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IMPORTANT CASE LAW



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| Sl. No. | CAUSE TITLE | CITATION | DATE OF JUDGMENT | SHORT NOTES | Pg. Nos. |
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MADRAS HIGH COURT – CRIMINAL CASES

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| 1 | Androse @ Boopalan vs. State rep by Inspector of Police | 2019(1)TLNJ 618 (CrI) | 25.04.2019 | To attract section 376 IPC victim must be either a stranger or wife below 15 years of age | 28 |
| 2 | Jayakumar v. State | (2019) 2 MLJ (CrI) 668 | 15.03.2019 | When grave doubt created as to genesis and origin of occurrence benefit of doubts shall ensure in favour of accused | 28 |
| 3 | K.Ravichandran v. M.Palanikumar and Others | (2019) 2 MLJ (CrI) 663 | 15.03.2019 | Service of notice to the respondent and procedure to be followed while impleading accused u/s.319 Cr.P.C. | 28 |
| 4 | K.V.Pownraj v. State | 2019 (1) LW (CrI) 947 | 08.04.2019 | When new accused is ordered evidence must be recorded denovo | 29 |
| 5 | M/s. BMD Hotels & Resorts Pvt.Ltd. Rep. By its Managing Director Nirmala Devi and others v. P.Murali | 2019 (1) LW (CrI) 805 | 12.04.2019 | Without serving notice to the accused about the pendency of appeal judgment pronounced-liable to be recalled | 29 |
| 6 | V.Nagarajan and others v. B.P.Thangaveni | 2019 (1) LW (CrI) 936 | 04.04.2019 | Respondent left matrimonial home in 2014 complaint filed in 2017 under domestic violent act Complaint should be filed within one year from the date of incident. | 30 |
| 7 | Murugan v. State of Tamil Nadu | 2019 (1) LW (CrI) 954 | 02.05.2018 | Circumstances constitute – chain of events – accused must explain the incriminating circumstances against him | 30 |
| 8 | Rajesh and another vs. The State rep. By Inspector of Police | 2019 (2) TLNJ 599(CrI) | 15.04.2019. | Gang rape should be tried by Mahila sessions Court and not by Assistant Sessions Court | 30 |

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| 9 | Abudhageer vs. State, rep. By the Inspector of Police | 2019(2)TLNJ 565 (Crl) | 27.04.2019 | Doctor has deposed that deceased was in a fit state of mind while recording dying declaration – Cruelty proved – But on considering that accused took steps to extinguish the fire and admitted the deceased in hospital – Sentence reduced | 31 |
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| 11 | C.Kumaravel vs. The DGP and others | 2019(1) TLNJ 632 (Crl.) | 27.04.2019 | No petition u/s.156(3) shall be entertained without exhausting remedy u/s.154(3) Cr.P.C. | 31 |
| 12 | Rajeswari Vs. Kannan | 2019 (2) TLNJ 407 | 30.04.2019 | Denial of love and affection and parental care will amount to cruelty | 32 |
| 13 | National Insurance Company Ltd., Thanjavur Vs. Rajalakshmi & Ors | 2019 (2) TLNJ 500 | 04.04.2019 | When there is inconsistency between FIR and statement of witness on oath, the statement on oath should be given with evidentiary value | 32 |

SUPREME COURT – CIVIL CASES

2019 (2) TLNJ 154 (CIVIL) (SC)

T.Ramalingeswara Rao (D) Thro Lrs. & Anr vs N.Madhava Rao & Ors

Date of Judgment: 05.04.2019

Whether Injunction can be granted against the person who have purchased the property from the co-owner. Section 38 – Suit is filed for perpetual Injunction to restrain the defendant from interfering with the Plaintiff's peaceful possession and enjoyment of the suit property. Dismissed by trial Court and the 1st appellate court. But the 2nd appeal was allowed by the High Court – Hence this appeal is filed in the Supreme Court.

Held - Suit Property is a part of big chunk of land owned by several brothers by way of inheritance from their father – Appellants purchased the suit land from one of the co-sharers and Plaintiffs are the sons of another co-sharer. Even assuming that the plaintiffs be in possession of the suit property they are not entitled to claim injunction against the other co-sharers over the suit property – Possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereof for the statutory period – Appellants being the purchasers of the suit property from one of the co-sharers stepped into the shoes of their vendor/co-sharer and, therefore, had a right to defend their title and possession against the other co-sharer – Appeal allowed.

2019(5) SCC 360

Vijay Hathising Shah and anr. Vs. Gitaben Parshottamdas Mukhi and ors.

Date of Judgment : 25.02.2019

Application filed by the 1st respondent for amendment of plaint in the partition suit rejected by the trial court – High court allowed it by impugned order – On appeal it is Held that, the trial court is right in rejecting application for the following reasons

A) Firstly, because it was wholly belated;

B) Secondly, it was filed when trial in suit was almost over and case was fixed for final arguments; and

C) Thirdly, suit could still be decided even without there being any necessity to seek any amendment in plaint and the proposed amendment was not really required for determination of issue involved in the suit.

For these reasons, impugned order legally unsustainable and set aside and order of trial court restored – Trial court directed to decide civil suit within one month strictly in accordance with law – Appeal allowed.

2019 (3)CTC 596

Union of India Vs Parmar Construction Company

Date of Judgment 29-3-2019

Section 11 (6), 12(5), 21 &26 (As amended by Arbitration and conciliation Amendment) Act 2015 (3 of 2016) Retrospective application of 2015 Amendment Act to pending proceedings -When Maintainable 2015 Amendment Act came in to force on 23-10-2015 – The Amendment Act is not applicable to pending Arbitrary proceedings which commenced under section 21 of the Principal Act 1996 unless parties otherwise agree. Pending applications have to be examined in accordance with the principal Act 1996 without taking resort to subsequent amendment Act 2015.

2019(5) SCC 554

Royal Sundaram Alliance Insurance Company Ltd., vs. Mandala Yadagari

Goud and others

Date of Judgment 09.04.2019

Computation of Compensation on Death of a bachelor in Motor vehicle Accident cases: There must be uniformity and certainty in applying the Multiplier and Computing Compensation. The multiplier should be based on the age of deceased and not based on the age of parents. This proposition of law has been settled by three-Judge Bench reported in (2015)6 SCC 347 and affirmed by a five-Judge Bench reported in (2017) 16 SCC 680 – There is no warrant to once again reopen this issue, as contended by the insurance company.

(2019) 4 MLJ 302 (SC)

M.R.Krishna Murthi vs. New India Assurance Co. Ltd. And Others

Date of Judgment: 05.03.2019

Motor Vehicles – Payment of compensation : Appellant belonged to family of lawyers and he wanted to join legal profession, .At the time of accident, he was studying in a prestigious school – Circumstances indicated that Appellant had bright future - Though the evidence in respect of his disability did not indicate much loss of prospects in earning Certainly his movements were restricted – This would hinder the earning capacity to some extent. As Functional capacity is impaired because of disability suffered by Appellant the loss of future earning fixed at five thousand rupees per month and sixty thousand per annum and multiplier of eighteen is applied.

Direction issued to the government to consider feasibility of enacting Indian Mediation Act to take care of various aspects of mediation in general – Government might examine feasibility of setting up Motor Accidents Mediation Authority (MAMA) by making necessary amendments in the Act – In interregnum, National Legal Services Authority (NALSA) is directed to set up Motor Accident Mediation Cell (MAMC) which could function independently under aegis of NALSA or be handed over to Mediation and Conciliation Project Committee (MCPC) – Such project be prepared within period of two months and start functioning immediately thereafter, at various levels – Directions contained

in earlier order in another case for implementation of latest Modified Claims Tribunal Agreed Procedure – For ensuring such implementation, NALSA is directed to take up the same in coordination and cooperation with various High Courts – motor Accident Claims Annuity Deposit Scheme (MACAD) shall be implemented by all Claim Tribunals on All India basis – Banks, Members of Indian Banks Association, who had taken decision to implement MACAD Scheme would do same on All India basis – Government to look into feasibility of framing necessary schemes and for availability of annuity certificates – There should be programmes from time to time, in all State Judicial Academies, to sensitize, Presiding Officers of Claims Tribunals, Senior Police Officers of State Police as well as Insurance Company for implementation of said Procedure.

2019 4 MLJ 278 SC

Sevoke Properties Limited Vs. WB Stat electricity Distribution co Ltd

Date of Judgment 11-4-2019

Suit for eviction : Defendant has admitted that the lease is for a period of 15 years- Already lease period lapsed-Whether notice under section 106 TP ACT is required

Held : No. As per section 111(a) After efflux of time possession of the defendant is that of tenant at sufferance –There is no necessity to issue notice for eviction

2019 (3) CTC 827 (SC)

Perry Kansagra v. Smriti Madan Kansagra

Date of Judgment:15-2-2019

In a custody and Guardianship battle, Welfare of the child is the paramount consideration- Generally what is conspired in the mediation cannot be used as evidence -But there is an exception to this. As per Delhi Family court procedure rules 1992 by the Rule 8(viii) counsellor could be asked to submit to the judge a report relating to home environment of the parties concerned, their personalities and their relationship with the child in order to assist the judge in deciding the question involved in the matter. Child may respond in the interaction between the Counsellor and the Child. Such interaction is a valuable input for Court in discharge of its duties. Court can either interview the child or may depend upon the report submitted by the Experts, who may spend more time in studying child.

