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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS
CIVIL CASES

(2011) 5 MLJ 392 (SC)

Revanasiddappa and Anr
Vs
Mallikarjun and Ors

Hindu Marriage Act (25 of 1955), Section 16(3) – Legitimacy of children of void and Voidable marriages – Extent of property rights in coparcenary property – Suit for partition and separate possession – Claim for share in respect of ancestral property by first wife and children – Marriage of first defendant/husband to second wife during subsistence of first marriage – Children born out of void or voidable marriages, legitimate – Section 16(3) limits property rights of such children to property of their parents – Children born out of void or voidable marriages entitled to share in property of self acquired or ancestral property of their parents – Matter referred to Larger Bench.

Held: The legislature has used the word "property" in Section 16(3) and is silent on whether such property is meant to be ancestral or self-acquired. Section 16 contains an express mandate that such children are only entitled to the property of their parents, and not of any other relation.

RATIO DECIDENDI: The issue of entitlement of children born out of void or voidable marriages in coparcenary property is proposed to be referred to a Larger Bench for reconsideration.

(2011) 6 Supreme Court Cases 479

RUCHI MAJOO
Vs
SANJEEV MAJOO

Family and Personal Laws – Child custody – Territorial jurisdiction under S. 9, Guardians and Wards Act, 1890 – Ordinary residence of minor – Determination of – Unsubstantiated pleadings as to coercion and duress in obtaining father's consent for minor's stay at a particular place – Effect – Minor born of NRI parents, after returning with his mother to India from USA, ordinarily residing in Delhi with his mother and going to school there for past three years – Mother applying for minor's custody in Delhi District Court – Father disputing Delhi Court's jurisdiction on ground that his intention was not to allow his child to stay and study at Delhi and that consent for same was obtained from him under coercion and duress – But father categorically not wanting to prove said coercion and duress – To the contrary, plea of coercion and duress was completely disproved by e-mails exchanged between parties – On facts, held, District Court, Delhi had jurisdiction to entertain the application under Ss. 7, 8, 10 and 11 1890 Act – Unilateral reversal of a decision by one of the two parents could not change fact situation as to the minor being an ordinary resident of Delhi, when decision was taken jointly by both parents – Unsubstantiated ground of coercion and duress is not tenable more so because of the contrary evidence in e-mails – Such issues cannot be decided only on the basis of institution of abduction proceedings against the mother in a US Court – Guardians and Wards Act, 1890 – Ss. 7 to 11 – Constitution of India – Arts. 226 and 136 – Matrimonial and child custody disputes – Unsubstantiated pleadings – Inadmissibility – Conflict of Laws / Private International Law – Child custody.

Family and Personal Laws – Child custody – Territorial jurisdiction under S.9, Guardians and Wards Act, 1890 – Determination of – Test for, stated – Test for determining jurisdiction, held, is place of ordinary residence of the minor and intention to make that place one's ordinary abode – Guardians and Wards Act, 1890, S.9(1).

Family and Personal Laws – Guardians and Wards Act, 1890 – S.9(1) – Expression "where the minor ordinarily resides" – Interpretation of – Reiterated, word "resides" implies something more than a flying visit to, or casual stay at a particular place – The question whether one is ordinarily residing at a given place depends so

much on the intention to make that place one's ordinary abode – Words and Phrases – "Ordinarily resides", "ordinary residence", resides".

Conflict of Laws / Private International Law – Child custody – Repatriation of child on the principle of comity of courts – When not desirable – Paramountcy of welfare of minor – Father not seriously grudging mother getting custody of minor but wanting them to return to USA, and father having contracted a second marriage – On father's allegation, Court in USA framing charges of abduction against mother – District Court, Delhi granting custody of minor to mother – Child being happy with his studies and surroundings in Delhi where he had been living for three years – Child being unhappy with his father's attitude – Mother not wanting to go back to USA because of alleged past traumatic experience – Held, repatriation of minor to USA, on principle of "comity of courts" does not appear to be an acceptable option worthy of being exercised at this stage – Interest and welfare of the minor being paramount, a competent court in India is entitled and indeed duty-bound to examine the matter independently, taking the foreign judgment, if any, only as an input for its final adjudication – Respondent's case that the minor was removed from jurisdiction of American courts in contravention of order passed by them, is not factually correct – Order by American Court was passed after father had sent his child to Delhi – Guardians and Wards Act, 1890 – Ss. 7 to 11, 17 and 39 – Appointment and removal of guardian – Considerations.

Civil Procedure Code, 1908 – Ss. 13 and 14 – Conflict of jurisdiction of Indian courts with jurisdiction of foreign courts – Considerations involved in child custody matters.

Conflict of Laws / Private International Law – Child custody – Child having been removed from foreign country to India – Exercise of parents patriae jurisdiction – Approach and considerations, stated and explained - Guardians and Wards Act, 1890, Ss. 7 to 11, 17 and 39.

Conflict of Laws / Private International Law – Child custody – Foreign decrees and orders passed in the matte – Relevance and degree to which binding when child is removed to India – In such cases i.e. where child is removed to India, foreign decree and orders passed in the matter though, held, are relevant and must be considered, courts in India have to apply their independent mind – Child custody – Removal of child from one country to another – Law applicable – No universally accepted private international law in this regard – Effect.

Conflict of Laws / Private International Law – Child custody – Child having been removed from foreign country to India – Summary or elaborate enquiry to be made, held, depends upon facts and circumstances like time lag between removal of child to anther country and institution of proceedings, etc.

Family and Personal Laws – Child custody – Invocation of Jurisdiction – Writ jurisdiction vis-à-vis jurisdiction of court under S. 9, Guardian and Wards Act, distinguished – Writ jurisdiction, held, arises as soon as a child is within writ court's jurisdiction – But jurisdiction under S. 9 arises only if minor ordinarily resides within the court's jurisdiction – Constitution of India – Art. 226 – Guardians and Wards Act, 1890, S. 9.

Constitution of India – Art. 226 – Habeas corpus for child custody – Nature of proceedings warranted – Whether summary or elaborate enquiry – Considerations, stated.

2011(9) SCALE 567

Yograj Infrastructure Ltd
Vs
Ssang Yong Engineering and Construction Co. Ltd

ARBITRATION – ARBITRATION AND CONCILIATION ACT, 1996 – SECTION 9, 17, 37(2)(b) & 42 – SIAC RULES OF SINGAPORE – RULE 32 – Concept of 'proper law' of the Arbitration Agreement and the 'Curial Law' governing the conduct and procedure of the reference – Works contract – National Highways Authority of India awarded a contract to respondent, a company incorporated under the laws of the Republic of Korea – Respondent-company entered into a sub-contract with appellant-company incorporated under Indian law, for carrying out the work in question – Clauses 27 and 28 of the agreement provided for arbitration and the governing law agreed to was the Indian Arbitration Act of 1996 – Parties had willingly agreed to be governed by SIAC Rules of Singapore – Respondent-company issued a notice of termination of the Agreement on the ground of delay in performing the

work – Appellant filed an application u/s 9 of the Act praying for interim reliefs - Dispute between the parties was referred to arbitration and a sole arbitrator was appointed by the Singapore international Arbitration Centre – Arbitrator passed an interim order – Appeal filed u/s 37(2)(b) of the Act of 1996, for setting aside the interim order - District Judge dismissed the appeal as not maintainable since the seat of arbitration proceedings was in Singapore and the said proceedings were governed by the laws of Singapore – High Court dismissed the appeal – Whether impugned judgment is sustainable – Held, Yes – What would be the law on the basis whereof the arbitral proceedings were to be decided – Dismissing the appeal, Held,

2011 (4) CTC 585

T.G. Ashok Kumar
Vs
Govindammal & Anr

Transfer of Property Act, 1882 (4 of 1882), Section 52 – Doctrine of Lis Pendens – Principle explained.

