted by Courts below in absence of any proof on part on Landlady, *held*, erroneous and set side – Matter remitted back to Rent Controller for giving opportunity to Landlady to let in oral evidence – Civil Revision Petition allowed.

**(2016) 6 MLJ 531**

**G.V. Sampath vs. Vellore Institute of Technology**

**Date of Judgment : 28.07.2016**

Civil Procedure – Interim Injunction – Appointment of Receiver – Code of Civil Procedure, 1908, Section 94, Order XXXIX Rules 1 and 2 and Order XL Rule 1 – Suit filed by appellant/Petitioner against Respondents/Defendants for various reliefs – Along with suit, Appellant filed applications for injunction restraining Respondents from preventing him from discharging his duties as trustee of 1<sup>st</sup> Respondent/Defendant's trust – In those applications, Appellant also prayed to stay termination order of Appellant as trustee, for appointment of receiver and for direction to Respondents to produce Trust's minute books – Trial Court dismissed applications filed for injunction regarding discharge of Appellant's duty as trustee, stay of order of termination of Appellant and for appointment of receiver – But, directed for production of minute books from specific year and rejected prayer with regard to production of minute books prior to that specific year – Being aggrieved, present appeals filed – Whether Appellant made *prima facie* case to grant interim injunction as envisaged under Order XXXIX Rules 1 and 2 – Whether case made out by Appellant for appointment of receiver as contemplated under Order XL Rule – *Held*, averments in affidavit filed in support of application for interim injunction show that Appellant made *prima facie* case to grant interim injunction as envisaged under Order XXXIX Rule 1 and 2 – But, regarding application for appointment of receiver, no grounds made out for appointment of receiver as contemplated under Order XL Rule 1 – Object of appointment of receiver is to protect, preserve and manage property – Pending suit, power of Court to appoint receiver is subject to Section 94 and is to be exercised for preventing ends of justice from being defeated – Appointment of receiver recognized as one of the harshest remedies which law provides for enforcement of rights and allowed in extreme cases and in circumstances where interests of creditors exposed to manifest peril – Facts on record do not satisfy those tests – Receiver not to be appointed

unless there is substantial ground for such interference, but no substantial ground seen for such interference to appoint receiver, as no case made out – Impugned order passed by Trial Court in application filed for appointment of receiver does not require interference – Appeal in relation to interim injunction allowed – Appeal regarding appointment of receiver dismissed.

**2016 (5) CTC 339**

**T. Krishna Pandian vs. K.S. Bharath Kumar**

**Date of Judgment : 29.07.2016**

Tamil Nadu Buildings (Lease and Rent Control Act) 1960 (T.N. Act 18 of 1960), Section 10(3)(a)(iii) – Owner’s Occupation – *Bona fide* Requirement of Landlord – Non-Residential Building – Landlord requires premises to carry on Transport Business – Tenant carries on business of Transport Business and Commission Agency – Contention of Tenant that Landlord after filing Eviction Petition had entered into Sale Agreement for Suit property and he is disentitled to seek eviction on ground of Own Use and Occupation – Landlord carries on similar business in rented premises was established by clinching evidence – Date of filing Eviction Petition would be crucial date for consideration of *bona fides* of Landlord – Landlord proved his *bona fide* requirement of Petition premises for his own use and occupation – Eviction ordered.

**2016 (2) TN MAC 518 (DB)**

**R. Mahaboob Ali vs. S. Gnaneswaran**

**Date of Judgment : 05.08.2016**

PERMANENT DISABILITY – Compensation – Award of – Injured/Claimant suffered various injuries including fractures on right leg – 40% disability – Tribunal awarding Compensation at Rs.1,20,000/- at rate of Rs.3,000/- per percentage of disability – Method adopted by Tribunal, *held*, perfectly correct.

FUTURE MEDICAL EXPENSES – Fracture on right leg – Steel plates fixed – To be removed in future – Rs.50,000/- awarded by Tribunal towards Future Medical Expenses enhanced to Rs.1,00,000/-.

