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IMPORTANT CASE LAWS

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**SUPREME COURT CITATIONS
CIVIL CASES**

2012 (6) CTC 213

**Ghanshyam Dass Gupta
Vs
Makhan Lan**

Code of Civil procedure, 1908 (5 of 1908), Order 41, Rule 17(1), Explanation to – Practice and procedure – Power of Appellate Court to decide Appeal on merits in absence of Appellant’s Counsel – Appellate Court cannot decide Appeal on merits in absence of Appellant Counsel – Appeal can be dismissed for default in absence of Counsel for Appellant – Judgment of High Court deciding Appeal on merit in absence of Counsel is liable to set aside – Matter remanded to High Court for fresh consideration – Law laid down in Abdur Rahman v. Athifa Begum, 1996 (6) SCC 62 followed and applied.

SUPREME COURT CITATIONS CRIMINAL CASES

(2012) 9 Supreme Court Cases 1

MOHAMMED AJMAL MOHAMMED AMIR KASAB ALIAS ABU MUJAHID

Vs

STATE OF MAHARASHTRA

With

STATE OF MAHARASHTRA

Vs

FAHIM ARSHAD MOHAMMAD YUSUF ANSARI AND ANR

And

RADHAKANT YADAV

Vs

UNION OF INDIA AND ORS

- A. Penal Code, 1860 – S. 302 r/w Ss. 120-B, 109 & 34 and Ss. 307, 397, 324, 341, 342 & 364 – Mumbai Terrorist Attack case – Sole terrorist captured alive out of total of ten – Conviction of - Bold and voluntary confession, by said sole surviving Pakistani terrorist (TA-1 or tried Accused 1) under S. 164 CrPc corroborated by ocular evidence of eyewitnesses who had life and death encounters with TA-1 and DA-1 (deceased – Accused 1), both of whom as a pair had been on a killing spree with highly lethal weapons at public places in Mumbai for about 3 hours, and further corroborated by forensic evidence, ballistic evidence, DNA evidence and a huge amount of other evidence – All such eyewitnesses easily identifying TA-1 and distinguishing him from DA-1 (due to sharp contrast in their height) – Conviction confirmed by High Court for following offences, therefore, upheld: for multiple murder, murder with common intention and abetment, attempt to murder with common intention and abetment, abducting in order to murder, robbery with attempt to cause death or grievous hurt, and several other allied offences under IPC, committing terrorist acts punishable under S. 16 of Unlawful Activities (Prevention) Act, 1967, as well as offences under Explosives Act, 1884, Explosive Substances Act, 1908, and Arms Act, 1959 [Ed. : remaining offences of which tA-1 has been found guilty have been dealt with in other Shortnotes].
- TA-1, in his voluntary confession before Magistrate under S. 164 CrPC giving details about his Pakistani identity, his parents, relatives, friends and their addresses and telephone numbers, especially upon State of Pakistan disowning him – TA-1, thereafter describing how he got inspired from speeches of Le T(Lashkar-e-Toiba) a banned organization, in Pakistan fighting for secession of Kashmir from India – Before Magistrate, TA-1 further describing how he himself searched for office of Le T and was finally inducted as their member – Thereafter how he was indoctrinated, how he received physical training, weapons training, intelligence training and marine training – TA-1 giving details of trainers, duration and subject-matter and location of each training and members with their ranks in Le T – TA-1 confessing that he and trainees had every opportunity to leave LeT camp and no pressure was exerted on them to become fidayeen (martyrs) to kill Indians and exert pressure for secession of Kashmir – And how proudly, bravely and boldly was TA-1 desiring to become a fervent jihadi and fidayeen and kill enemies (i.e. Indian people) to satisfy his religious and patriotic urges.
 - TA-1 giving detailed description of broader and larger conspiracy hatches in Pakistan of which he was a part along with its objectives and strategy to attack various places in Mumbai to kill Indians and foreigners and to destabilize India, etc. – That he and 9 others were chosen to execute the conspiracy.

- TA-1 then describing how the other 9 and he had jacked an Indian fishing boat(Kuber) off the coast of porrbandar (Gujarat), abducted its navigator and how TA-1 in a jubilant mood had slit the throat of harmless and defenceless navigator with a knife while his co-conspirators held the legs of the navigator (navigator's hands having been tied earlier) – TA-1 then describing how they abandoned Kuber and travelled by an inflatable rubber dinghy (fitted with a Yamaha engine later found to have been purchased in Pakistan) and how they landed at strategic location in Mumbai i.e. at Badhwar park (a fishing village, from which all their targets were very near and taxis were readily available and their landing there would not be suspected) – TA-1 describing how he came across 2 witnesses there (PWs 28 and 29) – TA-1 describing how the ten got divided into 5 pairs (as preplanned) and went to their desired targets to execute the conspiracy.
 - That TA-1 had paired with Da-1 and they first went to CST Railway Station by a taxi, planted a bomb beneath the taxi driver's seat (which exploded later) – On reaching CST Railway Station, Da-1 and TA-1 had started indiscriminate firing and throwing of hand-grenades at the public and police, killing and injuring them – That having killed to their heart's content they went out of CST, killing everyone they saw on the road, then entered Cama Hospital and killed and injured staff and policemen there – However as they failed to break into Hospital interiors to kill patients, their activities was confined to people found on terrace of Hospital – Then they again came out onto the road killing and injuring policemen with whom they had encounters – TA-1 and DA-1 then snatched a Skoda car and went ahead to their next target – TA-1's confession ended with his being caught at Vinoli Chowpaty (Where also TA-1 killed a policeman, while being caught alive but his companion DA-1 got killed in the process).
 - Prosecution story matched exactly with what TA-1 confessed, with complete corroboration from ocular evidence, photographic evidence, recordings of CCTV cameras, forensic evidence, DNA evidence, phone call records, station diary entries, police logs, etc. and recovered materials, some recovered materials being at the instance of TA-1 himself like materials and dead body inside Kuber which terrorists had hijacked – Witnesses clearly distinguished TA-1 from Da-1 due to their sharp height difference, TA-1 being the shorter – In their whole operation, the ten terrorists together killed a total of 166 persons, injured 238 others and destroyed property estimated at ₹ 150 crores, of whom TA-1 and DA-1 by themselves were responsible for killing 72 and injuring 130 persons.
 - Further held, though there was an enormous volume of other evidence, there was no reason to refer to all that evidence since on the basis of the ocular evidence alone of eyewitnesses who all had life and death encounters with TA-1 and DA-1 there was no doubt that TA-1, personally and jointly with DA-1, was directly responsible for killing at least 72 people and causing injures of various kinds to 130 people – There was no reason to disbelieve depositions of such witnesses – From the forensic evidence it further appeared that of the 72 dead, at least 6 persons fell to shots fired by TA-1 – Thus beyond doubt TA-1 was guilty of said offences – Criminal procedure Code, 1973 – S. 164 – Unlawful Activities (Prevention) Act, 1967 – Ss. 16, 15 and 9-B – Explosive Substances Act 1908 – Ss. 2 and 3 – Arms Act, 1959 – Ss. 27 and 7 – Evidence Act, 1872, Ss. 60, 45, 65-B, 3, 5, 7, 24 and 27.
- B. Evidence Act, 1872 – Ss. 60, 45, 35, 65-B, 3, 5, 7, 24 and 27 – Best evidence – Reliable ocular evidence/eyewitness testimony – Primacy of – Large number of eyewitnesses deposed – Huge amount of other evidence on record, such as articles recovered, medical and forensic reports, CCTV recordings, phone call records, station diary entries, police logs, etc. – Accused also confessed in entirety before Magistrate under S. 164 CrPC – Since facts confessed to by accused were fully proved and corroborated by ocular testimony, not necessary to refer to other evidence.
- C. Criminal Trial – Identification – Identification of accused – Identification of dead body in morgue and identification of photograph in fake identity card worn by accused who was killed, in court, by persons who had encountered said accused before he was killed, relied upon as corroborative evidence – Evidence Act, 1872, S. 9.