Transfer of Property Act, 1882 (4 of 1882), Section 52 – Doctrine of Lis Pendens – Suit for declaration of title and injunction by pendent lite purchaser – Entitlement to decree – Suit for Partition filed by R1 against R2 in 1985 with relation to suit property pending on date of sale (11.4.1990) by R2 in favour of Appellant herein – Partition Suit filed not a collusive Suit – Held, sale by R2 though not void would not bind R1, who was Plaintiff in Partition Suit – However, sale in favour of Appellant subject to right declared or recognized in favour of R1 / Plaitniff under decree passed in pending Partition Suit – Sale pendent lite would be subject to decree in the Partition Suit – Major portion of suit property allotted to R1 in final decree of Partition Suit -However, remaining portion of suit property allotted to R2 – Held, sale by R2 in favour of Appellant would be effective and binding on R2 with respect to share allotted to R2 in suit property in final decree in Partition Suit – Thus, Appellant entitled to declaration of title and consequential injunction to that extent.

2011 (4) CTC 675

Hafeeza Bibi & Ors
Vs
Shaikh Farid (Dead) by LRs. & Ors

Mohammadan Law – Transfer of Property Act, 1882 (4 of 1882), Sections 123 & 129 – Registration Act, 1908 (16 of 1908), Sections 17(1)(a) & 49 – Gift – Whether written gift made by Mohammadan under Mohammadan Law mandatorily required to be registered or not – Validity of Gift – Essentials of valid Gift: (a) declaration of gift by donor (b) acceptance of gift by donee (c) delivery of possession – Rules of Mohammadan Law do not make writing essential to validity of gift, even oral gift fulfilling all three essentials make gift complete and irrevocable – Merely gift is reduced into writing, such writing does not become formal document or instrument of gift – Section 129 of T.P. Act preserves Rule of Mohammadan Law and excludes applicability of Section 123 of T.P. Act to gift of immovable property – It is not requirement that in all cases where Gift Deed is contemporaneous to making of gift then such deed must be registered under Registration Act, each case would depend on its own facts – Law laid in Nasib Ali v. Wajed Ali, AIR 1927 Cal. 197 and Md. Hesabuddin v. Md. Hesaruddin, AIR 1984 Gaut. 41 stands approved – Judgment rendered by Full Bench of AP High Court in Inspector General of Registration and Stamps, Govt. of Hyderabad v. Smt. Tayyaba Begum, AIR 1962 AP 199 stands disapproved.

(2011) 5 MLJ 900 (SC)

Parmeshwari
Vs
Amir Chand and Ors

Motor Vehicles Act (59 of 1988) – accident causing injuries – Award of Tribunal set aside by High Court – Appeal by claimant – Filing of complaint not disputed – Decision of Tribunal set aside by High Court on ground that

nobody came from office of SSP to prove complaint – Administrational lag in proceeding with complaint – Official procedures not within control of claimant - High Court not justified in disbelieving complaint and testimony of witness – Lack of sensitized approach by High Court to plight of victim – Strict principles of proof in criminal cases not applicable in road accident claims – High Court judgment set aside – Award of Tribunal upheld.

RATIONES DECIDENDI:

I. **A complaint made by a motor accident claimant cannot be disbelieved by the High Court on the ground that nobody came from office of SSP to prove that complaint, because the official procedures in matters of proceeding with the complaint is not within control of ordinary citizens and the High Court will not be justified in setting aside the award passed by the Motor Accident Claims Tribunal without appreciating plight of victim.**

II. **Strict principles of proof in criminal cases are not attracted in a road accident claim.**

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SUPREME COURT CITATIONS
CRIMINAL CASES

(2011) 3 MLJ (Crl) 368

Ramesh Babu and Ors
Vs
State, rep. by Inspector of Police, Ariyalur Police Station, Perambalur District

Indian Penal Code (45 of 1860), Sections 498- A and 304–B – Indian Evidence Act (1 of 1872), Section 32 – Death by stove bursting – Conviction and sentence – No offence proved against in-laws who stay at a different place – Dying declaration recorded by Magistrate – Record of statement by Police Constable, to be third statement – No certification by Doctor to show mental capacity of third Statement – Third statement not a dying declaration – No proof of demand of dowry or cruelty – Death due to accidental fire – Conviction set aside.

RATIO DECIDENDI: A third statement made by a dying person which is not certified by the Doctor to show the mental capacity of such person to give that statement cannot be a dying declaration and a conviction based on such dying declaration is unsustainable when already two statements have been recorded by the Doctor and the Magistrate.

2011 CIJ 395 CTJ(1)

Bhagwan Dass
Vs
State (NCT) of Delhi

Code of Criminal Procedure, 1973 (2 of 1974) - Sec.354 – Murder – Honour killing – Sentence – Death – Appellant had allegedly killed his daughter by strangulation because of her extra marital affairs with another male – Based upon circumstantial evidence, trial Court convicted him which was upheld by the High Court against which the appellant preferred SLP – While the appellant argued that the evidence of the witnesses were not believable and the charge against him was not proved, State contended that the chain of circumstances proved the charges – Held, the appellant was the lone person available in the house who could have committed the offence and had necessary motive – After the occurrence, without informing the police, he tried to perform last rites and has also given confession to the police which resulted in the recovery of incriminating material – Honour killing deserved death sentence as it was of rarest of the rare one – Conviction and sentence was confirmed and the appeal was dismissed.

Code of Criminal Procedure, 1973 (2 of 1974) –Sec.161, 162 – Criminal trial – Witness – Statement to police – Contradiction – Appreciation – Usage – When a prosecution witness turns hostile, his / her statement to the police could be used to contradict her.

Code of Criminal Procedure, 1973 (2 of 1974) – Sec.354 – Murder – Honour killing – Sentence – Death – Honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment.

Ratios:

a. **When a prosecution witness turns hostile, his /her statement to the police could be used to contradict her.**

b. **Honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment.**

2011 CIJ 442 CTJ (1)

SK. Yusuf
Vs
State of West Bengal

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 27, 114 – Criminal trial – Charge – Proof – Circumstantial evidence – Last seen theory – Abscondance – Extra judicial confession – Appellant was accused of murdering a girl and burying the body – Based upon his extra judicial confession, abscondance for few days after the occurrence and the fact that he was last seen in the place of occurrence, he was convicted by the trial Court which was confirmed in appeal against which he preferred SLP – While the appellant contended that his last seen in the place of occurrence and abscondance would not raise any presumption of guilt and the extra judicial confession could not be believed which was resisted by the respondent – Held, there was no evidence to the effect that the deceased was last seen with the accused immediately before her death – His mere availability in the place of occurrence at the probable time of occurrence would not raise any adverse presumption – Extra judicial confession was not corroborated and there were material contradictions – Mere abscodance could not be taken as any adverse factor against the appellant – As the chain of circumstantial evidence were not complete, appeal was allowed and the appellant was acquitted.

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 114 – Criminal trial – Charge – Proof – Circumstantial evidence – Last seen theory – Mere presence of the accused near the place of occurrence immediately before the time of occurrence would not raise any adverse presumption against him. But, his presence alongwith the victim in that place at that time would raise such presumption.

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 114 – Criminal trial – Charge – Proof – Extra judicial confession – Extra–judicial confession is a very weak type of evidence and requires appreciation with great caution – To base conviction, extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind and the words of the witness must be clear, unambiguous and clearly convey that accused is the perpetrator of the crime – The "extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility".

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 114 – Criminal trial – Charge – Proof –Circumstantial evidence – Abscondance – In case a person is absconding after commission of offence, such a circumstance alone may not be enough to draw an averse inference against him.

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 114 – Criminal trial-Charge – Proof – Appreciation of evidence – Circumstantial evidence – In case of criminal prosecution, the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case – To convict an accused based upon circumstantial evidence, thee must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Indian Evidence Act, 1872(1 of 1872) – Sec.3, 27, 114 – Criminal trial – Charge – Proof – Confession – Recovery – Weapon – Recovery of a weapon based on the statement of the accused would not raise any inference against the accused, if there is no evidence connecting the weapon with the crime alleged to have been committed by the accused.