**(2016) 6 MLJ 667**

**Managing Director vs. R. Manoharan**

**Date of Judgment : 09.08.2016**

Property Laws – Status of Franchise Agreement – Injunction – Transfer of Property Act (TP Act), Section 105 – Indian Easement Act (Act), Section 52 – Appellants/Defendants and Respondent/Plaintiff entered into Ex.A.1/franchise agreement under which Plaintiff ran restaurant in suit property – After expiry of time and its extensions, 1<sup>st</sup> Defendant directed Plaintiff to hand over vacant possession – Plaintiff filed arbitration petition and in that petition, order passed to work out remedy before competent Civil Court – Plaintiff filed suit for permanent injunction restraining Defendants from interfering with his peaceful possession and enjoyment – Defendants resisted that when there was arbitration clause in Ex.A.1, civil suit barred – Trial Court held that Plaintiff was only licensee and he had no right to continue in possession and could not ask for injunction against owner of property – On appeal, First Appellate Court held that Plaintiff was in possession of property and made regular payment of rent, which is also accepted by Defendants – First Appellate Court also held that as

transaction was lease, Defendants had to proceed under due process of law – Being aggrieved, present second appeal filed by Defendants – Whether impugned order passed by first Appellate Court in granting relief of injunction against Appellants sustainable – Whether Ex.A.1 is lease or licence – *Held*, Ex.A.1 and other documents/Exs.A.8, A.9, A.10 and A.13 would show that franchise given only to run restaurant which would mean that it is only licence – But, lease means where transfer of interest of immovable property, lessee can do whatever he need and it is not necessary to obtain permission to each and every act – Entire documents would show that for each and every thing, Respondent sought for administration approval, which shows that administration of entire building is with Appellants and Respondent is only rendering service and no transfer of interest in property – Once person sought for injunction, he must prove that he has *prima facie* title, legal possession, balance of convenience and irreparable loss – But, Respondent is only licensee and after expiry of licence period, his possession is not lawful – As Respondent does not have lawful possession, he is not entitled to injunction, same was not considered by First Appellate Court, even though Trial Court considered same – Finding of First Appellate Court is perverse, same set aside – Appeal allowed.

**2016-4-L.W. 715**

**A. Annapporani vs. A. Mani and Others**

**Date of Judgment : 19.08.2016**

WILL/ Will, Settlement deed, difference, what is, proof of

Succession, Section 63, Will, Settlement deed, difference, what is, proof of

Evidence act, Section 68, Will, Settlement deed, difference, what is, proof of

Partition/WILL, Settlement, deed, difference, what is, proof of

Partition – Document whether WILL or Settlement – Proof of, how to be made – words ‘conveyed’, ‘transferred’ mentioned in Ex.D1, effect of

Held: Ex.D1 is a Settlement deed and not a Will – Absence of specific denial in respect of Ex.D1, effect, what is

**2016-4-L.W. 739**

**Ravishankar Prasad A. (deceased) and others**

vs.

**Prasad Production Private Ltd. and others**

**Date of Judgment : 26.08.2016**

C.P.C., Order 9, rule 13, Order 17, rule 2, order 22, delay, condonation, ex parte decree, setting aside of

Limitation act (1963), Section 5, delay, condonation, ex parte decree, setting aside of

Constitution of India, Article 227, delay, condonation, ex parte, decree, setting aside of

Suit filed before Original side was transferred to city court due to pecuniary jurisdiction – Notice not sent to defendants by transferee court, they did not appear – Court passed judgment and

decree on merits without hearing defendants – Petition to condone delay to set aside that order dismissed as not maintainable – Revision preferred – Effect of court circular in ROC No.193-A/91-what is

Held: though judgment was pronounced on merits, defendants were not given an opportunity to put forth their arguments, same should be construed only as a judgment passed under Order 17 rule 2 – It is liable to be set aside under Order 9 rule 13 – Application under Sec.5 maintainable