SUPREME COURT – CRIMINAL CASES

(2019) 2 MLJ (Crl) 730 (SC)

National Investigation Agency Vs Zahoor Ahmed Shah Watali

Date of Judgment: 02.04.2019

Matters to be considered in granting Bail regarding offences under special Act:

Respondent was booked under section 120B,121,121A IPC and under sections 13,16,17,18,20,38,39,40 of the Unlawful activities prevention Act 1967- Bail petition rejected by sessions court - High court granted Bail. Against which prosecuting agency has filed this appeal.

Held: When Bail application is filed regarding offences punishable under special enactment something more is required to be kept in mind in view of the special provisions contained in it. FIR registered against Respondent / 10th accused for being involved in unlawful acts and terror funding, in conspiracy with other accused persons .Taking into account the totality of report made under Section 173 of Criminal procedure code and the accompanying documents, evidence / material already presented to Court, including redacted statements of the protected witnesses reasonable grounds to believe that accusations made against Respondent were prima facie found true – Material produced by the Investigating Agency shows linkage of the Respondent with the accused 3 to 6 and the linkages between Respondent and the accused 3 to 12 is revealed from CDR analysis – Document seized during search of Respondent’s accountant’s residence containing information about foreign contributions and expenditures of Respondent – Statement of witnesses recorded under section 161 and statements recorded under Section 164, presented by Investigating Agency in sealed cover – High Court ought to have taken into account totality of materials / evidences which depicted involvement of Respondent in commission of stated offences and being member of larger conspiracy, besides offence under Section 17 for raising funds for terrorist activities – Respondent is found not entitled to grant of bail in connection with stated offences – Granting of Bail by High Court is set aside - Appeal allowed.

(2019) 2 MLJ (Crl) 676 (SC)

State by Karnataka Lokayukta Police Station v. M.R.Hiremath

Date of Judgment: 01.05.2019

Whether filing of certificate Under Section 65B of Indian evidence Act regarding the electronic evidence is must at the time of filing Charge sheet -

Accused Charged for commission of an offence under section 7, 8, 13(1) (d) read with section 13 (2) of the Prevention of corruption Act. Accused filed discharge petition and is dismissed - High Court set aside the order of dismissal and discharged the accused taking a view that the electronic evidence submitted in this case is not accompanied with certificate required under section 65 B.

The Honourable Supreme court has held that:- At the stage of considering the application filed for discharge, Court must proceed on assumption that materials brought on record by prosecution was true and evaluate materials to determine whether facts, taken on its face value, disclose existence of ingredients necessary to constitute offence – High Court has erred in concluding that absence of certificate under section 65B at the time of filing the charge sheet will vitiate the proceedings. High Court lost sight of other material on which prosecution sought to place reliance. Appeal allowed.

(2019) 2 MLJ (Crl) 702 (SC)

Sampat Babso Kale and Another Vs State of Maharashtra

Date of Judgment: 09.04.2019

Murder – Dying declaration – Indian Penal Code, 1860, Sections 34, 302 and 498A – High Court convicted and sentenced the accused/Appellants for offences punishable under Sections 302 and 498A read with Section 34, Hence this appeal – Whether conviction of Appellants only on basis of dying declaration is sustainable – Referring to the decision reported in (2006) 13 SCC 165 it has been held that though dying declaration is entitled to a great weightage, it has to be noted that the accused has no power of cross examination .Therefore When there is a reasonable suspicion ,the dying declaration need to be corroborated .In this case defence version is that the deceased herself took of all the ornaments and then she went to kitchen and committed suicide -From the observation magazar its found that mangalsura, Bangles ,nose rings anklets were recovered from the bedroom and they were found bellow the Pillow .Normally no Indian women will remove it. Facts proved indicates that the occurrence took place in kitchen and not in bedroom. Defence version that deceased took of all those ornaments and left it in the bedroom and then went to kitchen and committed suicide could not be totally ruled out - Doctor though has stated that the victim was in a fit state of mind has admitted in his evidence that in case of a victim with 98% burns, the shock might lead to delusion No explanation adduced for non-examination of any witnesses from neighborhood – Non-examination of those important witnesses lead to non-corroboration of dying declaration – Judgment of High Court, set aside – Appeals allowed.

(2019) 2 MLJ (Crl) 697 (SC)

State of Rajasthan v. Kanhaiya Lal

Date of Judgment: 10.04.2019

Whether single blow is enough to attract sec 302 IPC :

Deceased died because of single injury caused on his head by the accused. Accused is convicted under section 302 IPC. High Court while allowing appeal filed by the accused convicted him under Section 304 Part I instead of Section 302, Hence the State had filed this appeal – Whether alteration of conviction from Section 302 to section 304 Part I by High court is sustainable.

Held:- Even a Single blow on the vital part of the body like head, with deadly weapon like axe when used with force can be proved to be fatal and would be sufficient to hold that it was case of murder within definition of Section 300 – Altercation between the accused and the victim is said to have taken place, in morning and that too much earlier than the time of incident – Merely because that altercation had taken place much earlier in time and not immediately prior to and or at time of commission of offence, it could not be inferred that there was no intention on part of accused to cause death of deceased – Impugned Judgment of High Court, set aside – Appeal allowed.

2019 (5) SCC 403

P.Rajagopal and Others vs. State of Tamil Nadu

Date of Judgment : 29.03.2019

Delay in FIR – Whether it will vitiate the proceedings

Held:- Will not vitiate the prosecution case – If there is Satisfactory explanation for delay.

In this case accused had illegal intention of taking the wife his employee Prince Accused A1 Helped the deceased to start Travel agency and made voluntary gift to the Jeevajothi the wife of the Prince and gave 2 days time to Prince to leave his wife.

On 1-10-2011 A2 to A11 who were aides of A1 surrounded the house of Jeevajothi (PW1) and dragged Jeevajothi and her husband and her family members in to a car saying that A1 had instructed to bring all of them before him-Then they were taken to the house of A-14 which was used as a godown for the Hotel of A1 -A1 was present and he assaulted the Prince and caused the A2 to A9 to assault Prince and pressurised PW1 Jeevajothi to abandon her husband and to marry A1 -Later A1 gave 1 week time to prince to leave PW1 and released the Pw1 and her husband .For the next 1 week Pw1 and her husband was kept under the surveillance of A1 and his men -However Pw1 with her husband managed to go to Police commissioner and lodged a complaint on 12-10-2001

Held -Normally the case of the prosecution will be thrown out in case of inordinate delay Because delay may be due the possibility of concoction of evidence .But when there is satisfactory explanation the court will decide the matter on merit without giving much importance to the delay.

2019(5) SCC 373

State of Himachal Pradesh and anr. Vs. Vijay Kumar @ Pappu and anr.

Date of Judgment 15.03.2019

Acid attack victims – Rehabilitation –Awarding Compensation to victim –

Occurrence took place on 12-7-2004-Accused were charged convicted under section 307 R/W 34 IPC and sentenced to 10 years RI with fine of Rs 5000/-Taking note of 16 % chemical burning caused by Sulphuric Acid High Court arrived at the conclusion that the offence made out is only 326 and reduced the sentence to 5 years and enhanced the fine amount to Rs 25000/- Respondents accepted and undergone the sentence and deposited the fine of Rs 25000/-

It was argued on the side of Appellant that once the guilty is proved there is no reasonable and cogent justification to reduce the sentence -and the least submission was that if not inclined to restore the punishment awarded by the trial court at least reasonable compensation may be awarded to the victim. The respondent counsel had argued that after accepting the Judgment and having undergone the complete sentence and already released on 9-12-2008 the question of restoring the original sentence passed by the trial court would not arise

Referring to the earlier decisions reported in (2015) 5 SCC197 which granted compensation to the Victim who suffered the injury for the offence which took place in 1997, and on taking in to consideration of the decisions reported in (2014) 4 SCC427: (2015) 11 SCC 584: (2015) 2 SCC 227 directed each accused to pay Additional compensation of Rs.1,50,000/- within 6 months ID to undergo 6 months RI and further has direction was given to the State Government of Sikkim to pay compensation under victim compensation Scheme within 3 months.

2019(5)SCC 469

Bal Mukund Sharma @ Balmukund Chaudhry and ors vs. State of Bihar

Date of judgment : 16.04.2019

Whether by mere presence of the accused in the unlawful assembly section 149 IPC can be invoked against him. In this case by the sudden act of the accused B, opening the fire, the deceased was shot dead and others injured.

Held : Evidence on record may create grave suspicion in the mind of the court about complicity of others also with the help of section 149 IPC. But however may be the grave suspicion it will not take the place of the proof .Its settled in (1975) 2 SCC 596 - (2012) 3 SCC 221 that to determine whether an accused being a member of an unlawful assembly is liable for a given offence it need to be seen that whether an accused being a member of an assembly knew that the offence was likely to be committed in prosecution of such common object. This in turn has to be determined from the facts and circumstances of each case. In this case as the main the accused B suddenly opened fire he alone could be held to be convicted under section 302 IPC Penal Code others who have found to set fire to the house and caused injury Could be punished only under section 436, /149, 323/34 and 148 IPC. Accordingly Appeal was partly allowed.

2019(5) SCC 418

Basalingappa vs. Mudibasappa

Date of Judgment: 09.04.2019

When can Appellate Court interfere with the Judgment of the trial court Negotiable Instrument Act: Rebuttal of presumption that arise under S.139.