Ratios:

a. **Mere presence of the accused near the place of occurrence immediately before the time of occurrence would not raise any adverse presumption against him. But, his presence along with the victim in that place at that time would raise such presumption.**

b. **Extra–judicial confession is a very weak type of evidence and requires appreciation with great caution.**

c. **To base conviction, extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind and the words of the witness must be clear, unambiguous and clearly convey that accused is the perpetrator of the crime.**

d. **The "extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility".**

e. **In case a person is absconding after commission of offence, such a circumstance alone may not be enough to draw an adverse inference against him.**

f. **In case of criminal prosecution, the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case.**

g. **To convict an accused based upon circumstantial evidence, there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.**

h. **Recovery of a weapon based on the statement of the accused would not raise any inference against the accused, if there is no evidence connecting the weapon with the crime alleged to have been committed by the accused.**

(2011) 6 Supreme Court Cases 450

STATE OF KERALA AND ANR
Vs
C.P. RAO

Prevention of Corruption Act, 1988 - Ss. 7, 13(2) and 13(1)(d) – Trap case for taking bribe – Standard of proof and corroboration – Reiterated, mere recovery of tainted money, divorced from circumstances under which it is paid, is not sufficient to convict accused – When there is no corroboration of testimony of complainant regarding demand of bribe by accused, it has to be accepted that complainant's version is not corroborated and, therefore, evidence of complainant cannot be relied on.

Prevention of Corruption Act, 1988 – Ss. 7, 13(12) and 13(1)(d) – Trap case for taking bribe for awarding pass marks in examination – Acquittal confirmed – Complainant not being available for examination during trial – PWs 1 and 2 giving evidence that accused shouted that complainant was thrusting money (alleged bribe) into his pocket – PWs 1 and 2 also giving evidence about previous animosity of college authorities and respondent–accused – Although undue favour for alleged bribe was for awarding pass marks, as per prevailing examination system respondent–accused alone (without the approval of others) could not have given such marks – Hence, respondent rightly acquitted by High Court.

Criminal Trial – Appeal against acquittal – Effect on presumption of innocence of accused – Reiterated, presumption of innocence of accused is strengthened by acquittal rendered by High Court.

2011 CIJ 452 CTJ (1)

A. Shankar
Vs
State of Karnataka

Code of Criminal Procedure, 1973(2 of 1974) – Sec.378 – Indian Evidence Act, 1872(1 of 1872) – Sec.3 – Criminal trial – Acquittal – Appeal – Appreciation of evidence – Omission – Contradiction – Appellant was accused of murdering a person with scissors and acquitted by the trial Court against which the State preferred appeal – High Court differed with the conclusion of the trial Court and convicted the appellant against which he preferred appeal – While the appellant contended that the High Court committed serious error in differing from the appreciation of evidence done by the trial Court, respondent resisted the same – Held, in case of appeal against acquittal, the High Court could reverse the acquittal only when the conclusion of the trial Court was perverse – As the reasoning given by the trial Court was well considered and the High Court had not given cogent reason for

differing with the conclusion of the trial Court, appeal was allowed, the judgment of conviction passed by the High Court was set aside and the appellant was acquitted.

Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Appreciation of evidence – Omission – Contradiction – In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence – In criminal trials, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety – In case of criminal trials, the trial court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence – In criminal trial, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier – In criminal trials, omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

Ratios:

a. **In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence.**

b. **In criminal trials, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.**

c. **In case of criminal trials, the trial court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.**

d. **In criminal trial, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier.**

e. **In criminal trials, omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.**

f. **In exceptional circumstances the appellate court under compelling circumstances could reverse the judgment of acquittal of the court below if the findings so recorded by the court below are found to be perverse, i.e., the conclusions of the court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case.**

2011 CIJ 478 CTJ (1)

Elavarasan
Vs
State Rep. by Inspector of Police

Indian Penal Code (45 of 1860) – Sec.84, 302 304 – Indian Evidence Act, 1872 (1 of 1872) – Sec.8, 105 – Criminal trial - Murder-Culpable homicide – Mens rea – Intention – Proof - Burden of proof – Insanity – Abscondance – Relevancy – Appellant, in a fit of anger, assaulted his wife with sharp edged weapon and when his mother intervened, he attacked his mother also – On hearing the noise, his child woke up and cried and the appellant assaulted her with blunt edged weapon – After the assault, the appellant bolted the lock from inside and on the next day, the police broke open the door, arrested the appellant from the house and found the daughter died and others injured – In the trial, the appellant raised the plea of insanity which was not accepted by the trial Court and convicted him for an offence under Sec.302 IPC and the appeal to the High Court was also dismissed – In the further appeal, the appellant raised the defence of insanity and contended that his availability in the place of occurrence after the occurrence and earlier treatment for mental illness proved the defence which was resisted by the State – Held, in all the crimes in which the intention was an essential element, the accused could escape from the punishment if he was able to prove insanity either from the evidence of the prosecution or defence witnesses –

Mere absence of fleeing from the scene of occurrence would not be a decisive factor to prove the insanity of the appellant – Medical treatment for mental illness would not be a defence unless such illness prevented the accused from deciding right or wrong – The conduct of the appellant showed that he was not having an intention to murder his daughter but had knowledge of the consequences of his act – Conviction was altered to Sec.304(2) IPC and the appeal was partly allowed.

Indian Penal Code (45 of 1860) – Sec.84, 302, 304 – Indian Evidence Act, 1872 (1 of 1872) – Sec.105 – Criminal trial – Murder - Culpable homicide – Intention - Burden of proof – Insanity – Abscondance – The burden of proving the commission of an offence is always on the prosecution and that the same never shifts – If intention is an essential ingredient of the offence alleged against the accused the prosecution must establish that ingredient also – Intention or the state of mind of a person is ordinarily inferred from the circumstances of the case – The burden of bringing his / her case under Section 84 of the IPC lies squarely upon the person claiming the benefit of that provision.

Indian Evidence Act, 1872 (1 of 1872) – Sec.105 – Criminal trial – Mensrea – Intention - Burden of proof - Defence – Presumption – In criminal trial, the Court shall presume the absence of circumstances which may bring the case of the accused within any of the general exceptions in the Indian Penal Code or within any special exception or provision contained in any part of the said Code or in law defining the offence.

Indian Evidence Act, 1872 (1 of 1872) – Sec.105 – Criminal trial – Exception – Proof - Burden of proof – Evidence - In criminal trial, it is open to an accused to rely upon the material brought on record by the prosecution to claim the benefit of the exception.

Indian Penal Code (45 of 1860) – Sec.84 - Indian Evidence Act, 1872 (1 of 1872) – Sec. – Criminal trial – Murder – Culpable homicide - Mens rea – Intention –Proof - Burden of proof-Insanity – In criminal trial, while determining whether the accused is entitled to the benefit of Section 84 I.P.C. the Court has to consider the circumstances that proceeded, attended or followed the crime and those circumstances must be established by credible evidence.

Indian Penal Code (45 of 1860) – Sec.84, 302, 304 – Indian Evidence Act, 1872 (1 of 1872) – Sec.8 - Criminal trial – Accused – Conduct – Abscondance – Relevancy – In criminal trial, the post event conduct of the accused is relevant to determine the culpability of the offender in the light of other evidence available on record – In criminal trial, the conduct of the accused in not fleeing from the scene of occurrence would not in itself show that the accused was insane at the time of the commission of the offence.