D. Criminal Trial – Identification – Identification of articles – Gun (AK-47 rifle) whether swapped by accused when it ran empty with gun of same make of police officer killed by said accused – Determination of – Number on rifle, magazines, armoury records, ballistic analysis of dead bodies of persons shot by either weapon – Such evidence matching confession made by another accused person (TA-1) who had accompanied accused (DA-1) who had swapped rifles – Arms Act, 1959, S.27.

(2012) 9 Supreme Court Cases 249

SURESH SAKHARAM NANGARE
Vs
STATE OF MAHARASHTRA

- A. Penal Code, 1860 – Ss. 302 and 201 r/w S. 34 – Murder – Accessory accused not being main assailant – Constructive/vicarious liability under S. 34 – Fastening of – Participation of such accused in causing death not established – Causality – Intervening event – Cause of death different from event in which such accused had participated based on which such accused implicated only with aid of S.34 – Effect – Conviction reversed – Fratricide (murder of brother) by brother and two others – Appreciation of evidence – Approver – Sufficiency of evidence.
- A-1 and deceased were brothers, and A-2 and A-3 were friends of A-1 – A-1 developed enmity against deceased as he used to intervene whenever help of A-1 assaulted his wife and children – A-1 allegedly killed deceased with help of A-2 and A-3 by burning him to death – During trial a-2 turned approver and (as PW 7) stated that appellant A-3 had caught hold of legs of deceased while A-1 was in process of throttling deceased – That when deceased had stopped resisting, A-1 had abused A-2 (PW 7) and a-3 and told them to get out – That PW 7 had then seen A-1 lifting kerosene can and pouring kerosene on person of deceased – Trial Judge convicted A-1 and A-3 under S. 302 r/w S.34 and sentenced them to life imprisonment – High Court confirmed conviction and sentence – A-1 had not appealed against his conviction and sentence – Appellant A-3 contended that as sole testimony of PW 7 approver was not corroborated by medical evidence, hence it could not be relied on – That common intention to murder on his part i.e. A-3's part was not established
 - PWs 1 to 4 had not implicated appellant – PW 5 deposed that appellant was seen coming out of house of A-1 in a frightened state of mind - No material to show tht appellant had any common intention to eliminate deceased - Only adverse thing against present appellant was that he used to associate with A-1 for smoking ganja – Even as per testimony of approver, in absence of any motive or intention, mere act of holding legs by A-3 that too at end of event when A-1 had been throttling deceased while sitting on his abdomen, and later A-2 and A-3 had been thrown out by A-1, who had then poured kerosene on his brother and set him alight, A-3 cannot be made liable for offence of murder with aid of S. 34, particularly, when medical evidence for cause of death is otherwise, namely, due to 100% burns – Assault/throttling not found to be cause of death – Held, prosecution failed to establish guilt insofar as present appellant is concerned – Courts below committed error in convicting him with aid of S. 34.
- B. Penal Code, 1860 – S. 34 – Common intention – Ingredients – Prior meeting of minds – Common intention, and participation of accused – Prearranged plan – If common intention is proved but no overt act is attributed, S. 34 will be attracted – If participation of accused in crime is proved and common intention is absent, S. 34 cannot be invoked.
- C. Evidence Act, 1872 – Ss. 133 and 114 III. (b) – Approver – Evidentiary value – Statement of approver remained uncorroborated – Even on assumption that approver's statement was true, statement of approver by itself still found to be insufficient for conviction and contradictory to medical evidence – Conviction reversed – Penal Code, 1860, S. 302 r/w S. 34.

(2012) 8 Supreme Court Cases 263

DAYAL SINGH AND ORS
Vs
STATE OF UTTARANCHAL

- A. Public Accountability, Vigilance and Prevention of Corruption -* Corruption in Criminal Justice System – Investigating officer (SI) and government doctor deliberately favouring accused and acting in conscious and deliberate violation of their duty – Disciplinary proceedings, even after retirement of officials concerned – Initiation of - Power of trial court to direct – Punishment for contempt by High Court or Supreme Court for disobedience of such orders of trial court – Contempt of Courts Act, 1971 – S. 10 – Nature and Scope – Power of superior court to punish for contempt of interior/ subordinate court.**
- B. Criminal Trial – Defective or illegal investigation – Investigation and doctor’s report coloured with motivation – Dereliction of duty and misconduct by investigating officer and expert witness (doctor) or other material witnesses – Power of trial court to issue directions for disciplinary and other action against them, even after retirement of officials concerned – Such directions issued by trial court, affirmed and contempt notices issued to Higher Officials for not initiating disciplinary proceedings directed by trial Court – Court’s approach in appreciation of evidence in such cases.**
- Court should ascertain on examination of prosecution case in its entirety whether there have been acts of omission and commission by investigating agency and other material witnesses which resulted in defective investigation and whether same were intentional and deliberate motivated, court should exercise higher degree of caution and care so as to ensure that despite attempt to misdirect trial, criminal justice system is not subverted – Court must record specific finding and reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to prosecution case, in breach of professional standards and investigative requirements of law, during course of investigation by investigating agency, expert witnesses and even PWs – Further, trial court would be justified in directing disciplinary authorities to take disciplinary or other action, whether such officer, expert or employee witness, is in service or has since retired.
 - Directions issued by Supreme Court against investigating officer (SI, PW 6) who conducted investigation and doctor (PW 3) who conducted post-mortem, both in a manner so as to defeat prosecution case, and other officials – Directors General, Health Services of U.P./Uttarakhand issued contempt notices as to why appropriate action be not initiated against them for not complying with directions contained in judgment of trial court for initiation of disciplinary proceedings against PW 3 – Abovesaid officials directed to take disciplinary action against Medical Officer, PW 3, whether he was in service or had since retired, for deliberate dereliction of duty, preparing a medical report which ex facie was incorrect and was in conflict with inquest report and statement of IO, PW 6 – Bar of limitation, if any, under the Rules not to come into play because they were directed by the order of the trial court to do so – Action even for stoppage/reduction in pension can appropriately be taken by the said authorities against PW 3 - Directors General of Police U.P./Uttarakhand directed to initiate, and expeditiously complete disciplinary proceedings against PW 6 SI, whether he was in service or had since retired, for acts of omission and commission and deliberate dereliction of duty – Criminal Procedure Code, 1973 – Ss. 156 to 161, 353 and 354 – Constitution of India – Arts. 136 and 129 – Service Law - Departmental enquiry – Initiation, of even after retirement of officials concerned – Directions by court – Contempt of Courts Act, 1971 – S. 10 – Nature and Scope – Power of superior court to punish for contempt of inferior/subordinate court.
- C. Criminal Trial – Fair and speedy trial – Object – Social justice – Rights of society and victim – To do justice not only to accused but also to society represented by prosecution by giving it a chance to prove its caas – Aim is to Aim is to ensure not only that no innocent person is punished but also that guilty persons do not escape – Constitution of India, Art. 21.**
- D. Criminal Trial – Defective or illegal investigation – Investigation coloured with motivation – Acts of omission and commission committed by investigating agency and other material witnesses – Whether deliberate and adversely affected prosecution case – Medical evidence in conflict with eyewitness version.**