Complainant said to have lend Rs 6 Lakhs to accused -Accused disputing financial capacity of complainant to pay amount-Date of loan is not mentioned in the complaint - Complainant is said have retired in 1997 and encashed retirement benefit to the tune of Rs 8 Lakhs only. Evidence brought on record that the complainant given loan to the tune of 18 Lakhs in the relevant period to various borrowers including the accused -Further the

complainant has filed a suit against another party for recovery of sum of Rs 7 Lakhs. Pw1 has deposed in evidence that the said loan was given in the year 2011. But the Cheque is dated 27-2-2012 Under such conditions, burden is heavily on the complainant to establish that despite having lent 18 lakhs within 2 years he had further amount of 6 Lakhs to lend money to the accused. Held Complainant failed to prove financial capacity and reversed the Judgment of the High Court by holding that it is not open to the Appellate court to re-appreciate the evidence and conclusion reached by the trial court the trial court Judgment is perverse." It can be said to be perverse only if it is against the weight of evidence "- In this case the trial court has come to the conclusion based on the evidence on record. Hence interference by High Court is not sustainable - Hence allowed the appeal filed by the accused.

2019(5) SCC 436

Vijay Mohan Singh vs. State of Karnataka

Date of Judgment : 10.04.2019

Minor discrepancy and contradictions are not be given much importance.

Victim at the time of admission has stated before the doctor, that the burn injury was accidental. Latter she gave dying declaration implicating the husband, that he demanded additional dowry and it was the cause for her suicide. Defence was not able to prove that the burn was accidental. Accused was last seen in the house and he immediately after the occurrence had flew away. The evidence of the Doctor and the Magistrate who recorded the confession was totally ignored by the trial court. Trial court has committed patent error in considering the information given by the victim to the doctor at the time of her admission. Minor discrepancy and contradictions are not be given much importance.

Dr. has deposed that the victim was conscious and coherent and in a fit state of mind to give the evidence. Further the dying declaration of the victim is corroborated by the evidence of the Magistrate. Conviction recorded by High Court in the appeal is upheld

2019(5)SCC 646

Kripal Singh vs. State of Rajasthan

Date of Judgment 15.02.2019

Whether the dictum Falsus in uno, falsus in omnibus is applicable to Criminal trial
Criminal Trial – Proof – Falsus in uno, falsus in omnibus –(False in one thing false in everything) is not applicable to criminal cases. Even if major portion of the evidence is found to be deficient but the residue is sufficient to prove the guilt of the accused then notwithstanding the factum that acquittal of a number of other co accused, can maintain conviction against the one against whom there is sufficient evidence to prove guilty.

In the instant case Accused alleged to have given Axe blow on the head of the deceased and axe blow on the Shoulder of the PW1 and then he taken away the motor cycle. Latter the motor cycle and axe was recovered from the accused but there was no independent witness to it. Deposition of eyewitness PW13 in court found in conformity with FIR. Dr also has opined that the injury on the head, neck, throat were separately sufficiently to cause death.

Merely because the evidence of PW13 is not sufficient to hold the conviction of other co-accused, it can't be contended that the evidence of PW13 is to be rejected in toto.

It is the duty of the court to separate grain from chaff. If chaff can be separated from grain then its open to the court to recorded conviction of particular accused notwithstanding that the evidence is found to be deficient to hold guilty of other co accused .But if it is not possible to separate the truth from false hood because of the reason that both are inextricably mixed up and in the process of separation an absolutely new case to be reconstructed by divorcing the essential details presented by the prosecution completely from the context and background against which they made, then the only possible course is to discard the evidence in toto.

It is also held that simply for the reason that there is no independent witness to the recovery of weapons, the evidence of police as to recovery can't be rejected.

On considering the evidence of PW 13, recovery of the Axe and the motorcycle in the light of other evidence available on record conviction is recorded against the accused who caused head injury with the axe.

2019(5) SCC 663

Manoj Kumar vs.State of Uttarkhand

Date of Judgment 05.04.2019

Appreciation of circumstantial evidence :

On 24-8-1993 deceased aged 17 was at home at about 10.45 am accused entered the house and tried to establish forcible physical relations .It was strongly resisted by the girl - Accused strangled the deceased by putting the weight of his hand on her throat - There after orchestrated entire crime as if it was a case of suicide - At 12.00 noon after returning from duty father found the body hanging from the roof and lodged complaint on 26.08.1993 PW2 informed the complainant that the accused came out of the house at about 11 am on their call and told that nobody was at home - Complainant approached the police and conveyed the information about the presence of accused at the relevant time in the scene of occurrence - Simultaneously on 26.08.1993 accused made extrajudicial confession to PW 4 and he in turn narrated it to IO.

Held - considering the fact that the accused is residing in the ground floor of the house where deceased found dead access of the accused to the place of occurrence is highly probable. Accused and his father were missing since the time of the offence. Accused was apprehended on 27.08.1993and he failed to provide any explanation as to the injury found on his body. Injuries found on the body of the deceased indicates sign of struggle. Post mortem report reveals that the death is not suicidal. Extra judicial confession is corroborated by independent witness -the absence of enmity between the accused and the witness raise no doubt as to veracity of witness. In the above said circumstances Chain of events rightly analysed by the trial court - Conviction upheld.

2019(5)SCC 605

State of Uttar Pradesh vs. Faquierey

Date of Judgment 11.02.2019

To come under the exception I to S.300 IPC the Accused himself should not have voluntarily caused the provocation.

Grave and sudden provocation: culpable homicide is not murder if the offender causes the death to a person while deprived of self control due to the grave and sudden provocation made by the victim. But the matter is that the provocation should be the one which is not sought or voluntarily provoked by offender. No overt act alleged against deceased to say that the Accused was provoked by the deceased. From the facts proved it appears that provocation was voluntary on part of offender Therefore first proviso to Exception I to S.300 IPC cannot come to the rescue of respondent - Conviction under Section 302 IPC is restored.

2019(2)SCC (Cri) 436

Mahendran Vs. State of Tamil Nadu With

Ravi Alias Gopu and others Vs. State

Date of Judgment 21.02.2019

Inference of common object of accused, in each case would depend upon cumulative effects of facts of that particular case.

Determination of common object :

Common object of the Unlawful assembly can be gathered from the nature of assembly, arms used by them and by the behaviour of the assembly at or before the scene of occurrence .It is not necessary for the prosecution to prove which member of the assembly did which or what act. Where overt act and active participation indicates the intention of the person perpetrating the crime then mere presence in the unlawful assembly may fasten vicarious liability

In this case out of 24 persons were charged, among them A-1 to A-9 were armed with stones and sickles and are alleged to have come to the house of the deceased. A-1 is said to have poured kerosene and A-2 is set to have put fire to the roof. When the deceased tried to flee was assaulted with sickles and stones that resulted in his death – Presence of other accused at time of occurrence as part of the crowd is proved – Conviction of appellants for murder with aid of S.149, confirmed.

Credibility of Injured witness – Occurrence at 7.30 Am - FIR Lodged at 8.45 AM Police station is 4 Km away-After lodging the complaint Pw1 was taken to hospital - PW 1 his first statement had not stated about injuries suffered by him due to pelting of stones by aggressors but tried to prove his presence on basis of allegedly self-inflicted injuries which were found to be not more than one hour old by PW 17 who examined him a 06.30 p.m. Held Opinion of Expert /Doctor cannot be given preference over primary evidence statement of witness in respect of manner of injuries suffered by the injured.

Delay in forwarding FIR to Magistrate – FIR sent at 9.30 to JM. AMHC deposed that he went to Thiruvavur and waited for JM .Since it was a holiday delivered the FIR to JM at resident at Pauthira Manickam at 4.45 Pm delay explained.

Informant failed to disclose parentage of 3 accused though stated the parentage for 10 accused in FIR. Since the FIR is proved to have been lodged soon after the occurrence possibility of prior consultation is ruled out as the FIR is lodged soon after the alleged occurrence

Genesis, Place and Manner of Occurrence – P.W.13 stating that occurrence took place opposite M's house while prosecution alleging that occurrence took place near PW 13's house, manner of occurrence as alleged by prosecution is held unacceptable.

Common memorandum of recovery prepared on basis of disclosures made by different accused – Relevant facts discovered on basis of it - held, admissible.

Contradictions, inconsistencies, exaggerations or embellishment. Held that Minor discrepancies inconsequential, particularly when witnesses were examined six years after occurrence.

principles relating to common object :

- * Manner and sequence of attack made by the members on the victim circumstances under which the occurrence took place will indicate common object
- * Mere unlawful assembly cannot render a person liable. The unlawful association must be based on common object.
- * Common object does not require prior concert and common meeting of mind before the attack Its enough each has the same object.
- * Common object may be ascertained from acts and language of the members composing it.
- * Its not necessary to prove definite roll played by each accused
- *When crowd of person plunge in to action based on common object it is very hard for the witness to describe accurately the roll played by each accused.
- * If large crowd of people armed with deadly weapon commit the offence, it may not be necessary that all have to take part in actual assault.