Ratios:

a. **The burden of proving the commission of an offence is always on the prosecution and that the same never shifts.**

b. **If intention is an essential ingredient of the offence alleged against the accused the prosecution must establish that ingredient also.**

c. **Intention or the state of mind of a person is ordinarily inferred from the circumstances of the case.**

d. **The burden of bringing his/her case under Section 84 of the IPC lies squarely upon the person claiming the benefit of that provision.**

e. **In criminal trial, the court shall presume the absence of circumstances which may bring the case of the accused within any of the general exceptions in the Indian Penal Code or within any special exception or provision contained in any part of the said Code or in law defining the offence.**

f. **In criminal trial, it is open to an accused to rely upon the material brought on record by the prosecution to claim the benefit of the exception.**

g. **In criminal trial, while determining whether the accused is entitled to the benefit of Section 84 I.P.C the Court has to consider the circumstances that proceeded, attended or followed the crime and those circumstances must be established by credible evidence.**

h. **In criminal trial, the post event conduct of the accused is relevant to determine the culpability of the offender in the light of other evidence available on record.**

i. **In criminal trial, the conduct of the accused in not fleeing from the scene of occurrence would not in itself show that the accused was insane at the time of the commission of the offence.**

2011 (6) SCALE 612

SUNIL RAI @ PAUA & ORS.
Vs
UNION TERRITORY, CHANDIGARH

CRIMINAL LAW – I.P.C. – SECTION 302/34 – Appeal against convictions – Circumstantial evidence - Three accused migrant workers, working as rickshaw pullers, were put on trial for murder of deceased – Prosecution case that deceased was last seen being chased by three appellants yelling at him and shouting that they would not spare him – Appellant 1 had his money and clothes stolen by someone breaking open the lock of the box under the passenger seat of his rickshaw – Suspecting deceased, appellant 1 caught hold of deceased by his neck and asked him to return his money and clothes otherwise he would kill him – Allegations that three accused went after him yelling and shouting – 12 hours later, at about 8.30 in the morning, body of deceased was found lying in a badly injured condition near the local bus stand – On the issue of last seen, prosecution examined PW.9, PW.14 and PW.15 – Vacillations in deposition of PW.9 – PW.14 and PW.15 declared hostile – Inherent improbability in alleged extra judicial confession made before President of Rickshaw Puller Union – Disclosure made by appellant 1 did not indicate the place where the assault took place – Trial Court convicted all three appellants – On appeal, High Court confirmed their convictions – Whether convictions of appellants were sustainable – Allowing the appeal, Held.

2011 (6) SCALE 658

ABHAY SINGH CHAUTALA
Vs
C.B.I

PREVENTION OF CORRUPTION – PREVENTION OF CORRUPTION ACT, 1988 – SECTION 13(1)(e), 13(2) & 19 – I.P.C. – SECTION 109 – Cr.P.C. – SECTION 482 – Sanction to prosecute – Necessity of – Public servant who has abused some other office than the one he is holding – Concept of 'doubt' or 'plurality of office' – If a person continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, there will be no question of sanction – Relevant time is the date on which cognizance is taken – If on that date, the accused is not a public servant, there will be no question of any sanction – Prosecution case alleging that both the accused while working as Members of Legislative Assembly, had accumulated wealth disproportionate to their known source of income – On investigation, it was found that in the check period of 7.6.2000 to 8.3.2005, appellant had amassed wealth worth ₹1,19,69,82,619/- which was 522.79% of appellant's known sources of income – During the check period, appellant was Member of Legislative Assembly – There was no sanction to prosecute u/s 19 of the Act against appellants – An objection regarding absence of sanction was raised before the Special Judge – Special Judge held that allegations in the charge sheet did not contain the allegation that appellants had abused their current office as member of Legislative Assembly and, therefore, no sanction was necessary – Appellants did not continue to hold the office that he had allegedly abused on the date of cognizance – Whether there was any necessity granting sanction to prosecute appellants – Dismissing the appeal, Held.

2011 (7) SCALE 710

SAYAJI HANMAT BANKAR
Vs
STATE OF MAHARASHTRA

CRIMINAL LAW – I.P.C. – SECTION 299, 300 EXCEPTION 4 & 304 PART–I – Killing wife by throwing kerosene lamp on her – Alteration of conviction from Section 302, IPC to Section 304 Part-I, IPC – Appellant accused came home under the influence of liquor and abused his wife – There was petty quarrel between appellant and the deceased and in that quarrel the appellant hit her left knee with a water pot made of brass and thereafter threw a burning kerosene lamp upon her – At that time, she was wearing nylon sari which immediately caught fire and she was engulfed by flames – Deceased was immediately taken to the hospital by her parents where her dying declaration was recorded – In her dying declaration while implicating her husband, it had also been mentioned that the accused also tried to douse the fire – It was established that he had received burn injuries to the extent of 18 % - Trial Court convicted appellant u/s 302, IPC – On appeal, High Court affirmed judgment and order passed by the trial Court – Whether the act on part of accused showed his intention to commit the murder or such bodily injury as was likely to result in her death – Held, No – Accused held liable to be convicted for offence u/s 304-I, IPC – Allowing the appeal in part, Held.

(2011) 7 Supreme Court Cases 776

Vishram Singh Raghubanshi
Vs
State of Uttar Pradesh

Contempt of Court – Nature and Scope – Contempt by advocates – Appellant contemnor, advocate of 30 years' standing using uttermost foul language and trying to overawe Judge physically to obtain favourable order – Also defying Judicial Officer concerned to make a reference of contempt to High Court – Acceptance of apology – Conditions for.

Held, apology cannot be accepted as a matter of course and court can reject same where it is found that words used were calculated and intended to cause insult, and where apology lacked penitence, regret or contrition – On facts held, apology tendered by appellant shows no repentance or remorse – Besides, apology was tendered belatedly, only under pressure, after framing of charges, and to escape punishment – Hence, such apology is unacceptable – Magistrate concerned directed to take appellant into custody forthwith to serve out his sentence of three months' SI – Words and Phrases – "Apology" – Contempt of Courts Act, 1971 – Ss. 10, 12 and 2(c) – Advocates – Bar Council of India Rules, S. 1, Ch. II (Pt. IV)

Contempt of Court – Criminal Contempt – General principles – Scandalise or lower authority of court – Defamation vis-à-vis contempt – Maintainability of contempt proceedings – Considerations – Seriousness of irresponsible acts of contemnor and degree of harm caused to administration of justice, held, determine whether matter should be tried as criminal contempt – Further held, court has to consider whether wrong was done to Judge personally or to public – Act will be an injury to public if it creates apprehension in minds of people regarding integrity, ability or fairness of Judge or deters litigants from placing complete reliance upon courts' administration of justice, or if it is likely to cause embarrassment to Judge himself in discharge of his duties – Contempt of Courts Act, 1971, Ss. 10, 2 (a) and 2 (c).

Contempt of Court – Nature and Scope – Power of superior court to punish for contempt of inferior/subordinate court – Exercise of contempt jurisdiction – Purpose of – Held, superior courts have duty to protect judicial officers of subordinate courts, taking note of growing tendency of maligning reputation of judicial officers by unscrupulous practicing advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose – Contempt of Courts Act, 1971, S. 10.

Advocates – Professional standards and ethies – Held, an advocate in a profession should be diligent and his conduct should conform to requirements to law by which an advocate plays a vital role in preservation of society and justice system – Any violation of professional ethics by an advocate is unfortunate and unacceptable – Dangerous trend of making false allegations against judicial officers and humiliating them should be curbed with heavy hands – In present case, contemnor advocate, of 30 yrs' standing sent to jail for 3 months' SI, for such conduct.

(2011) 5 MLJ 903 (SC)

Rangammal
Vs
Kuppuswami and Anr

Indian Evidence Act (1 of 1872), Section 101 – Burden of proof – Appeal against dismissal of second appeal – Execution of sale deed by de facto guardian on behalf of minor without permission of Court – Legality of - Filing of suit for partition by 1st respondent – Share of appellant included in schedule of partition suit – Appellant in physical and peaceful possession of property – Plaintiff / 1st respondent claiming disputed property by virtue of a sale deed allegedly executed by appellant who was minor at time of execution of deed - Plaintiff / 1st respondent failed to prove any legal necessity of minor for execution of sale deed without permission of Court – Appellant not liable to discharge burden to disprove sale deed, when 1st respondent failed to discharge his burden of genuineness of sale deed – Suit of partition collusive in nature – Appellant entitled to extent of share in schedule to suit property – Appeal allowed.