**(2016) 7 MLJ 229**

**Sundarajan vs. Dr. K. Chandrasekaran**

**Date of Judgment: 12.09.2016**

Civil Procedure – Additional Written Statement – Discretion of court – Code of Civil Procedure 1908 (Code 1908), Order VIII Rule 9 – First Respondent filed suit for declaration of title to suit property and other consequential reliefs – Petitioner’s Interim application under Order VIII Rule 9 of Code 1908 for receiving additional written statement filed before Trial Court dismissed – Whether interpretation of Order VIII Rule 9 of Code 1908 by Trial Court is sustainable in law – *Held*, Order VIII Rule 9 provides for filing of additional written statement with leave of Court – It is to ensure that license is not given to defendant in suit to perpetually keep filing additional documents so as to prolong suit and cause prejudice to Plaintiff – To ensure that Court is provided ultimate discretion to permit filing of written statement or additional written statement from any of parties and fix time limit of not more than thirty days for presenting same – Court is permitted to exercise its discretion to allow filing of additional pleadings – Provision indicates that Court shall not grant more than thirty days for presenting additional pleadings – Issue of minimizing delay is self contained in provision itself – Trial Court order leads to conclusion that scope of Order VIII Rule 9 has not been properly appreciated – Claim of Petitioner for filing additional written statement that deserves credence has been negated erroneously – Additional written statement filed by Petitioner shall be taken on record – Trial Court directed to expedite Suit proceedings – Revision petition allowed.

**(2016) 7 MLJ 280**

**D. Dhanasekaran vs. V. Damodharan (Died)**

**Date of Judgment: 20.09.2016**

Property Laws – Settlement Deeds – Undue Influence – Unsound Person – Alleging that he was mentally unsound and without his knowledge, Ex.P-4 and Ex.P-5/settlement deeds executed and Appellant/1<sup>st</sup> Defendant executed same by undue influence, since he was in dominating position in family, 1<sup>st</sup> Respondent/Plaintiff filed suit to declare settlement deeds to be null and void – Single Judge decreed suit – Being aggrieved, present appeal filed by 1<sup>st</sup> Defendant – Pending appeal, 1<sup>st</sup> Respondent passed away and his legal heirs been on record as 2<sup>nd</sup> to 5<sup>th</sup> Respondents – Whether settlement deeds executed by Plaintiff valid or executed by undue influence of 1<sup>st</sup> Defendant and executed without knowledge of Plaintiff – *Held*, only because of relationship between parties, it cannot be concluded that Appellant was in position to dominate Plaintiff – Fact that Appellant was in dominating position is to be established by Plaintiff – Even if that fact is established, next factor that execution of settlement deeds was due to undue influence made by Appellant to be established – Facts show that settlement deeds executed, registered and same attested by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as witnesses – No pleading as to nature and manner of undue influence used by Appellant, though there was plea that when Plaintiff was mentally ill, settlement deeds executed without his knowledge by convincing family members saying that 3<sup>rd</sup> Defendant’s first wife might claim stake – In absence of pleading as to nature and manner of undue influence exercised by Appellant, settlement deeds were not executed under undue

influence as alleged by Plaintiff – As records show that Plaintiff was able to travel and put his signature as witness before Sub-Registrar, plea that Plaintiff was unsound in relevant period was not acceptable – Ex.P.17/reply sent by Plaintiff to lawyers notice shows that he admitted execution of settlement deeds and there was no whisper about his mental illness – Fact that settlement deeds were executed, when Plaintiff was mentally ill cannot be correct – Plaintiff admitted in Ex.D.17 that he cancelled settlement deeds, but such unilateral revocation is not sustainable – Ex.D.15 and Ex.D.20 also show that settlement deeds came into effect and property tax and EB connection changed to name of Appellant – Settlement deeds are valid and Plaintiff is not entitled to reliefs sought for in suit – Judgment and decree of Single Judge set aside – Appeal allowed.

**2016 (5) CTC 622**

**Ashokarajan vs. Dr.Padmarajan**

**Date of Judgment : 21.09.2016**

Hindu Succession Act, 1956 (30 of 1956) – Joint Family Property – Can self-acquired property acquire character of Joint Family Property – Father throwing self-acquired property into common hotch pot – Intention evidences that such property to be treated as Joint Family Property.

Interpretation of Deeds & Documents – Nomenclature not relevant – Substance important – Document evidencing Family Arrangement though styled Partition is Family Arrangement alone.

Indian Succession Act, 1925 (39 of 1925) – Will – Revocation of – Father executed Will – Father subsequently entered into Family Arrangement with his sons including person who did not get anything under Will – Such Family Arrangement revokes earlier Will.