2019(2)SCC (Cri)244

Nawaz Vs. State

Date of Judgment : 22.01.2019

Grave and sudden provocation:

Deceased Provoked accused No. 1 by uttering the word prostitute - In our society no lady will like to hear such word from the husband most importantly she would not be ready to hear such a word against her daughter. Accused throttled the husband to death with towel and latter burnt the dead body to conceal offence. As the incident was due to grave and sudden provocation and everything occurred in fraction of a minute, depriving the accused of her power of self-control – conviction altered from Ss.302 and 201 to Ss.304 Pt. I and 201.

2019(2) SCC (Cri) 280

Dev Wati and others Vs. State of Haryana and another

Date of Judgment : 24.01.2019

To implicate the accused, there must be not only a prima facie case but the evidence shall be a strong evidence then mere probability.

Missing complaint was lodged by brother PW 9 - latter body was found - In the trial while giving evidence PW 9 implicated the Appellant here in and filed petition under section 319 - to array the appellant here in as accused - summon issued to the Appellant to face the trial. To implicate the accused there must be not only a prima facie case but the evidence shall be a strong evidence then mere probability. In short the evidence must be of such a nature that if unrebutted it must lead to conviction of the proposed accused

2019 (2) SCC (Cri) 300

Digamber Vaishnav and another Vs. State of Chhattisgarh

Date of Judgment: 05.03.2019

Conviction solely on basis of circumstantial evidence – When sustainable – Principles summarised. When last seen theory can be invoked against the accused. When 2 views are possible which view has to taken.

Robbery with murder of 5 ladies of family – Circumstantial evidence – Held, testimony of child witness (PW 8) is fraught with inconsistencies – None of the other witnesses identified appellants – There is unexplained delay in reporting crime – FIR was registered against unknown persons – Recoveries made under S.27, Evidence Act, not reliable, nor establishing motive of robbery - Articles which were recovered being far less valuable than many articles found at home of victim – Even in FIR, there is no averment of any article or money being stolen or lost – Crime not established beyond reasonable doubt –

Held - A. burden of proof squarely rests on prosecution and that general burden never shifts – There can be no conviction on basis of surmises and conjectures or suspicion howsoever grave it may be – Strong suspicion, strong coincidences and grave doubt cannot take place of legal proof.

Conviction solely on the basis of circumstantial evidence when can be made :

- a) The circumstances from which the an inference of guilt is sought to be drawn is cogently and firmly established
- b) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused
- c) Circumstance taken cumulatively form a complete chain and there should be no possibility for escape from conclusion that in all human probability the crime was committed by the accused and no one else and there shall not be any explanation or hypothesis other than that of the guilt of the accused

If the above conditions are fulfilled conviction can be recorded even solely based on circumstances

B If two views are possible based on evidence adduced in case, one pointing to guilt of accused and other to his innocence –which view is to be accepted

If two views are possible based on evidence adduced in case, one pointing to guilt of accused and other to his innocence – the view most favourable to the accused is to be adopted

Evaluation of Child witness: It must be carefully evaluated as the child may be swayed by what others tell to them and he is an easy pray to tutoring -Therefore it must find adequate before being relied on. It is more a rule of practical wisdom than law

C : Last seen Theory – Circumstantial evidence of Last seen together by itself cannot form basis of holding accused guilty of offence – If there is any credible evidence that that just before or immediately prior to death of the victim they were 1st seen along with the accused at or near about the place of occurrence the needle of suspicion certainly will point to the accused being the culprit this would be one of the strongest factor or circumstances inculcating them with the alleged crime purported on the victim. However of the last seen theory if not inspire confidence or is not trust worthy conviction can't be recorded by Last seen together factor.

Last seen together factor to become a incriminating circumstances, there must be a close proximity between the time of seeing the accused and recovery of dead body.

E : Scope of sec 27 of Indian Evidence Act : Discovery of every fact is not admissible .Discovery of relevant fact alone is admissible in evidence -A fact will become relevant if either by itself or linking with some other fact lead to discovery of the crime.

2019 (2) SCC (Cri) 314

Gaurav Kumar alias Monu Vs. State of Haryana

Date of Judgment : 15.02.2019

How to determine the age of the Juvenile

Criminal Trial – Juvenile/Child accused – Determination of Age – Non-Consideration of relevant Rules – Remand – Issue of juvenility of appellant decided on basis of 2007 Juvenile Justice Rules – Incident occurring on intervening night of 23.05.2000 /24.05.2000 while report pertaining to age of juvenile accused submitted on 08.05.2003 – Held, 2007 Rules were inapplicable – Question of juvenility of appellant was required to be determined on basis of rule 22 of the Juvenile Justice Rules (Care and protection of Children) Rule 2001

Board shall obtain

- i) Birth certificate given by a corporation or municipality
- ii) The date of birth certificate from the school first attended or
- iii) Matriculation equivalent certificate if available and
- iv) in the absence of (i) (ii)(iii) by the medical opinion of a duly constituted Medical Board subject to a margin of 1 year in the deserving case for the reason recorded by Medical board while passing order the board shall take in to consideration the evidence available or the medical opinion.

2019 (2) SCC (Cri) 320

Sunil Kumar Gupta and others Vs. State of Uttar Pradesh and others With

Khusbu Gupta Vs. State of Uttar Pradesh and others

Date of Judgment : 27.02.2019

Criminal Procedure Code, 1973 – S.319 – Addition of accused not named in FIR/Charge-sheet during course of trial – Basis for – In-laws not named in dying declaration, FIR or charge-sheet, held, cannot be added under S.319 Cr.P.C. to face trial under Ss.498-A, 304B/302 IPC and Ss.3 and 4 of DP Act, 1961 on basis of vague and non-specific allegations.

2019 (2) SCC (Cri) 325

Peer Singh Vs. State of Madhya Pradesh

Date of Judgment : 09.04.2019

Conviction for murder with aid of S.149 – Need to establish membership of unlawful assembly and the sharing of common object to murder – Presence of three appellants herein, mentioned in the FIR or in the 161 CrPC statement of material witness Only one of the eye witness naming them in evidence .Most crucial witness could not be able to identify the accused before court – Prosecution not able to explain why the name of the appellant are missing in FIR and 161 statement of Material witness – Grave suspicion created about the presence of the appellant in the unlawful assembly – Hence granting benefit of doubt appellant are acquitted.

2019 (2) SCC (Cri) 331

Amrika Bai Vs. State of Chhattisgarh

Date of Judgment : 29.03.2019

Doubt as to involvement in unlawful assembly and sharing of common object – Inconsistencies regarding role played by particular accused (appellant herein) and improbability of her having played that role alleged by the prosecution - Enmity clearly emanate from the record. It appears appellant are roped in as accused. Since, involvement of the accused itself doubtful the question of common object and using of violence dose not arise – Conviction reversed.

2019 (2) SCC (Cri) 334

Vidyalakshmi alias Vidya Vs. State of Kerala With

Anand Sabariraj and others Vs. State of Kerala

Date of Judgment : 15.02.2019

Murder with theft – Wife of deceased victim involved in getting him murdered in conspiracy with her lover and one other (appellant-accused A-3, A-1 and A-2, respectively) – Circumstantial evidence – Links in the chain of circumstances completely established – mobile conversation proved by examining BSNL personnel -Recovery of hand writing material of tour programme from A3 made - evidence adduced as to the fact that A1 to A3

met and stayed at M- all The circumstances found linked up with one another and chain was not broken in between – Prosecution successfully proved beyond reasonable doubt that all appellants (A-1 to A-3) entered into conspiracy to commit murder of deceased and A-1 and A-2 committed murder of deceased – when Prosecution successfully proved the case - The argument that Motive not established may not have much relevance- Conviction upheld by High court is confirmed.

2019 (2) SCC (Cri) 343

Harveer Singh and another Vs. State of Uttar Pradesh

Date of Judgment : 15.03.2019

Revision – Even where revision petition is dismissed as exparte – The court Shall apply the mind to the facts of the case and shall consider the legal aspects and should have passed appropriate order recording the reason for it.

2019 (2) SCC (Cri) 354

Pattu Rajan Vs. State of Tamil Nadu

Date of Judgment : 29.03.2019

- A. Murder Case based on Circumstantial evidence – A1 had an eye on the wife of the deceased – Motive proved – Last seen together – Recovery and identification of dead body and articles belonging to deceased – Confession made by accused relied on though dead body is recovered independent of confession -In the absence of parents for conducting DNA resorted to Super imposition of skull body also identified by the relatives -Last seen with accused Non-explanation by accused – Links in the chain of circumstances firmly established against accused – Conviction confirmed.
- B. Criminal Trial – Identification by superimposition test – Permissibility and Reliability of – Principles summarised.

Though DNA helped the court in identification of deceased when parents are not available and sample could not be taken the superimposition test will be handy and its acceptable piece of evidence

- C. Evidence act, 1872 – S.45 – Expert evidence – Expert evidence is advisory in nature and the court is not bound by the expert evidence.
- D. Discovery of fact –Dead body of Santhakumar recovered from burial ground in Tiger - Chola reservoir - The family of Santhakumar identified the body of Santhakumar - A2 gave confession and led the police team to the very same place from where body exhumated .Recovery of body though happened to be earlier than the confession in the facts and circumstances of the case it does not negate the validity of recovery based on a confession in terms of section 27.

Facts elicited in confession made before police – Extent to which admissible – If a confession is made by accused before police and a portion of confession leads to recovery of any incriminating material, such portion alone is admissible under S.27 of the Evidence Act.