RATIONES DECIDENDI:

I. **Burden of proving existence of any fact always lies on that person who asserts that such facts exist in view of Section 101 of the Indian Evidence Act.**

II. **A plaintiff in a suit for partition in entitled to include only those properties for partition to which family has clear title and unambiguously belong to members of joint family which is sought to be partitioned and if someone else's property is included in schedule of suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial Court, the initial burden of proof will be on the plaintiff to establish that disputed property belongs to the joint family which is to be partitioned.**

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HIGH COURT CITATIONS
CIVIL CASES

(2011) 5 MLJ 285

Melchizedec
Vs
Johnson Appadurai and Ors

Code of Civil Procedure (5 of 1908), Section 152 – Amendment of judgment and decree – Error in respect to nature of disposal of appeal – Conclusion of judgment wrongly indicated as "dismissed" instead of "allowed" – Ultimate indication not in accordance with finding – Technicality not to come in way of correction of bona fide mistakes committed by Courts – Court not concerned about correctness of procedure adopted by party to correct mistake – Review petition not liable to be filed by petitioner for correction of mistakes – Mistake of final indication in appeal liable to be corrected.

RATIONES DECIDENDI:

I. **Correction of mistakes committed by the Court cannot be equated to review of the order as provided under Order 47 Rule 1 of the Code of Civil Procedure and the power of review must be conferred expressly and re-hearing of the matter cannot be permitted under guise of the review.**

II. **Courts are not concerned about the nature of proceedings initiated by a party to correct the errors committed by the Courts and the party is not liable to file a review petition for correction of such mistakes.**

(2011) 5 MLJ 303

Srinivasan and Anr
Vs
O.G. Janarthanan and Ors

Suit for partition – Parties seeking partition without arraying all relevant parties – No question of sharing a particular property would arise – Suit, bad for non-joinder of necessary parties.

RATIO DECIDENDI: Unless all the relevant parties are arrayed in a particular suit for partition, the question of sharing a particular property would not arise.

(2011) 6 MLJ 364

V. Damodaran (died) and Ors
Vs
Thulasirama Reddy and Ors

Code of Civil Procedure (5 of 1908), Order 22 Rule 10 – Transfer of Property Act (4 of 1882), Section 52 – Rights of transferee pendent lite – Second Appeal – Suit for declaration of title of property and permanent injunction – Suit decreed – Concurrent findings – Appellants/defendants are purchasers pendent lite impleaded in suit by plaintiffs themselves – Denial of opportunity to appellants to contest matter by adducing evidence due to filing of I.A. by plaintiff to prevent appellants from cross–examination of plaintiffs witness – Purchasers pendente lite prevented by lower Courts from cross-examining plaintiffs witness adduce rebuttal evidence – Prevention of appellants from contesting matter on merits by lower Courts, not justified – Pendente lite purchaser entitled to get

impleaded in suit and contest matter on merits – Second appeal allowed – Matter remitted back to first appellate Court to give opportunity to appellants to cross-examine and adduce evidence.

RATIO DECIDENDI:

Purchasers pendente lite is entitled to get impleaded in a suit in which he is having substantial interest and contest matter on merits by cross examining plaintiffs witness and adducing rebuttal evidence.

2011 CIJ 421 ALJ

Rajaganapathy Ganesan
Vs
Union of India & Anr

Income Tax Act, 1961 (43 of 1961), Sec. 293 – Indian Evidence Act, 1872 (1 of 1872) – Sec.90, 101 – Benami Transactions (Prohibition) Act, 1988 (45 of 1988) – Sec.3 – Code of Civil Procedure, 1908 (5 of 1908) – Sec.9 – Income tax – Arrears – Recovery – Property - Attachment – Third party –Suit - Maintainability – Benami - Burden of proof - For the income tax due from the father of the appellant, the property of his mother was attached which was challenged by the appellant – Appellant contended that for the dues of his father, the property of his mother could not be attached and sought for a decree of injunction to restrain the respondents from proceeding with sale – Respondents contended that the mother was a benami to the father and in view of the bar under Sec.293 of the Income Tax Act, Civil Court was not having jurisdiction to challenge the action of the authorities under the Act – While the trial Court accepted the stand of the plaintiff/appellant, the appellate Court reversed it by holding that suit against the action of the income tax authorities was barred against which the appellant preferred appeal – Parties stood by their stands – Held, suit asserting the claim of title by the third parties when the income tax authorities proceed against their properties or the due of another was maintainable in the Civil Court – When the authorities proceeded against the property standing in the name of a person by holding that the holder was a benami of the defaulter, the burden of proof of such benami nature was on the department – As the department had failed to let in any evidence to prove the nature of benami, it had failed to prove its defence – Appeal was allowed and the suit filed was decreed.

Income Tax Act, 1961 (43 of 1961) – Sec.293 – Code of Civil Procedure, 1908 (5 of 1908) – Sec. 9 – Income tax – Arrears – Recovery – Property – Attachment – Third party – Suit – Maintainability - Civil suit by a third party to the income tax due against the authorities under the Income Tax Act is maintainable when they proceed against the property of such third party for the dues under the Act.

Benami Transactions (Prohibition) Act, 1988 (45 of 1988) – Sec.3 – Benami - Burden of proof – Burden of proof of benami holding is on the person who asserts such benami nature of a property.

Ratios:

a. **Civil suit by a third party to the income tax due against the authorities under the Income Tax Act is maintainable when they proceed against the property of such third party for the dues under the Act.**

b. **Burden of proof of benami holding is on the person who asserts such benami nature of a property.**

(2011) 6 MLJ 475

Dorothy Thomas
Vs
Rex Arul

Code of Civil Procedure (5 of 1908), Sections 2(6), 13 and 14 – Conclusiveness of foreign judgment – Custody of minor child – Suit for declaration and permanent injunction – Final order passed by American Court challenged by applicant/wife - Grant of decree of divorce by U.S. Court and grant of permanent custody of minor to respondent/husband – Verdict of American Court on basis of oral and documentary evidence let in by husband – Failure of applicant to reply to counter claim and non-appearance before Court twice despite invoking jurisdiction

of Court herself – Decision of Court not merely based on account of absence of applicant – Applicant/wife cannot allege lack of opportunity of hearing when she failed to avail such opportunity – Held, case not falling under Section 13(b) and (d) – Divorce proceedings initiated by wife merely on reason that she grew out of marriage – Applicant/wife not willing to sacrifice her career prospects in India whereas defendant ready to make any kind of sacrifice for interest and welfare of child – Defendant proved to be a good father – Interest and welfare of child requires the return of child to U.S at request made by father – Prayer for interim injunction of applicant/wife rejected – Wife directed to seek variation/modification of final order before the American Court whose jurisdication she invoked.