Transfer of Property Act, 1882 (4 of 1882), Section 123 – Gift – Stamp Act, 1899 (2 of 1899) – Settlement Deed – Settlement Deed executed by Father after entering into Family Arrangement treating self-acquired property as Joint Family property – Settlement Deed proceeding on footing that father had absolute right into and upon such property is not valid – Suspicious circumstances in execution of Settlement Deed found – Settlement not valid.

Contract Act, 1872 (9 of 1872), Sections 40 & 56 – Family Arrangement cannot be treated as Contract to apply Sections 40 & 56.

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## HIGH COURT CITATIONS CRIMINAL CASES

**(2016) 3 MLJ (CrI) 711**

**Pramilakumari vs. State**

**Date of Judgment : 13.04.2016**

Murder – Suspicion – Indian Penal Code 1860 (Code 1860), Sections 302, 309 and 506(ii) – Constitution of India (Constitution), Article 21 – Arms Act (Act), Sections 3, 5, 25(1-B) and 27(1) – Appellant/wife of Deceased stood charged for offences under Section 3 r/w Section 25(1-B) and Section 5 r/w Section 27(1) of Act and under Sections 302, 309 and 506(ii) Code 1860 – Trial Court convicted Appellant under all charges and sentenced her to undergo imprisonment for life and pay fine – Whether Appellant / Accused is guilty of offences as charged and whether Accused fired M.O.2/revolver against deceased as well as against herself – *Held*, applying test of close scrutiny by keeping in mind that child is prone to tutoring and considering admission made by P.Ws.4 as well as 20 and in light of admission made by them that they would say anything as stated by P.W.2, their evidences are highly doubtful and they cannot be relied on at all – Not explained to Court as to how revolver and cartridges could be photographed at around morning when case of prosecution is that they recovered after confession was made by accused in evening, after arrest of accused – M.O.12 photograph and evidence of P.W.21 completely falsify case of prosecution that M.Os.2, 3 and 5 were all recovered based on disclosure statement made by accused – No truth in case of prosecution that accused was arrested only in evening and on her disclosure statement, material objects were recovered – Highly improbable that accused would have informed two eyewitness viz., P.Ws.4 and 20 by waking them up and then in their presence shot at deceased – Highly improbable that after having done so, accused would have told children not to tell anybody that she only shot deceased – If story projected by prosecution that accused ran towards ground floor of house with children is true, case of prosecution that accused attempted to commit suicide cannot be true because such escape from place of occurrence is inconsistent with same – If it is true that P.W.1 had already lodged F.I.R against accused, there would have been no necessity or occasion to put P.W.2 in police lock up as accused – Only probabilizes stand of accused that she made complaint against P.W.2. that he was one who shot at her husband – No explanation as to why P.W.2 was treated like accused – Prosecution can be held to have created strong suspicion against accused – Suspicion, however strong it may be, shall not take place of proof – Doubts and improbabilities in case of prosecution – Under Article 21 of Constitution, deprivation of life and liberty of individual can be had only by following procedure established by law – Said procedure enshrined in Article 21 of Constitution does not permit conviction of accused on mere surmises or suspicion – Prosecution has miserably failed to prove case against accused beyond reasonable doubts – Appellant entitled for acquittal – Appeal allowed.