- E. Criminal Trial – Circumstantial Evidence – Last seen together – Failure on the part of accused to explain – The doctrine of last seen if proved then pardon will shift on to accused, placing on him the onus to explain how the incident occurred and what happened to victim who was last seen with him. Failure to give proper explanation or giving false explanation will give rise to a strong presumption against him

Further investigation or Fresh investigation – Regarding earlier abduction already investigation over and charge sheet filed .Subsequent abduction is not continuous one to the earlier abduction and hence not necessary that both case to be investigated by the same investigating officer who conducted the investigation relating to the previous Abduction

2019 (2) SCC (Cri) 452

Mala Singh and others Vs. State of Haryana

Date of Judgment: 12.02.2019

Applicability of section 34/149 IPC:

Prosecution did not adduce any evidence before the trial court to prove that Common intention. 8 Accused already acquitted under section 149 IPC and that Judgment reached finality – The remaining accused being less than 5 cannot be proceed with under section 149- In that situation charge altered from S.302 r/w S.149 to S.302 r/w S.34 by High Court without any evidence regarding common intention is held unsustainable – Both sections deals with constructive liability - but both are working in different sphere – Some time both may overlap and it is a question to be decided based on facts of each case – If evidence disclose common intention there is no bar to punish the accused under section 34 IPC Moreover it is not a substantive section and charge need not be framed separately

From the combined reading of the sections 216,386,464 CRPC when no prejudice will cause to the accused and prosecution then the charge may be altered even at the appellate stage .In 1996 3 SCC 166 It has been reiterated that if accused has to face a charge for new offence charge can't be altered.

In this case evidence on record regarding charge of common object not sufficient to prove common intention in present case. Hence the A2, A3 could be at the most held liable for offence under section 324 IPC On the basis of their individual participation in the crime.

2019 (2) SCC (Cri) 469

Shankar and others Vs. State of Maharashtra and another

Date of Judgment : 26.02.2019

Criminal Procedure Code, 1973 – S.320 – Compromise in non-compoundable offences – Non compoundable offence can't be compounded Reduction of sentence would be the relief.

MADRAS HIGH COURT – CIVIL CASES

2019 4 MLJ 598

R.Ananda Padmanabhan (deceased) and Others Vs.

Vadivel Gunder (deceased) and others

Date of Judgment: 03.04.2019

Whether suit for specific performance can be enforced based on the unregistered sale agreement.

Held: Even after insertion of new section 17(1-A) in the registration Act by way of amendment which came in to effect from 24-9-2001. The Suit for specific performance can be enforced based on unregistered sale agreement. But benefit under section 53-A of Transfer of Property Act cannot be sought for based on the unregistered sale agreement

2019 (2) TNLJ 577 (Civil)

N. Madhavan Vs. Karthic Raj

Date of Judgment: 11.4.2019

a) Whether fresh vakalat can be received without endorsement of no objection from the previous counsel? – b) Whether evidence can be re appreciated in review? – c) whether successive review petition is maintainable ?

Held: a) Review application filed without obtaining no objection for vakalat from the previous counsel-Counsel on record is answerable to court. It would not be in the interest of the profession to permit such practice -Without obtaining no objection for vakalat from the previous counsel the review is liable to be dismissed in limine- relied on decision reported in [(1996) 6 SCC 775]

b) In review petition evidence cannot be re-appreciated and review will not lie against the findings of Appellate Judgment. Even if the finding is erroneous. A court cannot sit in appeal over the Judgment in a review application [(Referred: 2006 2 CTC 809: AIR 2009 SC (Supp) 476: 20061 CTC 161)]

c) Once a review petition is dismissed further review-petition is not maintainable.

2019 (2) TLNJ 560 (CIVIL)

C.Chinthamani & Anr Vs R.Nagalakshmi & Ors

Date of Judgment : 28.01.2019

Can injunction be granted when exclusive right to the property itself is questioned : Suit is filed for injunction to restrain the defendants from interfering with the peaceful possession of the plaintiff-Probate of will proceedings pending. Exclusive right to the property itself is questioned - Since the plaintiffs and the defendants are in possession of the 'A' Schedule property the plaintiffs are not entitled to a decree for injunction in respect of A schedule - 'B' Schedule property is a vacant site - until and unless the plaintiffs are able to establish their right under the Will ,all the children of deceased original owner will be entitled to a 1/7th share each in the 'B' Schedule Property - Hence injunction cannot be granted.- Second Appeal Dismissed.

2019 (2) TLNJ 493

Nachi and others v. Poongodi and others

Date of Judgment: 22.01.2018

Suit filed for injunction based on Natham patta issued to the plaintiff-Appeal filed against the grant of patta before RDO and is pending -As on date Defendant has not filed any patta in his favour and the Natham settlement patta issued to the Plaintiff is not cancelled - Natham settlement deed filed by the defendant is found to be issued pending litigation and hence cannot be treated as genuine one -Unless patta granted to plaintiff is set aside plaintiff will be entitled to protection of possession based on the patta issued to him -Injunction granted by the appellate Court is upheld.

(2019) 5 MLJ 52 HC

R.Ranjith kumar Vs. P.E.Janmbulingam and others

Date of Judgment: 05.03.2019

Plaintiff filed a suit for permanent Injunction. B-memos issued to the plaintiff-Trial court as well as the first appellate court finds that plaintiff proved possession and decreed the Suit.

In the second appeal its held that:- The suit property being classified as vaikal poramboke the contention of the plaintiff that he is cultivating the land cannot be accepted - B-memos also had been issued only up to 1994. There is no proof for continuous possession - Suit property belongs to Government-Whoever encroaching water body is not entitled to protection before the court -Relied on the earlier Judgment reported in 1997 3 SCC 715 and 2008 2 MLJ 1025 and the appeal allowed and the suit is dismissed

2019 (4) MLJ 267 HC

S.Arumugam Vs. A.N.Subramaniyan

Date of Judgment: 14.03.2019

Plaintiff has filed the suit for permanent injunction claiming that the defendant tries to encroach. But the Defendant claims that he walks through the land and is in possession of the suit property.

Held : Suit property is a vacant land - by just passing through it one cannot be said to be having full control over it .Regarding vacant site its title that will decide the possession - Plaintiff having title will be said to be in possession of it -Plaintiff is entitled to permanent Injunction.

2019 (2) TNLJ 253

ShakhulHammed Vs. A.Faisalkhan

Date of Judgment: 26-3-2019

Section 5 Application filed under the Limitation Act :

Supreme court has laid down the principles to be applied in delay condonation petition in Balwanth singh Vs Jagadish singh and others (civil Appeal no 1166 of 2006 dated 8-7-2010)

Delay is not the only ingredient to be considered. In addition to delay, the conduct of the parties and the bonafideness of the reason stated for condonation of delay and the fact whether such delay could have been avoided by the applicant acting with normal care and caution also has to be considered.

In the case in hand defendant had refused to receive summon and latter had appeared entrance in E.P but has allowed it to be disposed set exparte. After the commissioner has visited the suit property then has come forward with an application to set aside the exparte decree along with section 5 application .The factum of refusal of summon suppressed in the affidavit. Held the applicant has not come with clean hands and dismissed the application relying on the above said Supreme Court decision.

2019 (3) CTC 659

Rajasekaran T. vs. Sagoundala

Date of Judgment:1-2-2019

Donor executed the disputed document to Plaintiff and latter conveyed it to another person contending it only a will and not Gift deed -Suit is filed by the donee for declaration and for injunction. In the document there is a reservation clause that the donor retain possession for his beneficial enjoyment till life time. Whether its a will or valid gift

Held: Though the donor retain possession and reserve life interest to use the profit derived from the said immovable property during his and the gift is without right to mortgage or right of alienation and it cannot be contented that its a will. Donor also has admitted in written statement that the deed is executed due to love and affection on the belief that the donee will take care of her - Defendant has sent caveat notice to the plaintiff mentioning the suit address. Voter list and EB receipt also filed by the plaintiff to prove his possession over the suit property. From the said admission and from the recital of the document the document in question is held as Gift only. Once gift deed is registered the rights will gets transferred and it cannot be said that title not transferred due to retention of life interest – Transfer of possession is not necessary to make a gift valid. (In Re – 2014 4 CTC 572 SC)

2019 (3) CTC 767

Ganapathy v. Thirumalai Gounder

Date of Judgment: 07.01.2019

Negotiable Instruments Act, 1881 (26 of 1881), Section 118 – Suit for recovery of money based on Promissory Note – Execution of Promissory Note denied – Allegation that signature in Promissory Note was forged – Plaintiff failed to seek Expert Opinion to prove signature – Trial Court was of the opinion that Promissory Note was not proved – Suit dismissed – Appeal by Plaintiff, allowed – Second Appeal by Defendant.

HELD: Initial burden of proving execution of Negotiable Instrument is on holder/maker – Once initial burden is discharged, presumption under Section 118 will get attracted – Then the Onus will shift on to the person challenging instrument, to rebut the presumption – Such rebuttal can even be by way of admissions of parties – In the present case, Plaintiff specifically pleaded that Defendant borrowed money to meet his Family expenses and he also proved execution of Promissory Note through the attestors – Defendant has not denied the borrowal but vaguely has stated that Promissory Note was forged, – Once specific pleading is not denied it amounts to admission - Defendant also has not brought any circumstance to rebut presumption — Second Appeal dismissed holding that Minor inconsistencies in deposition of Lender cannot be given much importance.