RATIONES DECIDENDI:

I. **A foreign judgment on custody of minor child cannot be recognized in India as per Section 13(b) of the Code of Civil Procedure unless it is rendered on merits of the case.**

II. **A person who fails to avail opportunity of hearing provided in the proceedings of the foreign Court cannot contend violation of principles of natural justice and any attack to such foreign judgment under Section 13(d) of the Code of Civil Procedure is not sustainable.**

2011 (4) CTC 541

Thalappakatti Naidu Ananda Vilas Biriyani Hotel, represented by its Partner, N. Dhanabalan, No.15, East Car Street, Dindigul
Vs
Thalapakattu Biriyani and Fast Food, temporarily called as "Chennai Rawther Thalapakattu Biriyani", represented by its Partner No.32, Jawaharlal Nehru Road, Koyambedu Round Tana, Chennai - 107

Trade Marks Act, 1999 (47 of 1999) – Infringement – Passing off – Plaintiff originally filed Suit in year 2007 for passing off against Defendant claiming that Plaintiff is prior user of trade mark "THALAPPAKATTI" – Learned Single Judge granted interim injunction in favour of Plaintiff in passing off Suit – Defendant filed OSA challenging order of learned Single Judge granting interim injunction – Pending Appeal parties entered into an interim arrangement and interim order was passed by Division Bench recording said arrangement – Plaintiff filed Miscellaneous Applications in OSA seeking modification of interim arrangement orders passed by Division Bench on ground that Defendant had breached terms of settlement - Subsequently Plaintiff was allowed to withdraw Miscellaneous Applications with liberty to file appropriate Application in Suit itself – Plaintiff subsequently obtained registered trade mark "Thalappakatti" in year 2010 and Defendant's Application seeking registration of similar mark was rejected by Deputy Registrar of Trade Mark – Plaintiff filed new Suit for infringement on basis of obtaining registration of trade mark – Maintainability of Suit – Contention of Defendant that neither fresh Applications in previous Suit nor fresh Suit, are maintainable in law – Held, cause of action for First Suit is passing off, cause of action for Second Suit is infringement – Action for passing off is common law remedy, action for infringement is statutory remedy – Registration of trade mark gives to registered proprietor, exclusive right to use of trade mark and to obtain relief in respect of infringement – Hence, fresh Suit filed by Plaintiff for infringement and Applications filed in previous Suit are maintainable.

Trade Marks Act, 1999 (47 of 1999) – Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2 – Infringement – Passing off – Plaintiff earlier filed Suit for passing off and infringement in year 2007 on basis of pendency of Application for registration of trade mark – Plaintiff subsequently filed Suit for infringement on basis of registration of plaintiff's trade mark namely "THALAPPAKATTI" – Contention of Defendant that fresh Suit is barred under Order 2, Rule 2 of C.P.C., since plaintiff's First Suit was filed for both infringement and passing off, on basis that Application for registration of trade mark was pending, hence Second Suit is also based upon same cause of action – Defendant further contended that registration of trade mark relates back to date of filling of First Suit, hence subsequent registration would relate back to date of filing of Application, thereby curing defect in original institution of Suit as one for infringement – Held, Cause of action is bundle of facts and not mixture of facts and fiction – Deeming fiction cannot be elevated to level of fact, so as to make it cause of action – Cause of action for Suit for infringement should comprise of minimum two facts: (a) registration of trade mark (b) some action of Defendant amounting to infringement – Object of Order 2, Rule 2 is two fold (a) to ensure that no Defendant is sued

and vexed twice in regard to same cause of action (b) to prevent Plaintiff from splitting of claims and remedies based on same cause of action – Order 2, Rule 2 does not bar Second Suit based on different and distinct cause of action – Subsequent Suit is not barred by principles underlying Order 2, Rule 2.

Interpretation of Statues – Deeming Fiction – Nature and scope – Applicability of deeming provision – Deeming fiction can put something back in point of time for various purposes – Cause of action cannot be created through deeming fiction – "Fiction" is antithesis to "action" and cause of action cannot be converted into fiction.

Legal Maxims – Relatio est fictio juris, etintenta ad unum – Meaning – Relation is fiction of law and intended for one thing – What is intended for one thing cannot be applied for every thing.

(2011) 6 MLJ 544

Lakshmanan and Ors
Vs
G. Ayyasamy

Indian Easements Act (5 of 1882), Section 4 – Code of Civil Procedure (5 of 1908), Order 41, Rule 33 – Defendants' roof projecting over suit property - Defendants claiming easementary right – Held, owner of property entitled to exercise his right up to the sky, a serial projection not permissible – Defendants to remove eaves of roof projecting over suit property and to make arrangements to stop rainwater from failing thereon.

Law of Easements – Defendants claiming easementary right of ingress into and egress from suit property to whitewash, repair and maintain their western wall – Defendants, held, cannot maintain their western wall without going into suit property – Defendants hence have said easementary right over suit property.

Indian Easements Act (5 of 1882), Section 15 – Acquisition by prescription – Applicability – Windows on the western wall – Plaintiff's prayer for removal of same – No prayer from defendants for retaining said windows – Said windows in existence for only 4 years, Section 15, Act of 1882 not applicable – Plaintiff entitled to removal of said windows.

RATIONES DECIDENDI:

I. **The owner of the property is entitled to have his right exercised up to the sky and in such a case, aerial projection cannot be permitted.**

II. **When the plaintiff is the owner of the suit property over which the defendants claim easementary right, the first appellate Court was wrong in holding that the defendants could have the eaves of their roof projecting over the suit property of the plaintiff.**

III. **By virtue of Order 41, Rule 33 Code of Civil Procedure, 1908, the High Court has the power to rectify the error of law committed by the Courts below:**

IV. **Since the defendants cannot effect whitewashing or repairing of their western wall, without going into the suit property, the defendants shall have the easementary right of ingress into and egress from the suit property of the plaintiffs.**

V. **The owner of a house has the necessary easementary right to go into the neighbour's land for repairing and whitewashing his outer wall.**

LEGAL MAXIMS:

1. **Cujus Est Solum Ejus Est Usque ad coelum' – The owner who owns the soil owns up to the sky.**
2. **'Superficies solo cedit' – The surface goes with the land.**
3. **'Sic utere Tuo ut alienum non laedas' – Use your property so as not to damage anothers.**

(2011) 5 MLJ 566

Govindammal
Vs
Murugesan and Anr

Injunction – Second Appeal – Suit for permanent injunction – Suit bad for want of prayer for declaration of title – Courts below wrongly proceeded on ground as though plaintiff who is allegedly in possession and having patta in his favour is entitled to permanent injunction – Injunction suit per se cannot be converted into suit for declaration or in alternative for partition etc. – Bare suit for injunction ex facie and prima facie, untenable – Second appeal allowed.

RATIO DECIDENDI: An injunction suit per se cannot be converted into a suit for declaration or in the alternative for partition etc. If law enables the plaintiff to initiate any fresh proceedings, it is open for him to do so and it is for the defendants to resist the same as per law.

2011 (4) CTC 593

P. Dhanakoti
s
Devikarani @ Devaki and Ors

Indian Succession Act, 1925 (39 of 1925) – Will – Probate – Jurisdiction of Probate Court to make enquiry about title of property covered under Will – Probate Court declined to grant probate in respect of one item of property mentioned in Will, holding that Testator had no title over property – Validity – It is not duty of Probate Court to consider any issue as to title of Testator to property – In proceeding upon Application for probate of Will, Court is called upon to determine whether Will is true or not, it is not province of Court to determine any question of title reference to property covered by Will.

Jurisprudence – Judgments in rem – Judgments in personam – Grant of Probate – Grant of Probate by competent jurisdiction is nature of proceeding in rem – It binds not only upon all parties made before Court but also upon all other persons in all proceedings arising out of Will or claims under or connected therewith – Probate granted by Competent Court is conclusive of validity of Will until it is revoked and no evidence can be admitted to impeach it except in proceeding taken for revoking Probate.

(2011) 5 MLJ 625

N. Ravindran
Vs
V. Ramachandran

Code of Civil Procedure (5 of 1908), Order 7, Rule 11 (d) and Order 2, Rule 2 – Suit for specific performance, damages, future damages and also for permanent injunction against defendants filed in 2006 – Plaint discloses cause of action arose in November, 2002 – Plaintiff already in year 2002 filed suit for permanent injunction – Suit barred by limitation and barred under Order 2, Rule 2 Code of Civil Procedure.