- According to eyewitness version, accused persons inflicted lathi-blows on deceased which resulted in his death on the spot – Presence of eyewitnesses at the scene of occurrence not in doubt and their testimony found to be natural and trustworthy – Investigating officer (SI, PW 6) also found, in presence of panchas, injuries on the person of deceased and prepared inquest report recording his opinion that deceased died on account of those injuries – But doctor (PW 3), who conducted post-mortem, reported no external or internal injury and could not ascertain cause of death – No reason mentioned by IO also for non-disclosure of cause of death by doctor – Deceased's viscera handed over to police but either not send to FSL or if sent, report thereof neither called for nor proved before court – Held, post-mortem report was prepared in a perfunctory manner deliberately, to misdirect prosecution and IO also acted in a negligent and designed manner with a view to shield accused which adversely affected prosecution case – But merely because of investigation being defective and motivated, it should not enure to the benefit of accused to the extent of his acquittal – Hence, in present case concurrent conviction of accused by courts below under Ss. 302/323/34 IPC, confirmed – Criminal Procedure Code, 1973 – Ss. 156 to 161 – Evidence Act, 1872 – S. 45 – Penal Code, 1860, Ss. 302/34 and 323/34.
- E. Criminal Trial – Defective or illegal investigation – Investigation coloured with motivation – Acts of default/omission and commission by investigating officer and expert witness – If found to be so flagrant that intentional and irresponsible attitude become apparent, investigation must be regarded as coloured by motivation and an attempt to save the accused.
 - F. Criminal Trial – Defective or illegal investigation – Intentional acts of default/omission and commission by investigating officer (IO) and medical officer (MO) of government hospital – Dereliction of duty and misconduct – What would amount to - To be determined in the context of service to which such officers belong – Police officers and doctors are required to maintain duty decorum of high standards – Hence, whether their acts constituted dereliction of duty and misconduct should be determined on basis of such standards – Disciplinary proceedings to be initiated on directions of trial court in such cases, even after retirement of officials concerned – Service Law – Misconduct.
 - G. Evidence Act, 1872 – Ss. 45, 49 59 and 60 – Medical evidence – Expert report (post-mortem report) in conflict with eyewitness version – Which one should be given precedence – Manner in which could should appreciate evidence – If expert report found to be perfunctory, incorrect and outcome of deliberate attempt to misdirect prosecution case, whereas eyewitness version found to be trust worthy and credible and establishes prosecution case beyond reasonable doubt, eyewitness version should be preferred over expert report (post-mortem report) – Hence, in present case concurrent conviction of accused by courts below under Ss. 302/323/34 IPC, confirmed – Penal Code, 1860, Ss. 302/34 and 323/34.
 - H. Evidence Act, 1872 – S. 45 – Expert report – Should be well authored and convicting – Report, duly proved, has evidentiary value – But it is not binding on court – Court should analyse report, read it in conjunction with other evidence and then decide whether it is reliable or not.
 - I. Criminal Trial – Witnesses – Related witness – Testimony of, if found to be natural and truthful, cannot be discarded merely because of his relationship with deceased/victim and being interested witness.
 - J. Penal Code, 1860 – Ss. 302/34 or S. 304 Pt. II r/w S. 34 and Ss. 323/34 – Common intention to cause death – Accused persons armed with lathis came with premeditated mind and started assaulting deceased without any provocation, till his death on the spot, and when PWs came to deceased's rescue, accused inflicted injuries on them also – Held, conviction under Ss. 302/34 for causing death of deceased and under Ss. 323/34 for causing injuries to PWs justified.

(2012) 9 Supreme Court Cases 284

RAVU JAOYR

Vs
STATE OF RAJASTHAN

- A. Penal Code, 1860 – Ss. 304-a, 279 AND 337 – Road accidents – Rash and negligent driving – Preconditions for invocation of S. 279 IPC, restated – Determination of negligent and rash driving – Relevant considerations – Nature of proof – Can be inferred from attendant circumstances – Doctrine of “res ipsa loquitur” (thing speaks for itself) – Also applicable to criminal cases of accident – Principle of “reasonable care” and concept of “culpable rashness” and “culpable negligence” – Meaning and application of, explained.
- Held, rash and negligent driving has to be examined in the light of the facts and circumstances of a given case – Speed of vehicle not always determinative – Reckless and negligent driving at slow speed is also possible.
 - In present case, a bus coming from opposite direction driving on wrong side of the road colliding with a jeep and resulting in death and injuries to persons travelling in jeep – No dispute as to said accident – Consistent statements of eyewitnesses that bus was being driven by accused, who after the accident parked it at a place away from place of occurrence and ran away – Conduct of moving bus after accident to a different point indicated that it was being driven on wrong side of road – No reason to disbelieve reliable and trustworthy testimony of eyewitnesses – In view of these facts and having regard to principle of res ipsa loquitur, judgment of High Court reversing acquittal and convicting accused under Ss. 304-A, 279 and 337 IPC, held proper and not liable to be interfered with – Motor Vehicles Act, 1988, Ss. 184 and 166.
 - Words and Phrases – “Negligence”, ‘reasonable care”, “rash and negligent driving”, “culpable rashness” and “culpable negligence”.

(2012) 4 MLJ (Crl) 334 (SC)

Abuzar Hossain @ Gulam Hossain
Vs
State of West Bengal

Juvenile Justice (Care and protection of Children) Act, 2000, Section 7-A-Juvenile Justice (Care and protection of Children) Rules, 2007, Rule 12 – Plea of juvenility – Procedure to be followed to determine age of Appellant, juvenile delinquent – Issue of juvenility not pressed at any stage, no evidence led to prove age of Appellant – Whether claim of juvenility can be recognized and sent for determination in appeal – Held, claim of juvenility may be raised at any stage even after final disposal – Juvenility can be raised in appeal even if not pressed before trial Court – Initial burden to satisfy Court to be discharged by person claiming juvenility – Documents in Rule 12(3)(a)(i) to (iii) sufficient evidence to raise presumption of juvenility – No hard and fast rule to accept or reject credibility of documents obtained after conviction – Affidavit of claimant, parents, sibling or relative in support of juvenility claim not sufficient unless circumstances justify enquiry – Plea of juvenility should be considered on preponderance of probability – Reference answered.

(2012) 9 Supreme Court Cases 408

MOHD. HUSSAIN ALIAS JULFIKAR ALI
Vs
STATE (GOVERNMENT OF NCT OF DELHI)

- A. Constitution of India – Art. 21 – Fair trial and Speedy trial – Qualitative difference between – Retrial/De novo trial – When to be directed – Original proceedings irredeemably vitiated – Considerable time having elapsed since incident – Fair trial, an absolute right whereas speedy trial, a relative right –

Several factors are to be balanced while considering pace of trial – Apart from accused’s convenience of early conclusion of trial, public confidence in justice delivery system has also to be maintained by ensuring that serious crimes do not go unpunished – Social impact of crime in question too a relevant factor – Supremacy of justice is to be preserved – Slow-paced trial does not per se prejudice accused.

- Approach to be adopted in instant case of alleged terrorist acts which, if proved, could culminate even in death sentence – Retrial whether a necessity despite considerable delay – Appellant, a foreign national, subjected to trial for causing bomb explosion in public transport vehicle (bus) in December 1987 - Four persons died and twenty-four injured – Trial court holding appellant guilty in October 2004 and imposing death sentence – High Court confirming death sentence in August 2006 – Supreme Court however finding in 2012 that trial was vitiated on account of insufficient opportunity given to accused to defend himself – However, the two Judges comprising said Supreme Court Bench differing on further course of action to be adopted (though unanimous that trial was vitiated) - One learned Judge ordering appellant’s release and deportation back to his country while the other learned Judge ordering time-bound retrial [(2012) 2 SCC 584] – Second view confirmed by this larger Bench upon reference of issue to it – State too cooperating by pruning list of prosecution witnesses (sixty-five non-material witnesses dropped) – Retrial directed to be concluded within three months.
- Penal Code, 1860 – Ss. 302 and 307 – Explosive Substances Act,, 1908 – Ss. 3 and 4(b) – Criminal Procedure Code, 1973 – S. 386(b)(i) – Rule of Law – Words and Phrases – “Speedy trial” and “fair trial” – Unlawful Activities (Prevention) Act, 1967, Ss. 15 and 16.

B. Criminal Procedure Code, 1973 – S. 386(b)(i) – Retrial/De novo trial – Exceptional and rare instances warranting – Exercise of power in a routine manner to be avoided – Demand of justice to be hallmark of appellate court’s order directing retrial – Court has to ensure that accused gets fair trial but at same time no guilty person goes scot free – Scope of retrial - Alternatives open to appellate court when original trial vitiated by unfairness – Acquittal or retrial – Prolonged trial whether a ground for acquittal – Adverse impact of underserved acquittal on public confidence – Accused who was alleged to be involved in terrorist acts, already having spend fourteen yrs in jail, and having remained under shadow of death sentence for eight yrs – Held, these factors alone could not be grounds to set him free – Public right to bring criminal to justice has also to be enforced – Retrial instead of acquittal therefore considered better option – Constitution of India, Arts .20(2) and 21.