2019 (3) CTC 695 (DB)

John Robert D. vs. P. Rathinam

Date of Judgment: 24-10-2018

Order 1, Rule 10 – Contract Act, 1872 (9 of 1872), Section 230 – – Suit for Specific Performance based on Oral Agreement for Sale – Money advanced to Power of Attorney Principal demanded enhanced consideration – Suit filed against Power of Attorney – -Held, question of adequacy of consideration and value of property cannot be gone into, when alleged Owner is not impleaded – Agent cannot be sued when principal is disclosed -Agent is not personally liable for the contract entered in to on behalf of the principal Therefore without impleading the owner even alternative relief of refund cannot be granted – Appeal dismissed.

2019 (3) CTC 890 (DB)

Meenakshi vs. Premkumar Nachiappan

Date of Judgment: 29-1-2019

Protection of Women from Domestic Violence Act, 2005 (43 of 2005) – Section 12 – Hindu Marriage Act, 1955 (25 of 1955), Section 13(1) (i-a) –

Criminal prosecution launched against Husband and his family after the Family Court dissolved marriage – Proceedings partly quashed and partly dismissed for non-prosecution – Such subsequent events can be noted by High Court to conclude that Wife intended to harass and humiliate Husband and in-laws – Husband adequately proved averments of cruelty in Original Petition, therefore, entitled for Decree of Divorce – The Judgment and Decree of Family Court is accordingly confirmed

2019 (3) CTC 625 (DB)

**Nawab Wallajah Sahib Pallivasal, rep. by its Secretary, Tirunelveli vs. Commissioner of
Land Administration/ Board of Revenue, Chennai.**

Date of Judgment: 30-4-2019

Sections 5 & 27 Wakf Act is self-contained code – Properties belonging to Wakf to be notified under Section 5. Wakf Board cannot file Suit in respect of property, if such property not notified – Section 27 to be invoked to bring in any property to Wakf if already omitted – Person claiming himself as Muthavali has no locus standi.

2019 4 MLJ 419

Kannan@ palaniVs. Mayilal @ Papathi and others

Date of Judgment 22-3-2019

Plaintiff filed the suit for declaration of title and for permanent injunction alleging that patta stands in her name -Defendant denies that patta – Original Patta not filed by the Plaintiff. In cross DW1 has admitted that patta stands in the name of the plaintiff. Trial court decreed the suit based on that admission.

Held not proper - When a plaintiff pray for declaration of title, decreeing the suit without production of any title deed and patta is not proper. Defendant is not bound to prove his title. Its the Plaintiff to prove her title and possession. The pleading and evidence of the party has to be considered cumulatively when there is denial in written statement and in other parts of evidence deciding the suit based on stray admission of the defendant cannot be legally sustained - Appeal allowed - Suit dismissed.

2019 4 MLJ 494

B.Boomidevi and others Vs. District Collector Knchipuram and others

Date of Judgment : 01.02.2019

Plaintiff applied for patta based on the judgment obtained by him in the suit filed for specific performance. Nothing stated as to genuineness of the claim. Plaintiff cannot rely on judgment to claim title. Property found to be that of Pidariamman temple Independent title must be established- HR&CE is not party to the specific performance suit. The judgment rendered in the specific performance suit will not bind the defendant - plaintiff is not entitled to transfer of patta without proving title. Petition filed seeking direction in the writ is dismissed.

2019 4 MLJ 284 HC

Koolan @ Munusamy Vs Chennammal and Others

Date of Judgment: 01.02.2019

Property Laws – Easements – Right of way – Easement Act, Section 13 – Appellant / Plaintiff filed suit for declaration of his right over cart track in suit property – Trial Court decreed suit, but First Appellate Court dismissed suit, hence these appeals.

Held: Entire property in three survey numbers held under one title, faced disintegration in subsequent partition – Section 13 providing for easement of necessity of right of way to ensure that none of those who were parties to partition was disadvantaged due to want of right of access – 1st Defendant had not pleaded existence of any alternate pathway Right of easement did not depend on concessions made by parties to sale deed, it exists independence of it.. Existence of Cart track mentioned in Ex A1, A2. If this suit cart-track was not there, there was no way to reach Plaintiff's property. Hence Appeals allowed and decreed the suit.

(2019) 4 MLJ 607

Jayaraman v. Palani

Date of Judgment: 29.03.2019

Suit filed by Plaintiff for permanent injunction claiming to be the owner of suit property by virtue of settlement deed – decreed by the lower Courts, hence this appeal.

Held, though both sides claim title on basis of earlier assignment. Defendant proved original assignment. Assignment in favour of Plaintiff's grandfather not established. Plaintiff unable to prove their actual possession - name of alleged tenants not proved. Electricity connection was in name of Defendant's wife - Ex.B.1, Ex.B.2 and Ex.B.4 series, filed in support of possession of Defendant. Though the said documents contained details of survey numbers correlating with suit property, it has not been considered. The wife of the defendant also claim title over property, but she had not been made as party. There was cloud over title of property, but Plaintiff had not sought declaration of title. The Suit for bare injunction shall fail in absence of proof with regard to possession. Appeal allowed.

2019 (2) TLNJ 491

Rajasudanthira Bose Vs. Ramachandran

Date of Judgment : 19.03.2019

Civil Procedure Code, 1908, Section 115, suit is filed for redemption of mortgage – preliminary decree passed then the final decree application was filed but with a delay petition with 113 days .The trial court declined to allow. In the affidavit it's stated that after the passing of the preliminary decree, the petitioner and his wife went to united states to see their son and daughter and on return the petitioner could not speak and hence he took treatment for the same. This averments were disbelieved by the trial court – On revision to the High court it is held that "the delay is not very enormous and the case should be decided on merits and should not be thrown out on mere technicalities"-and allowed the revision Petition.

2019 (2) TLNJ 573

Krishnamoorthy Vs. Selvakumar & Ors

Date of Judgment : - 09.04.2019

Civil Procedure Code – Order 18 Rule 17 & Order 16 Rule 1 (2) – Suit for mandatory injunction – petitioner filed application to recall the witness under order 18 Rule 17 and it was dismissed. He again filed applications to reopen the evidence and to issue witness summons under order 16 Rule 1 (2) and the same also is dismissed. CRP filed against it in High Court. It was held that without challenging earlier order, petitioner filling various applications amounts to dragging the proceedings. Hence, CRPs (PD) are dismissed.

2019 (2) TLNJ 513

National Insurance Company Ltd., Namakkal Vs. Prema & Ors

Date Of Judgment : 09.03.2017

Motor Vehicles Act, 1988, Section 166, 175. Award passed by Motor Accident Claims Tribunal for Rs.30,56,200/- CMA filed in High Court by Insurance Company.

Held: As Per the Post mortem certificate age of the deceased is 40 .Age of the deceased can be so fixed based on the Post Mortem Certificate (In Re Fakeerappa Vs Karnataka Cement pipe factory reported in 2004 (4) LW 20 and MD.TNSTC, Madurai Vs Mary reported in 2005 (5) CTC 515.

Deceased is a road worker .Therefore awarding addition of Rs.6,000/- under the head, future prospects,(That is 50%) cannot be said to be wholly unjustified - Wife of the deceased is aged only 25 years. Following the decision reported in 2013 (7) 476 the amount awarded under the Head "Loss of consortium" is enhanced to Rs.1,00,000/- considering the age of children and mother award under the head loss of love and affection - to each of the Children is enhanced to Rs.1,00,000/- and for the mother enhanced to Rs.50,000/- Since the family members were only 6 in number the Re-working compensation payable is arrived at Rs.30,71,750/- CMA is dismissed.

2019 (2) TLNJ 645

Mayavan (Died) Jayavalli (Died) rep. By Lrs. & Ors Vs. Saradambal @ Sadana & Ors.

Date of Judgment : 24.04.2019

Civil Procedure Code, 1908 Section 47 – Petition filed under section 47 CPC - before Executing Court – on two grounds – Decree was conditional one on payment of money and the said sum was not paid - further property could not be identified.

Held: The Judgment debtor/grandfather of Petitioners has contested the earlier Execution Petitions filed by Respondents wherein no stand was taken with regard to non-payment of conditional order. Father of Revision Petitioners contested the decree have also not taken such a stand. Revision Petitioner cannot now take a plea not taken by their predecessors – on identity of property. The boundaries having been clearly marked, Property can be delivered – Report of Amin cannot be the basis reject the E.P. Identity cannot be subject matter of decision under Section 47 of CPC – Revision Petition dismissed.

2019 (2) TLNJ 641

Vellaisamy.V. Vs. The District Collector, Sivagangai District & Ors.

Date of Judgment : 26.11.2018

Order 47, Rule 1 - In 'Review' the plea of Rehearing is impermissible in Law – Even under the garb of 'Review' the High Court would not re-hear the respective parties on points of Law. Review cannot be treated as an Appeal in disguise. Only an error which can be deciphered in a cursory manner can be looked into. An erroneous decision cannot be corrected in review. Remedy available to the concerned aggrieved person to approach the Higher Forum and to get the impugned order set aside. The mere possibility of two views on the subject is not a reason for Review - Review Application is devoid of merits hence it is dismissed.