**(2016) 3 MLJ (CrI) 755**

**M. Loganathan vs. State**

**Date of Judgment: 02.06.2016**

Sexual Assault – Penetrative Sexual Assault – Unnatural Offences – Protection of Children from Sexual Offences Act, 2012 (Act 2012), Sections 3 and 4 – Indian Penal Code, 1860 (Code 1860), Sections 377, 376(1), 376 and 375 – Code of Criminal Procedure, 1973 (Code 1973), Sections 222(1) and 464 – Indian Evidence Act, 1872 (Act 1872), Section 6 – Constitution of India, 1950, Article 20(1) – After trial, Appellant/accused convicted under Section 4 of Act 2012 and Section 377 of Code 1860 – Challenging his conviction, accused filed present appeal alleging that conviction of accused under Section 4 of Act 2012 illegal – Whether conviction of accused under Section 4 of Act 2012 and Section 377 of Code 1860 sustainable – *Held*, evidence of PW-2/victim is convincing, same cannot be rejected – Facts on record show that insertion of penis into vagina of PW-2 was only partial and that is why when PW-2 examined by PW-6, hymen found intact – PW-2 did not state that there was ejection from penis of accused, when he did that heinous act – Plea of accused that medical evidence and evidence of Chemical Analyst/PW-8 do not corroborate evidence of PW-2 deserves to be rejected – Further, nothing elicited from PW-2 that in Police Station, she was tutored – As per evidence of PW-2, PW-3 came to place of occurrence and rescued her – Evidences of PWs.2 and 3 fall within ambit of Section 6 of Act 1872, same is not hit by hearsay rule – Evidence of PW-3 corroborates evidence of PW-2 – As on date of alleged occurrence, Act 2012 was not in force, conviction of Appellant under Section 4 of Act 2012 is unconstitutional as it violates Article 20(1) of Constitution – If rape as defined in Section 375 of Code 1860 is committed against child, it is offence under Section 4 of Act 2012 – Accused was put on notice that accusation against him was that penetrating his penis into vagina of PW-2 – Further, Section 222(1) of Code 1973 applicable to facts on record – Conviction imposed on Appellant under Section 4 of Act 2012 liable to be set aside, but he is liable to be convicted under Section 376(1) of Code 1860 – Accused also committed unnatural offence falling within scope of Section 377 of Code 1860 – Conviction of Appellant under Section 377 of Code 1860 confirmed – Conviction imposed on Appellant under Section 4 of Act 2012 set aside, but he is convicted under Section 376(1) of Code 1860 – Appeal partly allowed.

**(2016) 3 MLJ (CrI) 728**

**V. Arul vs. State**

**Date of Judgment: 09.06.2016**

Murder – Culpable Homicide – Indian Penal Code 1860 (Code 1860), Sections 300, 302, 304-I and 201 – Trial Court convicted Appellant/sole accused under Sections 302 and 201 of Code 1860 and sentenced him to undergo imprisonment for life and to pay fine – Appeal – Whether conviction of Appellant for offences under Sections 302 and 201 of Code 1860 justified – *Held*, from circumstances proved by prosecution, clear that deceased died of homicidal violence and proved through extra-judicial confession, which draws corroboration from many other sources that it was accused, who caused death of deceased – Facts show that accused had been provoked by conduct of deceased and by her utterances – Only out of said provocation, having lost his mental balance, accused had stabbed deceased with knife on her neck – Act of Accused would fall within 3<sup>rd</sup> limb of Section 300 of Code 1860 and first exception to Section 300 – Appellant liable to be punished under Section 304-I of Code 1860 – After having caused death of deceased, accused had taken body to distant place and by pouring kerosene, tried to burn dead body – Act of accused would be offence punishable under Section 201 of Code 1860 – Considering mitigating and aggravating circumstances, sentencing of 5 years rigorous imprisonment and to pay fine for offence under Section 304-I of Code 1860 would meet ends of justice

– For offence under Section 201 of Code 1860, conviction and sentence imposed by Trial Court confirmed – Appeal partly allowed.

**(2016) 4 MLJ (CrI) 240**

**Manikandan vs. State**

**Date of Judgment : 16.06.2016**

Suicide – Abetment to Suicide – *Mens Rea* – Indian Penal Code (Code), Section 306 read with 107 – Trial Court convicted and sentenced Appellant/Accused for committing offence under Section 306 of Code – Appeal against conviction – Whether Prosecution established charge under Section 306 of Code, against Appellant beyond reasonable doubts – *Held*, offence of abetment required *mens rea* – There must be intentional doing/aiding or goading commission of suicide by another – Otherwise, even mere casual remark, something said in routine and usual conversation would be wrongly construed or misunderstood as abetment – Merely because person had been so named in suicide note, Court was not to immediately jump to conclusion that he was offender under Section 306 of Code – Contents of suicide note and other attending circumstances had to be examined to find out whether it was abetment within meaning of Section 306 read with 107 of Code – It was intention on part of Accused that victim should die which matters – There must be positive act on part of Accused – It need not be by words, it may be by deeds and letters – Accused did not instigate, provoke nor pressurize deceased to commit suicide – Conviction and sentence imposed on Appellant under Section 306 set aside – Appeal allowed.