(2012) 9 Supreme Court Cases 432

AVTAR SINGH
Vs
STATE OF HARYANA
With
KIRPAL SINGH ALIAS PALA AND ORS
Vs
STATE OF HARYANA AND ORS

- A. Penal Code, 1860 – S. 149 Pt. II r/w S. 302 or S. 304 Pt. I [S. 300 Exception 2 or Exception 4] – Murder trail – Appreciation of evidence – Murder or culpable homicide – Self-defence plea, rejected – Common object to murder found established – Determination of aggressor – Dispute over land – Held, it was a clear case of a premeditated attack where all members of unlawful assembly could be attributed with knowledge that there was every likelihood that offence of murder would be the ultimate outcome – Hence, conviction under S. 302 r/w S. 149, confirmed.
- B. Penal Code, 1860 – S. 302 or S. 304 Pt. I r/w S. 149 – Murder or culpable homicide – Intention to murder – Inference of – Dispute over land – Aggressor party (accused) making their way to harvest crop on disputed land being farmed by complainant party – Injuries caused – Manner of causing – One person done to death – Held, manner of causing injury on deceased goes to show that all accused persons were determinative of showing their might by ensuring that deceased and other

injured persons did not escape from their assault – Assailants ensured that deceased was hit on his head and every vital part of body and chopping off torso of both legs was only to ensure that there was no way for victim to escape the gruesome attack – Offence found proved against appellants squarely falls under S. 302.

- C. Criminal procedure Code, 1973 – Ss. 154, 179, 173(2)(i)(d) and 228 – FIR – Prompt FIR – Appreciation of - Some discrepancy with inquest report – Found inconsequential – Penal Code, 1860 – Ss. 149 and 302/149 – Person though present at crime scene, not alleged to have participated in crime at all – Held, rightly not arrayed as accused.
- D. Penal Code, 1860 – S. 302 or S. 304 Pt. I [S. 300 Exception 2] and S. 100 – Murder trial – Appreciation of evidence - Self-defence – Implausibility of defence of – Issue related to disputed land – Very fact that there were extensive injuries sustained by complainant party and death of one person amongst them in process of assault inflicted upon them, only goes to show that plea of self-defence was wholly a make-believe version – None in accused party sustained and injury – When appellants proceeded towards disputed land with arms such as gandasi and kirpans it amply disclosed their mindset to deal with complainant party sternly against whom they had a definite grudge relating to land dispute which had been brewing for quite a long time prior to occurrence – Interim order passed against accused party by civil court was extended on that very date – Plea of self-defence, rightly rejected.
- E. Evidence Act, 1872 – S. 134 – Number of witnesses – Where there were several persons stated to have witnesses incident and prosecution examined those witnesses who were able to depose more accurately leaving no room for doubt about involvement of accused in occurrence, and extent of involvement of accused with details of specific overt acts, and were also able to withstand cross-examination by maintaining sequence and part played by each accused as originally stated, it was wholly irrelevant and unnecessary to multiply number of witnesses to repeat same version – Criminal Trial – Examination – Non-examination/Failure to examine witness – Effect of.
- F. Criminal Trial – Defence – Defence version/Story – Credibility of – No corroborative evidence – DW 2 allegedly suffered five extensive injuries of which one was an incised wound – DW 2 did not pursue complaint in regard thereto – Occurrence had taken place on 9-4-2003 between 7 to 7.30 p.m. – DW 2 allegedly went to hospital at 4.10 p.m. on 10-4-2003 – Doctor, DW 3 admitted that he had no document to show that he was on emergency duty at hospital concerned on 10-4-2003 – No steps were taken to show that DW 3 was really on duty on 10-4-2003 at hospital concerned which was not his regular place of duty as a doctor – Considerable doubt and suspicion arose as regards version spoken to by both DWs 2 and 3, in particular about nature of injuries sustained – Hence, rightly rejected.

(2012) 9 Supreme Court Cases 460

AMIT KAPOOR

Vs

RAMESH CHANDER AND ANR

- A. Criminal Procedure Code, 1973 – S. 228 – Framing of charge – Considerations for – “Presumption that accused has committed offence” under S. 228 CrPC – Nature and scope of, and when arises – Held, court after considering “record of case”, documents submitted therewith, and hearing parties shall frame charge if there are grounds for presuming that accused has committed offence – Said presumption is not presumption of law as such – Satisfaction of court in relation to existence of constituents of offence and facts leading to that offence is sine qua non for exercise of such jurisdiction – Court at S. 228 CrPC stage is not concerned with proof but merely strong suspicion that accused has committed offence – Final test of guilt is not to be applied at stage of framing of charge – Grabbing of property of deceased lady driven to commit suicide, as alleged in suicide note and statement made by son of deceased as well as getting of blank papers signed by accused and not giving monies due to them, etc. were stated to be circumstances leading to commission of suicide – Presumption under S. 228 CrPC, held, could hence have been invoked – High Court erred in quashing charge framed under S. 306 IPC – Hence, charge restored – Penal Code, 1860, Ss. 306 and 448.

- B. Criminal Procedure Code, 1973 – Ss. 227 and 228 – Discharge of accused and framing of charge against accused – Relative scope – Distinction between Ss. 227 and 228 – Explained in detail.
- C. Criminal Procedure Code, 1973 – Ss. 397, 401 and 482 – Revisional and inherent jurisdiction of High Court – Comparative scope – Explained – Interlocutory and final orders – Scope of interference under either jurisdiction, explained – Maxims – Quando lex alicui concedit, concedere videtur id sine quo res ipsa esse non potest – Practice and Procedure – Revision.
- D. Criminal Procedure Code, 1973 – Ss. 397 and 401 – Revisional jurisdiction – Nature, scope and object of - Explained in detail – Finality of order passed in revisional jurisdiction – Subject only to jurisdiction of Supreme Court under Art. 136 of Constitution – Practice and Procedure – Revision - Constitution of India, Art. 136.
- E. Criminal Procedure Code, 1973 – Ss. 482, 397, 401, 227 and 228 – Quashment of proceedings or discharge of accused – Case law surveyed in detail – Principles summarised.
- F. Criminal Procedure Code, 1973 – Ss. 482, 401, 397 and 228 – Quashment of criminal proceedings – Civil dispute involved as well – Effect of - Criminal proceedings if abuse of process, issue really being only a civil dispute – Determination of – When a ground for quashment of criminal proceedings – Reiterated, mere existence of civil dispute would not by itself alter status of allegations constituting criminal offence – For quashment of criminal proceedings, allegations have to be so predominantly of a civil nature that they would eliminate criminal intent and liability – Penal Code, 1860 – Ss. 306 and 448 – Grabbing another’s property, and causing them to commit suicide – Liability for.

2012 -5-L.W.(Crl) 462

Rashmi Ajay Kr. Kesharwani & Anr
Vs
Ajay Kr. Kesharwani and Ors

Constitution of India, Article 226/Writ of habeas corpus against a parent, NBW issuance of, legality,

Criminal Procedure Code, Section 482,

No case is made out for issuance of a writ of habeas corpus – Case was filed with a wrong address to mislead the Allahabad High Court though the son is residing with the mother.

An allegation has been made that the son has been illegally detained by his mother.

A writ of habeas corpus is not to be issued in the matter of course, particularly when the writ is sought against a parent for the custody of a child – Impugned order of issuance of the non-bailable warrant was uncalled for.

2012 -5-L.W.(Crl) 472

Rashmi Rekha Thatoi & Anr
Vs
State of Orissa & Ors.

I.P.C., Section 341, 294, 506 and 302 r/w Section 34,

Criminal procedure Code, Section 438/Directions by High Court, Scope of,

Practice/Anticipatory bail, direction by High Court, interim order of bail on surrender, whether proper,
Scope of,

Bail/Anticipatory Bail, on such terms and conditions', on Surrender, whether permissible.

There is no indication that the Court of Session or the High Court can pass an order that on surrendering of the accused before the Magistrate he shall be released on bail "on such terms and conditions" as the learned Magistrate may deem fit and proper or the superior court would impose conditions for grant of bail on such surrender.