RATIONES DECIDENDI:

I. **To declare that the suit is barred by any law, the Court can decide the same, by looking at the averments contained in the plaint itself.**

II. **When the plaintiff has intentionally omitted to claim the relief of specific performance in the earlier suit, he will not be subsequently entitled to sue in respect of the portion of his claim –right of specific performance which omitted.**

2011 - 3 –TLNJ 637(Civil)

Mohammed Abdur Raheem, aged 54 years, S/o. Sokku, 724,
Rethinasamy Nagar, 6th Street, Nanjikottai Road, Thanjavur, Thanjavur District
Vs
State Bank of India, Rep. by its Chief General Manager, Rajaji Salai, Chennai 1 and Anr

Constitution of India 1950, Article 226 – Petitioner convicted in a criminal Case – Acquittal ordered – Request of reinstatement partly accepted – Back wages denied – writ petition in High Court – Held – Denial of back wages can only be in case, some fault can be with the employee in not performing his duties – In spite of the suspension of sentence, the respondents did not allow the petitioner to work – if the employee is not permitted to perform his duties, and subsequently action of the Management is held to be bad, the denial of back wages will amount to punishment for no fault of him, which cannot be sustained in law – Writ petition allowed.

2011 - 3 – L.W. 641

M. Gangabai
Vs
The Principal Chief Post Master General, Tamil Nadu Circle, Chennai – 600 002. & Ors

Hindu Marriage Act / Proof of marriage, Challenge by mother (plaintiff) to the validity of the marriage of her deceased son, with 4th defendant, "Nomination Form" to be given while in service, by an employee for payment of Terminal benefits, failure to furnish, Effect of,

Evidence Act, Section 112 / Birth during marriage, conclusive of proof of legitimacy, Section 114 / Illustration (e) / Presumption, Scope,

C.P.C., Section 100 / Second Appeal, Interference by High Court when justified.

Suit out of which Second Appeal arose was filed by appellant for declaration that the plaintiff is entitled to the terminal benefits (Postal Services) of her son AMN as L.R., and for a consequential permanent injunction against the defendants 1 to 3 (Postal Authorities) from settling the terminal benefits / death benefits of her deceased son (AMN) to the 4th defendant (wife of AMN) who has no right whatsoever to claim the same as she is not the legally wedded wife of late A.M.N.

Suit was dismissed by trial court and it was upheld in appeal – Held: dismissing the Second Appeal, it is clear that the deceased AMN and the 4th defendant lived as husband and wife and they gave birth to two children as evidenced by Ex.B2 the marriage certificate and Exs.B3 and B4, the birth certificates of the children, and over and above Ex.B6, the identity card issued by the Ministry of Health, Central Government Health Scheme, Madras would demonstrate that the Central Government, viz., the postal department recognized the deceased AMN and D4 as husband and wife and they also recognized their two children as the children born to them.

We come across day in and day out that most of the Government servants are not adhering to the rule relating to furnishing of the nominations – Court can take judicial notice of such facts – Simply because nomination form was not filled up and furnished by the deceased to his employer that it does not mean that the case of D4 has to be belittled or slighted or discarded.

Court should be in favour of upholding the marriage rather than picking holes in the evidence relating to the proving of the marriage and label or dub the lady as an illegitimate wife and also the children as illegitimate children unless there is any clinching evidence to that effect – Second Appeal dismissed.

(2011) 6 MLJ 642

Vijayalakshmi and Anr
Vs
Pushparani and Ors

Tamil Nadu Slum Areas (Improvement and Clearance) Act (11 of 1971) – Code of Civil Procedure (5 of 1908) – Suit for partition – Deceased ancestor of parties applied for allotment of suit property – Slum Clearance Board not yet conferred title or ownership, matter still pending – Entitlement of legal heirs to seek partition of suit property – Held, ancestor's right, not ownership right but possessory right – Said possessing right devolved upon ancestor's two daughters who entitled to half share each in possessing right over suit property.

Tamil Nadu Slum Areas (Improvement and Clearance) Act (11 of 1971), Section 29 – Proceedings to evict occupants – Can be instituted or a decree/order executed only with the permission in writing, of the prescribed authority.

RATIONES DECIDENDI:

I. **Even possessory right or leasehold right over immovable property can be the subject matter of partition.**

II. **As per Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, proceedings for eviction of occupants cannot be instituted or any decree or order executed for eviction of occupants, without obtaining permission there-for from the prescribed authority.**

2011 - 3 –TLNJ 671(Civil)

K. Santhanalakshmi
Vs
Saravanan and Ors

Civil Procedure Code 1908 as amended, Order 7, Rule 11 – Suit for declaration – Exparte injunction ordered – Revision against exparte injunction under Article 227 of Constitution of India filed in High Court – High Court found that in the earlier proceedings exparte decree of declaration was obtained perfecting the sale of interests of minors – Such exparte decree operates as resjudicata for the present suit – held cannot be re-agitated – held plaint is liable to be struck off – Civil Revision petition allowed.

Civil Procedure Code 1908 as amended, Section 11 – See Civil Procedure Code 1908 as amended, Order 7, Rule 11.

2011 (4) CTC 720

Veluran @ Muthusamy Gounder (deceased) and Ors
Vs
Perumal Gounder

Limitation Act, 1963 (25 of 1963), Section 27 & Article 134 – Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 95 – Extinguishment of Right to Property – Defendant purchased suit property that belonged to Plaintiff in Court auction – Plaintiff filed Suit for declaration and permanent injunction on ground that Defendant after purchase of property in Court auction had not filed any Application for delivery of possession under Order 21, Rule 95 within period of one year from date of confirmation of sale – Whether failure to obtain delivery of possession after purchase of property in Court auction within one year from date of sale would amount to extinguishment of right over property – Whether it is necessary for auction purchaser to apply to Court under Order 21, Rule 95 for getting possession of properties purchased by him in Court auction – Held, case of Defendant that he took possession of property and property was lying vacant – Non–filing of Application cannot be put against Defendant

– Section 27 of Limitation Act cannot be made applicable to an Application under Order 21, Rule 95 – Filing of Application claiming possession of property purchased in Court auction cannot be equated to Suit for possession.

2011 - 3 – L.W. 738

K.K. Velusamy
Vs
N. Palanisamy

C.P.C., Order 18, Rules 17, 17 – A (before deletion), Section 151 / Inherent Powers, Scope and exercise of, Recalling of Witness, Application for, Scope,

Evidence Act (1872), Sections 3, 8 / Evidence of conversation recorded in (CD) Compact Disk containing electronic record of a conversation,

Information Technology Act (2000), Section 2(t), definition of "electronic record". Order 18 Rule 17 is a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court can put questions and elicit answers – There is no specific provision in the Code enabling the parties to re–open the evidence for further examination–in– chief or cross–examination – Section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses – Summary of the scope of decisions for invoking Section 151: See Para 10(a) to (f).

If there is a time gap between the completion of evidence and hearing of the arguments, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, the court may under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

In this case, the applications were made before the conclusion of the arguments – Neither the trial court nor the High Court considered the question whether it was a fit case for exercise of discretion under section 151 or Order 18 Rule 17 of the Code.

Held: The amended definition of "evidence" in section 3 of the Evidence Act, 1872 read with the definition of "electronic record" in section 2(t) of the Information Technology Act 2000, includes a compact disc containing and electronic record of a conversation. Section 8 of Evidence Act provides that the conduct of any party, or of any agent to any party, to any suit, in reference to such suit, or in reference to any fact in issue therein or relevant thereto, is relevant, if such conduct influences or is influenced by the fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who as already been examined. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination–in–chief or cross–examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

There is no specific provision in the Code enabling the parties to re-open the evidence for the purpose of further examination –in –Chief or cross–examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross–examination, for purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to

re-open the evidence and / or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

2011 - 3 – L.W. 748

Sanjaykumar Chordia and Anr
Vs
Mahaveer & Company HUF by its Kartha Mahaveerchand Bagmar and Anr

Tamil Nadu Buildings (Lease and Rent Control) Act, Exemption of new buildings from the purview of its operation for a period of five years, Scope,

(Indian) Evidence Act, Section 73, Power of Court to direct the party concerned to sign before it the sample signatures and send them for verification with the disputed signature,

C.P.C., Order 41, Rule 31 / Question considered in the Second Appeal was whether the lower appellate Court was right in holding that the appellants herein cannot challenge the finding on the maintainability of the suit without filing a cross-objection.