**(2016) 4 MLJ (CrI) 232**

**A. Radhakrishnan vs. Inspector of Police**

**Date of Judgment : 20.06.2016**

Discharge – Discharge Petition – Dismissal – Indian Penal Code (Code), Sections 414 and 34 – Code of Criminal Procedure, 1973 (Cr.P.C), Section 161 – Petitioner/A3 committed offence punishable under Section 414 read with Section 34 of Code – Discharge petition filed by Petitioner before Trial Court challenging criminal proceedings initiated against him was dismissed – Revision – Whether Trial Court justified in dismissing discharge petition of Petitioner – *Held*, it was clear from decisions of Supreme Court that if complaint alleged against accused was groundless, then discharge petition can be entertained – If there was strong suspicion found on materials placed before Court with regard to offences committed by accused, that would justify framing of charges against accused – Section 161 statements recorded by Police showed that they clearly spoke about entry of attachment order passed by Chief Judicial Magistrate, made in Guideline Value Register – Statement made under Section 161 was sufficient to frame charges against Petitioner/A3 and it was incorrect to say that there was absolutely no material to frame charges against Petitioner/A3 – No infirmity found in charges framed against petitioner – No valid ground found to interfere with impugned order passed by Trial Court – Petitioner/A3 not liable to be discharged from case at this stage – Criminal revision dismissed.

**(2016) 4 MLJ (CrI) 96**

**Yuvaraj vs. State by the Inspector of Police**

**Date of Judgment : 21.06.2016**

Murder – Presumption of facts – Indian Penal Code 1860 (Code 1860), Sections 302 and 392 – Indian Evidence Act (Act), Section 114 – Appellant/sole accused stood charged for offences under Sections 302 and 392 of Code 1860 – Trial Court convicted Appellant under both charges and sentenced him to undergo imprisonment and pay fine – Appeal against conviction – Whether Appellant/accused is guilty of murder of deceased and theft of gold ornaments – *Held*, accused was found in possession of M.Os.1 and 3/gold ornaments which were recovered soon after commission of theft – Accused has got no explanation to offer – Court inclined to raise presumption under Section 114 of Act that it was this accused who removed M.Os.1 to 4 from body of deceased – Removal of gold ornaments from body of deceased and causing death of deceased had happened in one and same occurrence, presumption is that it was this accused, who caused death of deceased also – Death of deceased was caused by accused with intention to kill her so as to remove valuable ornaments – Prosecution has clearly established that accused had committed murder of deceased and had committed theft of gold ornaments – Trial Court has rightly convicted accused under Sections 302 and 392 of Code 1860 – Appeal dismissed.

**(2016) 4 MLJ (CrI) 172**

**Gopi @ Gopinath vs. State**

**Date of Judgment: 15.07.2016**

Murder – Absence of Corroboration – Indian Penal Code (Code), Sections 302 r/w Sections 34, 506(ii) and 201 – Accused A1 was acquitted by Trial Court of charge framed under Section 302 r/w 109 of Code – Trial Court convicted Appellants/Accused A2 and A3 for offences under Sections 302 r/w 34, 506(ii) and 201 of Code – Appeal against conviction and sentence – Whether Trial Court justified in convicting and sentencing Appellants/Accused A2 and A3 – *Held*, prosecution proved that there was enmity between A1 and deceased – Had it been true that P.Ws 6 and 7 had seen occurrence, certainly, on returning to village, they would have raised hue and cry or at least informed family members of deceased – Going by unnatural conduct of those two witnesses, difficult to attach any weightage to evidence of those witnesses – Not safe to sustain conviction of A2 and A3 solely based on evidences of P.Ws.6 and 7 in absence of any other corroboration – Prosecution failed to prove case beyond reasonable doubts and has not been able to succeed in creating strong suspicion against Appellants – Court of law cannot convict Accused on mere surmises and conjectures – Conviction and sentence imposed on A2 and A3 by Trial Court not sustainable and liable to be set aside – Appellants acquitted – appeal allowed.