2019 (2) TLNJ 305

Ramdoss Vs. Subbayyan & Jagannathan

Date of Judgment: 05.01.2019

Indian Succession Act, 1925 Section 63 & Indian Evidence Act, 1872, Section 68:- Will executed by Testator in favour of his adopted son and grandson cannot be held suspicious – minor discrepancies in statement of witnesses do not affect the proof as to execution of will - free state of mind and mental capacity of executor proved beyond doubt. It is not in disputed that the 1st respondent was adopted and living with deceased testator till the end. Will proved beyond doubt. Findings of First Appellate Court requires no interference. Second Appeal dismissed.

2019 (2) TLNJ 295

Manickam.A. vs Jayakumari & Ors.

Date of Judgment : 11.02.2019

Tamilnadu Patta Pass Book Act, 1983, Section 14 - Suit filed by Sister as against Brother to cancel Patta issued in his favour in respect of Property - Defendant admitted the title of the Plaintiff and claimed Adverse Possession - Plaintiff contents that – without service and notice to her Patta was issued to the defendant without proper enquiry.

Held: When title stands in name of Plaintiff, issuance of Patta without making any enquiry or serving any notice to Plaintiff is illegal. Order of First Appellate Court cancelling the Patta issued in favour of Defendant is confirmed. Second Appeal by Defendant dismissed.

2019 (2)TNLJ 251

M/S Reliance General Insurance Chennai , 40 Vs. Mahadev

Date of Judgment: 04.02.2019

Future prospects: Whether the injured is a Government employee or a private employee is immaterial. If he is a permanent employee and has a fixed salary then 50% future prospects has to be awarded.

Regarding award of interest, the Prevailing rate of interest is 7.5 % .No special reason stated for awarding interest at 9% and hence rate of interest is reduced to 7.5%.

2019 (2) TLNJ 457

Adhiaman Engineering College & another Vs. Narayanappa

Date of Judgment: 18.01.20d9

Specific Relief Act, 1963, Section 20 – Suit filed for specific performance of sale agreement – Suit dismissed by trial court – First appeals also dismissed. Second appeal filed in High court by Plaintiff.

Held: where the agreement is signed by the vendor alone and delivered to the purchaser and accepted by him the contract is valid and can be specifically enforced.

But in this case sale agreement entered into on 7.10.1988 and the notice is issued by plaintiff only on 22.07.1992, i.e., after three years and nine months - plaintiffs were not ready and willing to perform their part of the contract - plaintiff not produced any adangal extracts to show their possession to seek part performance .Almost 31 years gone and the value of the properties increased may folds - Held :The plaintiff is not entitled to for the relief of specific performance - second appeal is dismissed.

2019 (2) TLNJ 651

The Branch Manager, Reliance General Insurance Company Limited, Chennai Vs.

Manivannan & Anr

Date of Judgment : 04.04.2019

Motor Vehicles Act, 1988, Section 173 & Indian Evidence Act, 1872, Section 62- Fatal Claim – Head on collision between motor cycle driven by deceased and lorry insured with appellatant . Appeal by Insurer – Cross Objection filed by Claimant seeking enhancement of compensation – Contention of the Appellant is that the deceased is equally responsible for the accident.

Held: That the FIR is only against the Lorry driver – Eye witness (PW2) and Rough Sketch marked prove the negligence of lorry driver – order of Tribunal holding lorry driver negligent confirmed.

Further held that printed copies of the medical bills produced by the petitioner which are made under uniform process would be treated as primary evidence Section 62 of Indian Evidence Act and allowed additional compensation to the tune of Rs.11,00,000/- for the medical bills produced by the Claim Petitioner Accordingly Appeal is dismissed - and Cross Objection is allowed.

2019 (3) CTC 590

Ponnuthaiammal M. vs. V.Alagarsamy Naicker

Date of Judgment:14.02.2019

Section 145 – Deposition of some Witnesses in some other Suit is sought to be received – Such deposition could be marked through such Witnesses only – Deposition not marked through such witnesses, not admissible.

(2019) 5 MLJ 224

Kona varonica Swarnamughi VS Devika Rani

Date of Judgment: 4-6-2019

Suit is filed by famous dancer Kona varonica swarnamugi for declaration of title over item 1 to 3 of the suit property and for recovery of possession of 920 sq feet in the 1st schedule of the suit property and for recovery of possession of item 2 and 3 of the suit properties.

The case of the plaintiff is that the defendant is the sister of the plaintiff. Out of the money of the Plaintiff the defendant purchased item 1 of the suit property in the name of the plaintiff, defendant and her mother and the plaintiff contributed money to purchase the 2nd item which stands exclusively in the name of the Defendant and her mother and the 3rd item is purchased entirely out of the money of the Plaintiff which stands exclusively in the name of the defendant. In support of her claim the plaintiff relied on the settlement deed executed by her mother in her favour in respect of 1/3 share in the suit property and the will executed by the defendant in respect of 1/3 share in the 1st item of the suit property.

Defendant has denied the averment and has submitted that as the plaintiff requested to convey the right in item 1 of the suit property to construct a dance hall and hence the defendant offered to sell it and in lieu of that executed a will to overcome stamp duty and the plaintiff failed to pay the consideration and

Hence, the will was latter revoked. and further has submitted that the plaintiff has purchased many properties and is maintaining many bank accounts and she never entrusted the management with the defendant and the item 1 of the suit property is the joint acquisition of all but the item 2 of the suit property is the self acquisition of the defendant and her mother and the 3rd item of the suit property is the self acquisition of the defendant.

It is also the case of the plaintiff that she was in possession of 920 sq feet in the 1st item and she was forcibly evicted by the defendants.

The questions came up for discussion are:

1. Whether plaintiff who has not specifically pleaded that the 1st defendant is Benami of her can maintain the suit?
2. What is the nature of transaction involved in respect of item 1 to 3? Whether those are Benami transactions as argued by the plaintiff?
3. Whether the submission of the defendant that regarding 1st item as co-owner she cannot be ousted out?

Held :a) As per section 4 (1) No suit can be filed alleging that plaintiff is the real owner of the suit property which stands in the name of defendant and As per section 4(2) no defense can be taken by the defendant that is the owner of the property standing in the name of the plaintiff

As per exception provided under section 4(3) if the property is held by co-owner or held by anyone in the name of other by way of trust proviso 4(1) and (2) will not attract.

b)To say that the property in the name of defendant is really the Benami property of the plaintiff, first there must a specific averment in the pleading as to what property is Benami property and who is holding as binamidar - Without specific pleading no amount of evidence can be let in

c) To determine whether the property is the Benami property the following factors has to be considered

i) From where the money came from to purchase the property in question?

ii) Nature and possession of the property

iii) Relationship of the parties

iv) Under whose custody the title deeds are?

v) What pre-empted the purchase of the property in the name of another?

5)The surrounding circumstances -Conduct of the parties in dealing with the property

D) Its In combatant on the part of the Plaintiff to also prove that the party in whose name the property is purchased is aware of the fact and he is not the real owner at the time of purchase but the plaintiff is the real owner.-

E) A Co-owner cannot forcibly dispossess another co-owner who is in exclusive possession

F)That notwithstanding section 6 of the specific relief Act, there is no bar to sue based on title to recover possession

G) In the light of above said propositions on Considering the evidence adduced on record, item 1 to 3 were not found to be benami property and in item 1 plaintiff is held entitled to 2/3 share and was granted recovery of possession regarding 920 sq ft with liberty to defendant to work out remedy by taking legal course and was further held that the plaintiff is entitled to Declaration regarding 50% in item 2 and was held that the plaintiff is not entitled to any Declaration regarding item no 3.

MADRAS HIGH COURT – CRIMINAL CASES

2019(1)TLNJ 618 (Crl)

Androse @ Boopalan vs. State rep by Inspector of Police

Date of Judgment 25.04.2019

To attract section 376 IPC, victim must be stranger and if she is wife, she must be below 15 years of age

Appeal against conviction under section 376 IPC: P.W.2 /victim was 17 years old – eloped on their own, got married and living together peacefully – As per explanation 2 of Sec 375 sexual intercourse or acts by a man with his own wife not below fifteen years of age, is not rape. Therefore to attract section 376 IPC, victim must be either a stranger or if she is wife, then she must be below 15 years of age-Appeal allowed.

(2019) 2 MLJ (Crl) 668

Jayakumar v. State

Date of Judgment: 15.03.2019

Murder – Appeal against Conviction – Indian Penal Code (Code), Sections 302, 307 and 397 – Trial Court convicted and sentenced Appellant for offences under Sections 302, 307 and 397 of Code, hence this appeal – Whether, conviction of Appellant for murder is, justified – Held, recovery of wooden log used by Appellant for commission of offence and recovery of Cell phone highly doubtful – Doctor opined that injury on deceased would have caused on account of falling on rock / stone in drunken state – Doctor who conducted autopsy also opined that when person under influence of alcohol fallen down, may sustain such injury and it depends upon size of rock and denied suggestion that deceased died on account of falling under influence of alcohol – Prosecution failed to offer any plausible explanation through testimonies of witnesses and documents marked to infirmities – Grave doubt created as to genesis and origin of occurrence – Benefit of doubt shall ensue in favour of Appellant – Appellant acquitted of charges – Appeal allowed.