When the High Court in categorical terms has expressed the view that it was not inclined to grant anticipatory bail to the accused petitioners it could not have issued such a direction which would tantamount to conferment of benefit by which the accused would be in a position to avoid arrest – Court cannot issue a blanket order restraining arrest and it can only issue an interim order.

Impugned orders directing enlargement of bail of the accused persons by the Magistrate on their surrendering are wholly unsustainable.

2012 (6) CTC 475

R.K. Anand

Vs

Registrar, Delhi High Court

Criminal Jurisprudence – Criminal Contempt – Use of services of contemnor for social purpose – Appellant, a Lawyer, guilty of suborning Court Witness in Criminal Trial – Held, offence committed by Appellant-Contemnor, odious – However, considering age of Appellant and ailment of his wife, lenient approach adopted – Held, no useful approach would be met by sending Contemnor to jail, rather services of Contemnor to be used for social purpose – Contemnor debarred from doing any professional work by charging fees for period of one year – Contemnor directed to devote services to Accused, who cannot afford to engage Lawyers – Contemnor further directed to serve Delhi High Court Legal Services Authority, free of cost for a period of one year - lakhs as offered by Contemnor to be used by Bar Council of India for developing a Law College attended by under-privileged and deprived sections of society – Contempt of Courts Act, 1971 (70 of 1971), Sections 2©(ii), 2©(iii), 12 & 19(1).

(2012) 9 Supreme Court Cases 512

CENTRAL BUREAU OF INVESTIGATION, HYDERABAD

Vs

K. NARAYANA RAO

- A. Advocates – Duties – Legal opinion rendered by advocate – Negligent or improper legal advice or opinion – Criminal liability for, when may be fastened – Criminal conspiracy to defraud Bank – Panel Advocate of Bank when can be made liable for such criminal conspiracy – Need for evidence to show that lawyer in question aided or abetted the other conspirators – Held, although a lawyer owes an unremitting loyalty to client's interests, however, merely because his legal opinion may not be acceptable (in present case respondent Panel Advocate had been given ownership documents of conspirators' pledged properties, for vetting), he cannot be fastened with criminal prosecution in absence of tangible evidence that he had aided or abetted other conspirators – At the most, he may be liable for gross negligence or professional misconduct if established by evidence – In present case, there being no such tangible evidence against respondent, criminal proceedings against him, held, rightly quashed – Advocates Act, 1961, Ss. 35 and 36.
- B. Criminal Procedure Code, 1973 – S. 482 – Inherent powers of High Court – Quashment in cases of economic offences/commercial transactions, breach of trust, cheating – When justified – Conspiracy to defraud Bank by improper sanctioning and disbursement of housing loans.
- Panel Advocate of Bank (respondent) sought to be implicated in said conspiracy on basis of legal advice given by him i.e. alleged false opinion about ownership of properties against which loans were given – Absence of evidence of abetting or aiding of conspiracy to defraud Bank – Respondent's name not mentioned in FIR but charge-sheet showing him as an accused for giving false legal opinion as Bank's Panel Advocate, but statements of witnesses not making specific reference to respondent's role in conspiracy – Held, liability of advocate who gave a legal opinion would arise only when such advocate could be shown to have been an active participant in a plan or conspiracy to defraud the Bank – In present case, there was no evidence to prove respondent was abetting or aiding original conspirators – Thus, respondent cannot be charged for said conspiracy to defraud Bank along with other conspirators – High Court's order quashing criminal proceedings, upheld – Penal Code, 1860 – Ss. 120-B, 107 to 109 and 419, 420, 467, 468 and 471 – Prevention of Corruption Act, 1988, S. 13(2) r/w S. 13(1) (d).
- C. Tort Law – Negligence – Professional negligence – Liability for – When attracted – Standard of requisite skill applicable – Held, a professional's only assurance which can be given by implication is

that : (1) he is possessed of the requisite skill in that branch of profession which he is practicing, and (2) while under taking performance of the task entrusted to him, he would exercise his skill with reasonable competence – A professional may thus be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess – Consumer Protection Act, 1986, Ss. 2(1)(0) & (g).

- D. Criminal Procedure Code, 1973 – Ss. 227, 228 and 229 – Framing of charge/Discharge of accused – Exercise of jurisdiction – Scope – Explained – Held, Judicial Magistrate enquiring into a case is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of accused to Court of Session – He is entitled to sift and weight materials on record, but only to see whether there is sufficient evidence for conviction – If Magistrate finds no prima facie evidence or evidence placed on record is totally unworthy of credit, it is his duty to discharge accused as once – While exercising jurisdiction under S. 227, Magistrate should not make a roving enquiry into pros and cons of the matter or weigh the evidence as if he were conducting a trial.
- E. Penal Code, 1860 – Ss. 120-A and 120-B – Criminal conspiracy – Elements of – Basis for extending criminal liability to co-conspirators – Held, essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both – Direct evidence to prove conspiracy is rarely available – Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about complicity of the accused – Offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference not supported by cogent and acceptable evidence.

(2012) 4 MLJ(Cr) 573(SC)

Nazma
Vs
Javed @ Anjam

Constitution of India (1950), Articles 226 and 227 – Code of Criminal Procedure, 1973, (2 of 1974), Section 439, 482 – Writ jurisdiction – In Criminal Miscellaneous petition (Cr.M.P), High Court stayed arrest till conclusion of trial – Entertaining miscellaneous applications in disposed of writ petitions – Validity of - Held, High Court committed grave error in not only entertaining criminal miscellaneous application in a disposed of writ petition, but also passing an order not to arrest till the conclusion of trial – Once criminal writ petition was disposed of, High Court becomes functus officio – High Court cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors – Entertaining of a petition in disposed of criminal writ petition and grant of reliefs, impermissible in law – appeal allowed.

HIGH COURT CITATIONS CIVIL CASES

(2012) 8 MLJ 29

Murugan (Died) and Ors
Vs
Karupiah and Anr

Code of Civil procedure (5 of 1908), Order 8, Rule 9 and Section 151 – Subsequent pleadings – Additional written statement – Filing of - Whether additional pleadings, subsequent to proceedings, can be entertained – Held, counter-claim has to be entertained for avoiding multiplicity of proceedings and also to save Court's time – No time limit for making counter-claim in additional written statement – No legal embargo to entertain additional written statement with counter-claim and no prejudice would be caused to other side – Civil revision petition allowed.

2012 (6) CTC 64

S. Karuppannan and Anr
Vs
N. Chinnappan and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 19, Rule 1 & 2 & Order 39, Rules 1 & 2 – Evidence Act, 1872 (1 of 1872), Section 3 – Suit for Declaration and consequential Reliefs – Defendants seeking ad-interim injunction – Plaintiffs seeking permission to cross-examine deponent of Affidavit, filed in support of Application seeking injunction – Affidavit is not included in definition of evidence – When an Affidavit is filed in support of an Application, either party cannot invoke order 19, Rule 2, to call upon deponent for cross-examination, as Affidavit is not filed as evidence – Whereas if any evidence is given by Affidavit, Court may at instance of either party, order attendance of deponent for cross-examination – In absence of any evidence given in form of Affidavit, Court has no discretion to permit cross-examination – Defendants, who have sought injunction, have to prove their possession – Since Defendants are not coming forward to prove their possession by entering into box and satisfy Court by their documents, it is not open to Plaintiffs to insist, that they must be cross-examined – Civil Revision Petition dismissed.

(2012) 8 MLJ 68

Sheik Mohammed
Vs
Ramzan Bi and ors

- (A) Suit for partition – Allotment of shares – Whether certain items of suit properties can be excluded from purview of partition – Held, items purchased from third parties by Defendants are third exclusive properties – Mohammedan Law does not contemplate Benami transactions, discourages the same – Cannot exclude item of suit property from purview of partition without furnishing reasons.
- (B) Plea of ouster – Legality of – Held, co-shares cannot plead ouster without evidence to show that claimant co-sharer was ousted from enjoying joint property – Mere enjoyment of property for many years would not enure prescriptive title or adverse possession against real owner, unless animus established – Plaintiffs not in possession of suit properties, does not enure to benefit of Defendants – Plea of ouster pleaded by defendants not satisfactory – Second appeal disposed of.