**(2016) 4 MLJ (CrI) 1**

**Rathnavel vs. State**

**Date of Judgment: 26.07.2016**

Murder – Appreciation of Evidence – Indian Penal Code (Code), Section 302 – Indian Arms Act (Act), Section 25(1-B) – Trial Court convicted Accused/Appellant for offences under Section 302 of Code and Section 25(1-B) of Act – Appeal against conviction – Whether Trial Court justified in convicting and sentencing Appellant without proper appreciation of evidence – *Held*, Court do not intent to evaluate evidence of PWs 1 to 3, so called eyewitness – Sessions case be remanded back to Trial Court for fresh disposal as lot of lapses and infirmities in conduct of trial before Trial Court had been noticed – Conviction and sentence imposed by Trial Court set aside in interest of justice – Court had not expressed any opinion regarding oral evidence of any of these witnesses already examined more particularly P.Ws.1 to 3 and it was for Trial Court to appreciate entire evidence afresh – Appeal allowed.

**(2016) 4 MLJ (CrI) 248**

**Parthiban vs. State**

**Date of Judgment : 23.08.2016**

Murder – Unlawful Assembly – Indian Penal Code, 1860, Sections 302, 449, 149, 148 and 14 – After trial, Trial Court convicted accused Nos.1 to 14 under Sections 147 and 148, accused Nos.1 to 3 under Section 449, accused Nos.4 to 14 under Section 449 read with Section 149, accused Nos.1 and 2 under Section 302 and accused Nos.3 and 4 under Section 302 read with Section 149 – Challenging their conviction, accused filed present appeals – Whether prosecution proved case beyond reasonable doubts against accused – *Held*, from evidences, it is inferable that deceased could have been attacked by more persons near school and he was abandoned – As spoken to by PW-15, occurrence would not have been noticed by any of the witnesses – PW-15, who came to scene of occurrence first, on way of Village in question, saw deceased lying with injuries and he took him to house of PW-1 and that is how fact that deceased attacked by somebody came to light – Also, inferable that attempt made to implicate as many persons as possible and FIR reached hands of Magistrate belatedly – Difficult to sustain conviction of any of the accused, as prosecution did not prove case beyond reasonable doubts against accused – Conviction imposed on Appellants by Trial Court set aside and they are acquitted of charges leveled against them – Appeals allowed.

**2016-2-L.W. (CrI.) 385**

**Prabhu [A1] and another**

**vs.**

**State Rep. by The Inspector of Police, J.J. Nagar Police Station, Chennai**

**Date of Judgment : 31.08.2016**

I.P.C., Sections 34, 109, 114, 363, 364a, 365, 386, 465, 468, 471, 506(ii)

Evidence act, Section 65B, Mobile phone details, acceptance of, when certificate to prove primary evidence, Sections 53, 54 accused, good character, relevancy of, bad character, irrelevancy, when

Evidence act, Hearsay evidence, rule of, statement of commissioner of police at press meet, was hearsay information, no weightage given – Sections 53, 54 accused, good character, relevancy of, bad character, irrelevancy, when

Mobile phone details, acceptance of, when – No certificate obtained under Section 65-B to prove electronic evidence as a primary evidence – call details cannot be taken into account

P.W.2 student of class IX in DAV senior higher secondary school Chennai, was kidnapped by two accused in a car – Ransom demanded for release – whether proved

Prosecution proved accused kidnapped P.W.2 for ransom and criminally intimidated P.Ws.1 and 2 – A1 and A2 used car for commission of crime – Car from which P.W.2 was rescued, was in possession of A1 and A2 which, either they had stolen from possession of P.W.19 or had received the stolen car

A1(B.E, MBA) demanded a sum of rupees five crores as ransom reduced it to one crore, which P.W.4 (father) agreed to pay – Test identification parade of accused whether proper – Physical features of A1 and A2 imprinted in the mind of P.W.2 a child – Identification of the accused by P.W.2 accepted – Delay in dispatching FIR – effect of

Duty of police to follow Section 7 of the Right to Information Act and Section 172(3) Cr.P.C.

Evidence act, Section 65B Mobile phone details, acceptance of, when to be done, certificate to prove primary evidence, Sections 53, 54 accused, good character, relevancy of, bad character, irrelevancy, when

Mobile phone details, acceptance of, when – No certificate obtained under Section 65-B to prove the said electronic evidence as a primary evidence – call details cannot be taken into account

Evidence act, Hearsay evidence, rule of, statement of commissioner of police at press meet, was hearsay information, no weightage given

Evidence act, Sections 53, 54 accused, good character, relevancy of, bad character, irrelevancy, when

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