(2019) 2 MLJ (Crl) 663

K.Ravichandran v. M.Palanikumar and Others

Date of Judgment: 15.03.2019

Power of Judicial Magistrate – to add Additional Accused Cr.P.C, Section 319 – Indian Penal Code, Sections 405, 406 and 420 1st Respondent lodged complaint against Petitioner and FIR registered against Petitioner for offences under Sections 405, 506 and 420 of IPC – Judicial Magistrate allowed application filed by 1st Respondent under Section 319 of Cr.P.C. against Revision Petitioner, hence this revision – Whether, Judicial Magistrate exercised powers under Section 319 of Cr.P.C. in proper manner.

Held, Revision Petitioner not made as party respondent in specific case – Judicial Magistrate failed to issue notice to Revision Petitioner before deciding application filed under Section 319 of Cr.P.C. and as no opportunity of hearing given to him. There was violation of

principle of natural justice – Just because 1st Respondent had given complaint by naming petitioner, not necessary that Petitioner should stand trial – Magistrate failed to consider that whether any evidence available to prosecute person sought to be summoned as accused exist – Order of Magistrate set aside – Revision allowed.

2019 (1) LW (Crl) 947

K.V.Pownraj v. State

Date of Judgment: 08.04.2019

Criminal Procedure Code, Section 319 (4)

I.P.C., Section 120(b), 406, 420

Tamil Nadu Protection of Interests of Depositors Act, (1997) Section 5

Denova trial – when to be ordered

Petitioner filed Memo before the Court below requesting the court to examine all the witnesses on the side of the prosecution by virtue of the procedure contemplated under section 319 (4) Cr.P.C -The trial court rejected the memo and permitted the petitioner to call the witnesses required for cross examination only against which this petition is filed.

Held: Evidence must be recorded de-novo when a new accused is added. In this particular case already 227 witness had been examined. Considering that large number of witnesses are examined the court had directed the petitioner to submit a list of witnesses who have to be examined afresh accordingly a list was submitted by the petitioner. Accordingly the order of trial court is set aside and the trial court is directed to call upon the prosecution to examine the above said witnesses mentioned in the list afresh and to provide opportunity of cross examination by the petitioner side on the same day, the witnesses are produced.

2019 (1) LW (Crl) 805

M/s. BMD Hotels & Resorts Pvt. Ltd. Rep. By its Managing Director Nirmala Devi and others v. P.Murali

Date of Judgment: 12.04.2019

Criminal Procedure Code, Sections 362, 482, Recall, scope

Criminal Rules of Practice, Rule 254

Recall of Judgment – When to be made – scope

Held: Accused were not served notice through Court informing about pendency of appeals before this Court while passing the judgment .Requirement as envisaged u/s 385 and 386 Cr.P.C. have not been followed – Judgment is liable to be recalled. Registry is directed to assign number to the Criminal miscellaneous petition and to list the criminal appeal before appropriate court.

2019 (1) LW (Crl) 936

V.Nagarajan and others v. B.P.Thangaveni

Date of Judgment: 04.04.2019

Domestic Violence Act (2005), Sections 28, 32

Protection of Women from Domestic Violence Rules (2006), Rule 15(6)

Criminal Procedure Code, Section 468

Domestic violence – compensation claim against in laws – whether permissible

Held: Relief sought with regard to residential rights, compensation, etc., - can be claimed as against husband only – petitioners 2 to 4 are only in-laws of the respondent – There cannot be any act of any domestic violence – Respondent left the matrimonial home in 2014, complaint in 2017 – Respondent ought to have filed complaint within a period of one year from the date of the incident.

2019 (1) LW (Crl) 954

Murugan v. State of Tamil Nadu

Date of Judgment: 02.05.2018

I.P.C., Sections 34, 302, 306

Criminal trial/ Circumstantial evidence

Circumstantial evidence – motive – motive was proved through the evidence of PW1 to 3 that K had a grudge against the deceased because he was not agreeable to k's proposal to marry his daughter.

When Prosecution is able to bring out the circumstantial evidence constituting a chain of events against the accused, it is necessary for appellant to explain the circumstances appearing against him in proceedings under section 313.

In this case circumstantial evidence is sufficient to constitute a chain of events against the appellant and that lead to draw a strong conclusion against the accused and K for having committed murder of M – Both had a common intention to eliminate M – Held :Accused is guilty of commission of the offences notwithstanding the death of co-accused.

2019(2)TLNJ 599(Criminal)

Rajesh and another vs. The State rep. By Inspector of Police

Date of Judgment: 15.04.2019.

Rape on victim girl by accused – convicted and 10 years R.I. awarded – Appeal – More than one person involved in the occurrence – As per Section 376(2)(g)IPC maximum punishment is Life sentence – Made over the case to the Assistant Sessions Judge itself is not correct – Assistant Sessions Judge framed the charge under Section 376 IPC and tried the case – If gang rape was committed, the Mahila Sessions (Fast track) Court ought to have altered the charge under Section 376(2)(g) IPC – Criminal Appeal allowed – order of Mahila Sessions court set aside and remitted back to alter charge, if necessary.

2019(2)TLNJ 565 (Criminal)

Abudhageer vs. State, rep. By the Inspector of Police

Date of Judgment: 27.04.2019

Doctor stated that deceased was in fit state of mind while recording dying declaration – Deceased clearly stated that because of cruelty, instigation and abetment, she committed suicide – ingredients of both 498-A and 306 satisfied.

Murder by pouring kerosene by wife over herself and set fire – Offence – sentenced – Appeal by accused – The charge against the accused is one u/s.498-A IPC and 306 IPC, cannot be brushed away merely because the husband on seeing his wife burning tried to extinguish the fire – Accused was addicted to liquor and was also in financial difficulties – Dying declaration is admissible evidence since Doctor stated that deceased was in fit state of mind while recording dying declaration – Deceased clearly stated that because of cruelty, instigation and abetment, she committed suicide – Ingredients of Both 498-A and 306 satisfied – on considering the act of accused to extinguish the fire, and admitted deceased in hospital are mitigating factors to be considered – Appeal dismissed – Sentence modified.

2019(2)TLNJ 545 (Criminal)

Exelan Networking Technologies Pvt. Ltd and others vs. M/s.Cadensworth India Limited, merged with M/s. Redington India ltd.

Date of Judgment 25.04.2019

Dishonour of Cheque: Respondent company merged with another company and is dissolved .It was argued by the defence counsel that because of the dissolution , in the eye of law , the respondent company doesn't exist at time of initiation of proceedings and the Complaint is not maintainable – But the Hon'ble apex court has held that to initiate proceedings under Section 138 Negotiable Instruments Act the relationship between the drawer and the payee is irrelevant and the existence of mercantile relationship between the drawer and payee is not required to initiate the proceedings – petition dismissed.

2019(1) TLNJ 632 (Crl.)

C.Kumaravel vs. The DGP and others

Date of Judgment: 27.04.2019

Petition to direct police to register FIR and investigate – It is not an alternative remedy to Sec.156(3) Cr.P.C. but a repository of inherent power – No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C. – Eschewing Sec.156(3) Cr.P.C. is only on exceptional and rarest of rare cases – petition not maintainable – Dismissed with directions.

2019 (2) TLNJ 407

Rajeswari vs Kannan

Date of Judgment: 30.04.2019

Hindu Marriage Act, Section 28 - Divorce by wife on the grounds of cruelty and desertion – alleging that husband not employed, borrowed all over the village and refused to heed the requirements of the appellant and children – Petition dismissed.

In the appeal it's held that the denial of love and affection and parental care itself will amount to cruelty.

Respondent having denied the same to the petitioner, she had to live lonely and had grow the child in a fatherless atmosphere and thereby suffered mental agony and it will amount to cruelty - On these ground divorce granted and the - Appeal is allowed.

2019 (2) TLNJ 500

National Insurance Company Ltd., Thanjavur Vs. Rajalakshmi & Ors

Date of Judgment : 04.04.2019

Motor Vehicles Act, 1988, Section 173. Accident and death due to reverse driving without any signal tractor dashed against the two wheeler – Claim petition filed by the wife of deceased. PW4 the Pillion rider gave ExP1, the FIR – wherein he has categorically stated that the deceased while riding his Two Wheeler dashed against the Stationary tractor and trailer . But reversed his stand and has deposed in court that the tractor-trailer came in a reverse direction and dashed against the deceased. Referring to the decision of the Hon'ble Supreme Court Reported in 2008 (2) TN MAC 137. Held that when there is an inconsistency or contradiction between FIR and statement of witness on Oath the statement on oath alone should be given evidentiary value.

In the absence of evidence as to monthly income of the deceased driver the Tribunal awarded Rs.4,49,000/- as compensation holding that the monthly income of a drive would be RS 3000- But in Appeal The Hon'ble High Court referring to the Scale of income fixed by the Hon'ble Supreme Court in the cases reported in 2007(1)TN MAC 1 SC, 2014 (1) TNMAC 459 SC fixed the monthly income of the driver at Rs 5,500/Per Month and further referring to the decision of the Hon'ble Supreme court reported in (2013) 9 Supreme Court Cases 54 awarded future prospects at the rate of 50 % considering the age of the victim found in PM Report (39 years) and explaining the pain and sufferings that has to undergo by the widow aged 29 awarded further sum of Rs.2,00,000/- as Consortium and after considering the size of the family being more than 3 deducting 1/4th towards personal expense Quantum of compensation was Suo-motu enhanced to Rs.16,00,000/- and CMA & CMP are dismissed.