2012 (6) CTC 85

Duraisamy Kachirayar and Ors
Vs
Sengoda Gounder

Code of Civil Procedure, 1908 (5 of 1908), Sections 96 & 100 & Order 41, Rule 31 – Suit for Partition and Separate Possession after redeeming mortgage – Trial Court dismissed Suit – Appeal also dismissed – Second Appeal filed by Plaintiffs – Appellate Court has confirmed judgment of Trial Court by way of a cryptic judgment – Ultimate conclusion found to be correct – Since First Appellate Court has not disagreed with finding of Trial Court, it is not fatal to judgment of First Appellate Court – Impugned judgment confirmed.

Transfer of property Act, 1882 (4 of 1882), Chapter 4, Section 58 – Mortgagor – Right of Redemption – Right of redemption is an integral part of ownership – Once ownership get transferred, right of redemption would not arise – If mortgagee himself becomes owner of property or if mortgagor sells away his property, without retaining any right, then all rights including right of redemption, get divested from mortgagor – Having sold their entire share in suit properties, Plaintiffs cannot claim that they have retained their right of redemption.

Hindu Law – Oral Partition – As per Hindu Law, concept of Oral Partition is not alien to it – It is for party, who pleads oral partition, to prove it – Plaintiffs are as silent as silence could be, concerning oral partition – Any amount of evidence without backup of pleadings should be eschewed – Plaintiffs have chosen not to plead oral partition – Courts below cannot be found fault with for not considering alleged oral partition – Witnesses might lie but circumstances would not – Theory of oral partition advanced by plaintiffs is clearly falsified – Second Appeal dismissed.

(2012) 8 MLJ 88

Kanakaraj
Vs
Lakshmanan

Common usage – Motor pump set an electricity – Plaintiff purchased land along with right in motor pump set having electricity service connection – Plaintiff also owns other properties besides extent purchased from vendor – Whether plaintiff's right to use device for irrigating is restricted to land acquired from vendor – Held, no one can convey better than what he has - Plaintiff can only step into shoes of vendor concerning the right acquired from him, cannot assert anymore right – Electricity service connection is impartible, cannot be subject matter of partition – Plaintiff restricted to use common pump set and electricity connection to extent of share purchased from vendor alone – Second appeal dismissed.

2012 -5-L.W. 139

Banumathi
Vs
Chellammal and Ors

C.P.C., Order 6, Rule 17.

Revision petitioner/plaintiff filed an application to amend the plaint to include the relief of declaration that the settlement deed executed by her father in favour of the 2nd defendant is null and void and not binding – It is only a pre-trial amendment – Pre-trial amendments are to be considered liberally.

2012 -5-L.W. 142

Sengolraj
Vs
Subramanian Chettiar

C.P.C., Order 8, Rule 9/Additional written statement, leave to file.

Order 8 Rule 9 given ample power to the court to grant leave for filing additional Written statement – It does not say that the subsequent pleading viz. additional Written Statement should be consistent with the original Written Statement.

Order rejecting the additional Written Statement of the Defendant is not justified.

2012 (6) CTC 166

Ritu Devi
Vs
Securities and Exchange Board of India, rep. by its General Manger, Investigation Department,
Mittal Court, “B” Wings, First Floor, 224, Nariman Point, Mumbai

Securities and Exchange Board of India Act, 1992 (35 of 1992), Section 11-C(1) [As inserted vide Amendment Act 59 of 2002 w.e.f. 29.10.2002] – Provision, whether retrospective in nature? – Investigation under provision not directly resulting either in penalty or punishment or may other Civil consequences – Investigation only a means to collect evidences by Investigating Authority by following prescribed procedure - Investigation, thus, not substantive in nature, rather purely procedural – Provision, thus, retrospective in nature.

Securities and Exchange Board of India Act, 1992 (35 of 1992), Section 11-C(1) Securities and Exchange Board of India [Prohibition of Fraudulent and Unfair practices Relating to Securities Market] Regulations, 1995 – Securities and Exchange Board of India [Prohibition of Fraudulent and Unfair Practies Relating to Securities Market] Regulations, 2003 – Power of Board to investigate – Board even prior to introduction of Section 11-C, was empowered to conduct investigations by virtue of 1995 Regulations, after Amendment Act of 2002 was also governed by Section 11-C – After repeal of Regulations, 1995, investigation by Board governed by Regulations, 2003 and Section 11-C – Thus, orders of Board directing investigation of transactions prior to 29.10.2002, would not be wholly without jurisdiction.

Interpretation of Statutes –Disjunctive/Conjunctive provisions – Securities and Exchange Board of India Act, 1992 (35 of 1992), Sections 11-C(1)(a) & 11-C(1)(b) – Section 11-C(1)(a) deals with transactions in securities, which have no sanction in law – Section 11-C(1)(b) relates to investigation against any intermediary or any person – Both provisions deals with different aspects and thus, are to be read disjunctively - Word ‘or’ employed between said provisions not to be read as ‘and’ – Provisions, disjunctive in nature and not conjunctive.

Securities and Exchange Board of India Act, 1992 (35 of 1992), Sections 11-C(1)(a) & 11-C(1)(b) – Transactions covered under provisions – 11-C(1)(a) deals with transactions, which are in progress – Section 11-C(1)(b) deals with past transactions as well.

Securities and Exchange Board of India Act, 1992 (35 of 1992), Section 11-C – Securities and Exchange Board of India [Prohibition of Fraudulent and Unfair Practices Relating to Securities Market] Regulations, 2003 – Section 11-C and Regulations 2003, go hand in hand – Board, even after introduction of Section 11-C, empowered to nominate an officer to investigate and submit report.

Interpretation of Statutes – Retrospective vis-à-vis prospective provision – A pure and simple procedural provision, is always retrospective in nature, unless different nature shown in Statute itself – Substantive provision creating rights and liabilities, prospective in nature, unless different intention shown in Statute.

2012 (6) CTC 188

Sivagurunathan and Ors
Vs
S. Shanmugaraja

Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 40 – “Cancellaiton” – ambit of term – Term implies that person suing should be party to document – When party to document challenges document by way of Suit, relief of cancellaiton to be obtained first before obtaining any other relief – Suit would be for cancellation, even if it is not prayed for and only impliedly sought for – Instant Suit, for relief of declaration that Sale Deed was only for one acre instead of ten acres as stipulated in document – Held, Suit though couched in form of declaration, Suit actually for setting aside Sale Deed – Relief in Suit indirectly amounting to cancellation of Sale Deed – Order of Trial Court directing payment of Court Fees under Section 40, confirmed.

Practice and Procedure – Determination of Court-fees payable of Plaint – Factors to be considered by Court.

2012 (6) CTC 194

Lalitha and Anr
Vs
Singaram and Aors

Evidence Act, 1872 (1 of 1872) section 65 – “Photocopy of Agreement to Sell – Exhibit A5 is only a photocopy without any authenticity – It is not known how such a document had been exhibited before Trial Court – Photocopy of Agreement is per se inadmissible in evidence – It should not have been allowed be marked at all – Furthermore it is an unregistered Agreement – No evidentiary value could be attached to Exhibit A5-photocopy of Sale Agreement.

Hindu Adoption and Maintenance Act, 1956 (78 of 1956), Section 19 – Claim of Maintenance made by widowed daughter-in-law – If widowed daughter-in-law is not having any share in Coparcenery property, then question of father-in-law paying Maintenance would arise – On facts, held that ever since death of husband of widow, father-in-law had not parted with income ‘A’ schedule property and widowed daughter-in-law was not allowed to enjoy property – In such event, widowed daughter-in-law cannot claim maintenance as well as mesne profits – Hence, claim for Maintenance is not well founded – But widowed daughter-in-law is entitled to claim mesne profits, as per law.

Hindu Law – Coparcener – Property standing in name of Coparcener, who is not a ‘Kartha’ – Presumption is that said Coparcener is exclusive owner of the property – No doubt, it is a rebuttable presumption – But presumption has not been rebutted – Tractor, which was in name of deceased husband of 1st Defendant belongs to him – A.S. partly allowed.

(2012) 8 MLJ 213

Nachiammal (deceased) and Ors
Vs
Kuppulakshmi and Ors

- (A) Unregistered will – validity of – Suit for partition – Reliance on unregistered will – Whether will was genuine or not – Held, no direct evidence that testator saw attesting witnesses attesting will – Propounder of will did not summon proper witnesses to identify signature of deceased attesting witness – No steps taken to get will registered – Legal heirs disinherited – Unless there is clarity in

evidence in proving will, cannot place reliance on such will – Defendants did not prove will, unregistered Will invalid – Matter remitted to trial Court – Second appeal disposed of.

- (B) Registration of will – Whether compulsory – Held, all legal heirs of testator were fully disinherited and in such case, Court would look askance at non-registration of will.

2012 (6) CTC 286

R. Ramanthan
Vs
M. Arunkumar and Ors

Transfer of Property Act, 1882 (4 of 1882), Section 45 – Joint Transfer for consideration – Interests of parties – Suit for Partition claiming 4/10th share over suit property – Suit property and another property purchased under two Sale Deeds in names of seven persons – Dispute in Suit between parties to one of Sale Deeds – Sale Deed sandwiched between Exhibits B1 & B2, Agreements between parties – Only in absence of evidence as to share in joint funds, Court has to hold that all joint purchasers are equally entitled – Since evidence in form of Exhibits B1 & B2 discloses respective shares, Plaintiff cannot contend that all shares are entitled to equal shares - As per Exhibits B1 & B2, Plaintiff is entitled to 4/10th share, 1st Defendant is entitled to 2/10th share and 2nd Defendant is entitled to 4/10th share.

Registration Act, 1908 (16 of 1908), Section 17(1) – Whether Exhibits B1 & B2 – Agreements, which indicate shares of respective parties, are between seven persons regarding apportionment of shares – Suit has not been filed to enforce Exhibits B1 & B2 – But Exhibits B1 & B2 have been relied on for purpose of arriving at shares of each party – Parties to those two documents, have carefully used words and phrases, to shed light on point that they could join together and deal with a large extent of land – It was intended to help parties to deal with land jointly – Genuineness of Exhibits B1 & B2 not in dispute, but questioned only on ground of want of registration – Exhibit B1 & B2 cannot be construed as conferring any vested right in immovable property – It is only an agreement as to how parties should deal with property – Document, which is not conferring any right on immovable property, requires no registration – Exhibits B1 & B2 cannot be eschewed from evidence on ground of want of registration – Objection of 1st Defendant would tantamount to let loosing red herrings in litigative process and nothing more.

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 9 – Suit for Partition – Non-joinder of parties – Effect of – Suit should not be simply dismissed on ground of non-joinder of necessary parties, unless such non-joinder is fatal to very Suit itself – Exhibit A1-Sale Deed is only in manes of three persons, relating to suit property – Suit property measures 46 cents and remaining extent in Suit survey number measures 46 cents, regarding which there is a separate Sale Deed in faovur of four persons – Those four persons are not added as parties to present Suit – If Ex. A1 had stood in name of all seven persons, then present Suit is based on Ex. A1-Sale Deed, in which other four persons are not concerned – Judgment that would be passed, is only a judgment in personam and not a judgment in rem – It would not bind non-parties to lis – As such those four persons will not be bound by judgment in present Suit – Suit cannot be simply thrown out because some persons might come and challenge judgment on ground that they are not added as parties – No objection has been raised by Defendants, that other four persons are entiled to claim right under Ex. A1 – Suit is not bad for non-jonder of said four persons, who are not parties to Ex. A1.

2012 (4) TLNJ 318 (Civil)

Mrs. Sulochana
Vs
Smt. R. Pangajam and Ors

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, section 10(2)(vii) – Eviction petition filed on the ground of willful default, 10(2)(i); owners occupation 10(3)(a)(3) and for demolition and reconstruction 14(1)(b) of the act – rent controller ordered eviction on the ground of willful default alone –on appeal eviction confirmed on

willful default and also on a ground of denial of title by the tenant-on revision High Court opined that as non-payment of rent was alone alleged eviction on the ground not sought is not proper-further held that attainment of tenancy is not needed when tenancy is admitted-non payment of rent is willful default (para 11) –revision dismissed.

(2012) 7 MLJ 414

S. Dakshina
Vs
Chinnaponnu and Ors

Hindu Succession Act (30 of 1956), Section 8 Clause (1) – Self acquired property – Suit for declaration and vacant possession – Trial Court and First Appellate Court on consideration of fact that minor interest to be protected dismissed suit – Question as to whether Courts below are right in holding that minor grand son has got right in property admittedly property as self acquired property of deceased grandfather of Minor purchased out of self earnings – Held, if a male Hindu owning immovable properties dies leaving behind his wife and children, then his wife and children would be Class I heirs, to inherit his property which cannot be described as ancestral property – They would be inheriting property of deceased male Hindu as their absolute property – Grandchildren of deceased original owner would have directly no right over it – Because person happens to be paternal grand son of an individual, he would not be entitled to lay claim over property of his grand father, unless property happens to be ancestral property – Without understanding real purport of concept ‘ancestral property’, both Courts below accepted wrong plea of defendent and dismissed suit – warrant no interference – Judgment and decree of both Courts below set aside – Suit decreed as prayed for.

2012 (6) CTC 448

M. Antony Samy Suresh
Vs
S. Joseph Rajan and Ors

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 8 r/w Section 151 – Power Agent, whether can sue in representative capacity of all purchasers? – Held, individual, who faces disturbance at hands of Defendants, might come to Court seeking relief for definite cause of action – Power Agent, who sold property to purchaser, would not have any right to sue in representative capacity of all purchasers, who purchased property from him.

2012 (4) TLNJ 479 (Civil)

N. Sundaresan
Vs
S. Chandrasekaran

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(2)(1) – petition filed for eviction on the ground of willful default – Quantum of rent disputed -tenant filed petition to deposit rent – Rent controller determined rent payable and found tenant guilty of willful default – ordered eviction – appellate authority confirmed eviction – on revision by tenant the High Court held that payment of rent in lumpsums amount to willful default (para 10) CRP (NPD) dismissed.

(2012) 7 MLJ 498

Kaliammal and Ors
Vs
K. Mayilsamy and Ors

Partition – Suit for partition filed by Plaintiff (Adoptive son) – Suit decreed – Second Appeal filed by Defendant – Question as to whether Courts below were right in holding that first respondent proved that he was validly adopted in absence of any pleading and proof about same – Held, adoption taken place prior to enactment of Hindu Adoption and Maintenance Act, 1956, therefore adoption governed by old Hindu Law – Performance Adoption must be proved by adducing evidence that there was giving and taking by natural parents and adoptive parents – Both of them capable of giving child and taking child in adoption – Plaintiff silent about ceremonies conducted at time of adoption – No pleading regarding giving and taking which is one of essential requirements to prove adoption – Courts below, without referring to Exhibit B-1 (Partition deed), erroneously held that plaintiff has proved that he was adoptive son – Adoption not proved – Second appeal allowed.

2012 (6) CTC 557

Sulochana
Vs
R. Pangajam

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 10(2)(i) – Wilful default in payment of rent – Eviction – Tenant even after receipt of notice not paying rent continuously – Moreover, during pendency of Eviction proceedings, Tenant irregular in depositing rent and rent was deposited only in lump sum – Order of eviction of Tenant on ground of willful default in payment of rent, upheld.

Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 23 – Appellate Authority – Scope of jurisdiction – Order of eviction on ground of denial of title – Validity of - Eviction ordered by Rent Controller on ground of willful default – Appellate Authority confirmed eviction on willful default and also ordered eviction on ground of denial of title – No issue framed on ground of denial of title before Rent Controller nor any evidence let in on same – In such circumstance, order of Appellate Authority framing said issue and ordering eviction on denial of title, unsustainable.

(2012) 7 MLJ 813

Natesa Gounder
Vs
Raja Gounder and Ors

- (A) Indian Easements Act (5 of 1882), Section 13 – Easement of necessity by implied grant – Claim by plaintiff to use suit property as pathway to his property – Whether concept ‘easement of necessity by implied grant’s is applicable – Held, no evidence that suit property belonged exclusively to plaintiff and Defendant 3 or their predecessors-in-title-Plaintiff already has facility of ingress and egress to his property through an iteri (pathway) – Plaintiff cannot claim easement over defendants’ property – Concept ‘easement of necessity by implied grant’ is not applicable – Second appeal dismissed.
- (B) Code of Civil procedure (5 of 1908), Section 100 – Second appeal – Whether in second appeal there will be fresh appreciation of facts – Held, first appellate Court, is last Court of facts – Unless there is perversity or illegality in rendering finding of facts by Courts below, High Court cannot interfere under Section 100 – First appellate Court failed to furnish reasons for upsetting reasoned findings of trial Court, hence fit to analyse evidence of case.

(2012) 7 MLJ 892

Rani and Anr
Vs
Chandra and Ors

Code of Civil procedure (5 of 1908), Order 6, Rule, 17 – Suit for Partition – Amendment of pleadings – Amendment application filed after commencement of trial – Amendment on Plaintiff schedule sought so as to include some other properties as they are also liable to be partitioned – Validity of – Held, even after amended Act of 2002,

not total bar for allowing amendment after commencement of trial – If parties are able to satisfy the requirement in Order 6, Rule, 17 CPC, amendment can be allowed – Issue raised in written Statement itself – Court should not go into merits of amendment, while allowing or disallowing amendment application - Without going into merits, in a suit for partition, parties are entitled to bring to the notice of Court about the properties to be included for partition - character of properties can be decided only during trial – Amendment petition allowed – Directions given.

HIGH COURT CITATIONS CRIMINAL CASES

2012 (6) CTC 1

Hotel Sorriya Heritage Inn, No.499, MG Road, Pondicherry-605 001, represented by its Chairman, Dr. Louis
Pragasam Kannaya

Vs

The Collector cum District Magistrate, Government of puducherry, Puducherry and Ors

Immoral Traffic (Prevention) Act, 1956 (104 of 1956), Sections 2(a) & 18(1) (a) & (b) – “Brothel House” – Meaning – Pre-requisites to hold a hotel as brother house – Accused booked room in hotel and committed an act of sexual abuse – Police registered case under various provisions of Indian Penal Code and forwarded information District Magistrate that hotel was used as brothel house – District Magistrate ordered closure of hotel for period of four months by holding that hotel was used as brothel house – Held, under Section 2(a), to brand a hotel as a brothel house essential requirements to be prima facie proved are : (a) that hotel was used for purposes of sexual exploitation or abuse (b) such use was for gain of another person or for mutual gain of two or more prostitutes – In absence of any convince or knowledge on part of hotel management, it cannot be said that hotel was being used for sexual exploitation – There is no material to show that hotel had gained out of alleged use of hotel by accused for sexually exploiting girl – Mere fact that room was booked for stay for purpose of sexual exploitation or abuse of anyone and mere collection of money for stay will not amount to gain as envisaged under Act – Impugned order of closure is set aside – Writ Appeal allowed.

2012 -5-L.W.(Cri) 499

Chinna Pillai and Ors

Vs

The State by, The Inspector of Police, Taluk Police Station, Krishnagiri

I.P.C., Section 302/Murder, motive, proof of, Evidence Act, Sections 24, 27/Extra Judicial Confession, Circumstantial evidence,

Criminal Trial / Evidence, Extra Judicial Confession, illegal intimacy, Proof of.

It is alleged that A2 had illegal intimacy with A1, the wife of the deceased.

Motive attributed as against A1 and A2 for death of the deceased is not established.

There is nothing to show that A1 had any reason or occasion to repose confidence in PW1-V.A.O. to make extra-judicial confession implicating herself in a serious murder charge – P.W.1 is an utter stranger to her.

Extra-judicial confession is not voluntary and genuine.

For the purpose of Section 27 specifying of the place of recovery is important and that is completely lacking in this case.

When P.W.1 had produced A1 with Ex.P.1, extra-judicial confession to P.W.9, P.W.9 had recorded her Ex.P.4, confessional statement – When Ex.P.1 goes, Ex.P.4 must also go.

None of the circumstances projected by the prosecution has been established.

2012 (6) CTC 510

K. Arasan and Ors

Vs

The State of Tamil Nadu, rep. by Inspector of Police, M-5, Vadavalli Police Station, Coimbatore

Vs

N. Arthanari

Vs

State, rep. by 1. The Inspector of police, Nangavalli Police Station, Mettur (Crime No.83 of 2004) and Ors

And

Saravanan and Ors

Vs

State, by Inspector of Police, Erode South police Station, Crime No. 40 of 2000, Erode District and Anr

Code of Criminal Procedure, 1973 (2 of 1974), Sections 427 & 482 – Ambit of inherent power of Court vis-a-vis Section 427 of Code – Inherent power under Section 482 to be used to secure ends of justice – Remedy available to Accused under Section 427 to bring previous conviction and sentence to notice of subsequent convicting Court for direction that sentence awarded in previous conviction to run concurrently with subsequent one – However, Accused not to be left at lurch if said remedy not availed before Trial Court or Appellate Court granting relief under Section 427 would not amount to altering, varying or modifying findings of lower Court – However, Court while exercising jurisdiction under Section 482 for granting relief under Section 427 has to exercise its judicial discretion on basis of facts and circumstances and gravity of charges leveled against Accused – Thus, Court under Section 482 can issue direction ordering sentence imposed in latter case on conviction to run concurrently with sentence imposed in former case as provided in Section 427.

2012 -2-L.W.(Crl.) 584

Deepalakshmi and Ors

Vs

K. Murugesh rep. by his Father/Power of Attorney Holder Dr. A.R. Kasilingam and Ors

I.P.C., Sections 420, 494, 497 and 494 r/w 109/complaint by Power agent, whether maintainable,

Criminal Procedure Code, Sections 198, 218, 219, 223 /Complaint by Power agent, whether maintainable.

As found in Section 415, there should be deception played by an accused – There has to be inducement and that inducement should be either fraudulent or dishonest – Person, upon whom deception and fraud or dishonest inducement is played, should have acted upon the same and because of such acting upon, the said person should have suffered harm either to his mind or reputation.

Mere assurance that she was going to India only for fixing a surrogate mother and to have health check-up will not amount to deception at all – It is not the case that she had come to India with an evil design to develop intimacy with the second accused – No averment for any kind of inducement on the part of the first accused.

Complainant cannot maintain the complaint as he is not the aggrieved person in respect of the alleged offence under Section 496 I.P.C.

Offence under Sections 494 and 497 I.P.C are not of the same kind – Therefore, the common complaint in respect of these two offence, when these two offences had not occurred in one and the same occurrence or in the same transaction, cannot be maintained.

An offence under Section 497 I.P.C is an offence committed only by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between two partners constituting the matrimonial unit – Learned Magistrate has taken cognizance of the offence under S. 497, I.P.C. against the first accused/wife – This is illegal, it cannot be maintained.

There is misjoinder of accused as well as charges. Power agent can file a complaint representing his principal – Complaint has not been filed by the father of the petitioner as an authorized person as referred to in Section 198 Cr.P.C.

Instead, he has filed the complaint only as a power agent of his son, who is the aggrieved person.

(2012) 4 MLJ(Cr) 586

Babus
Vs
Vinayagam

Negotiable Instruments Act (26 of 1881), Sections 138, 20-Indian Evidence Act (1 of 1872), Section 45 – Dishonour of cheque – Petition seeking expert opinion for comparison of handwriting in cheques by accused, dismissed – Criminal revision – Held, transaction between complainant and accused not disputed by accused – Petitioner admitted entrustment, execution or issuance of cheques as well as promissory notes – Holder in due course is authorized or empowered to fill up an instrument to make it a negotiable instrument – Respondent/complainant as a holder in due course, is entitled to fill up the cheques – It cannot be questioned by petitioner/accused – Petitioner admitted his signature in cheques as well as promissory note – There is no necessity to send cheques in question to forensic experts for comparison – Criminal revision dismissed.