Maxims: Affirmatis est probare – He who affirms must prove;

Affirmanti, non neganti incumbit probatio – The burden of proof lies upon him who affirms, not upon one who denies.

Once the Rent Controller and the appellate authority give a finding that a particular building is exempt from the purview of the Act, because it happened to be a new building, then it cannot be challenged in the civil Court – If an authority under the special enactments holds that a particular case does not fall within its purview, then it would not open for the civil Court to hold to the contrary that the statutory authority is having jurisdiction over that matter – As such, if viewed, it is clear that the contention of the defendants herein that only the Rent Controller has got jurisdiction in this case relating to eviction, is a mis-conceived one.

Defendants filed no Cross- appeal or Cross objection before the first appellate Court when the plaintiffs' appeal was pending before it – Defendants now in this Second Appeal cannot agitate over the finding of both the Courts below that the suit property herein was exempt from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act.

Contention on the side of the appellants / defendants that the building concerned was not a new building and that it attracted only the Tamil Nadu Buildings (Lease and Rent Control) Act, is not at all legally tenable.

It is the duty of an expert to get himself satisfied as to whether the sample signatures are reliable signatures – If sample signatures are fraught with falsity, such as artificiality and various other disturbing characteristics, then the expert would not be justified in placing reliance on the same – Here, the handwriting expert carried out his task properly and got satisfied about the reliability of the sample signatures.

Expert should be cross –examined by inviting his attention to the specific characteristics, which he relied upon, and he should be contradicted with reference to the well known treatise on the subject – Objection was not filed to expert's opinion by the defendants.

This case is a typical example as to how the cross–examination of a handwriting expert should not be done in that manner – Second Appeal party allowed.

Held: General principle is that normally contemporaneous signature or ante litam motem signature should be taken as sample signature and if such signatures are not available, then the Court can direct the party concerned to sign before it the sample signatures and send them for verification with the disputed signature. **Admittedly and indisputably, in this case, the ante litam motem signatures in the form of admitted receipts were available before the trial Court,** and it seems, both sides did not help the appellate Court in sending those ante litam motem signatures to the handwriting expert. **Now**

the core question arises as to whether on that ground the report of the handwriting expert-Ex.C1 should be discarded or rejected.

(2011) 5 MLJ 769

Dharanibai @ Prema
Vs
Tharangaraman and Anr

Code of Civil Procedure (5 of 1908), Section 100 – Second Appeal – Suit for partition and allotment of share – Dismissal of suit – Concurrent findings – 1st defendant claims full ownership over suit property as per release deed signed by plaintiff and Will of his mother – Plaintiff who is sister of defendants, challenges validity of release deed – Allegation of fraud – Document liable to be treated as voidable only when it is proved by party who makes allegation of fraud – Release deed cannot be set aside on ground of fraud or misrepresentation in absence of specific prayer in plaint – Release deed, held valid – Will not probated and produced by 1st defendant before Court to prove it – 1st defendant not entitled to claim absolute ownership of suit property – Plaintiff entitled to 1/6 share of property – Second appeal allowed.

Indian Evidence Act (1 of 1872), Sections 68 and 69 – Will liable to be probated and produced before court to prove it as per Sections 68 and 69 – 1st defendant cannot claim absolute ownership of property by Will unless it is probated and produced before Court to prove it in accordance with Sections 68 and 69.

RATIONES DECIDENDI:

I. **Unless there is a specific prayer in plaint to get a release deed set aside on ground of fraud, misrepresentation etc., such release deed has to be construed as a valid document.**

II. **A party cannot claim absolute ownership of suit property by way of Will unless it is probated and produced before Court to prove it in accordance with Sections 68 and 69 of the Indian Evidence Act.**

2011 - 3 – L.W. 774

N. Govindarajan
Vs
N. Leelavathy & Ors
With
N. Govindarajan
Vs
N. Leelavathy & Anr

Will / Genuineness, Attestation, Proof of Execution, Suspicious Circumstances,

(Indian) Succession Act, Section 63 / Mode and manner in which proof and execution of a document, required by law is to be attested,

(Indian) Evidence Act, Section 68 / Proof of a Will.

Attestation of the Will is not an empty for mality – It means signing a document for the purpose of testifying of the signatures of the executants – The attesting witness should put his signature on the Will animo attestandi – In the present case, no such evidence of animo attestandi is forthcoming. In his cross examination, PW2 has stated that " …. he did not know that he was signing in the Will at all and only through Plaintiff, he came to know that he has signed in the Will" – Evidence of PW2 is not sufficient to satisfy the requirement of the provisions of Sec.63(c) of Indian Succession Act.

Conscience of the Court has to be satisfied by the propounder of the Will by adducing evidence so as to dispel any suspicion or unnatural circumstances attaching to the Will – Law is well settled that if there are suspicious circumstances surrounding the Will, it is the duty of the person who propounds the Will to dispel such suspicious circumstance.

It is not possible to accept the contention that even before performance of marriage, the testator would have chosen to mention the name of his daughter as "R. VIJAYALAKSHMI" - Learned Judge held that inaccurate recitals contained in Ex.P1 – Will is a suspicious circumstance – Mentioning the name of "VIJAYALAKSHMI" as "R. VIJAYALAKSHMI" is a pointer of fabrication of the Will subsequently.

Unnatural disposition excluding the wife and daughters is yet another suspicious circumstance.

Suspicious circumstances are so glaring and obvious throwing serious doubts about the genuineness of Ex.P1–Will – On finding that the suspicious circumstances are not dispelled by the Plaintiff, the learned Judge rightly refused to grant the probate – As such we do not find any error warranting interference with the findings of the learned Judge declining to grant probate.

(2011) 6 MLJ 843

Bharathi
Vs
Palaniammal and Ors

Code of Civil Procedure (5 of 1908), Section 100 – Transfer of Property Act (4 of 1882), Section 126 – Second Appeal – Suit for declaration and recovery of possession – Validity of revocation of settlement deed executed by father in favour of plaintiff/appellant in issue – Gift deed acted upon and possession taken by plaintiff – No condition attached to gift deed – Execution of gift deed out of love and affection – Clause of taking care of executant and performance of last rites cannot be considered as conditional clause attached to gift deed – No statement made by executant about failure of plaintiff to maintain him after execution of settlement deed – Revocation by executant only on ground that plaintiff not acting as per his wish and is taking steps to alienate property – Gift deed not conditional and hence absolute – Plaintiff entitled to absolute title – Second appeal allowed.

RATIO DECIDENDI: A party gets absolute title of property under a gift deed when such gift deed is an absolute one and not conditional.

(2011) 6 MLJ 851

P.N. Peruvazhuthi
Vs
R. Saravanan

Code of Civil Procedure (5 of 1908), Section 115 and Order 21 Rule 21 – Simultaneous Execution – Simultaneous action to bring property for sale and seeking arrest of judgment-debtor – Suit for money – Decreed – Execution petition to bring property of Judgment-debtor for sale pending – Order of dismissal of execution petition seeking arrest of judgment-debtor, challenged – Revision maintainable under Section 115 only when error is committed by a subordinate Court by passing order without jurisdiction or on illegality or material irregularity of such order – No satisfactory reason assigned by decree-holder to maintain subsequent E.P. seeking arrest during pendency of earlier E.P. – No erroneous exercise of jurisdiction by Court below or illegality and no material irregularity, so as to warrant any interference in revision under Section 115 – Revision liable to be dismissed.

RATIO DECIDENDI:

Revision is maintainable under Section 115 of the Code of Civil Procedure, only when error is committed by a Court, which is subordinate to the High Court by exercising jurisdiction not vested with the Court below or failed to exercise jurisdiction, so vested or when there is illegality or material irregularity in the order, under the revisional jurisdiction of this Court.

2011 - 3 – L.W. 890

Veluran @ Muthusamy Gounder (deceased) and Ors
Vs
Perumal Gounder

C.P.C., Order 21, R.95 / Non filing of an application under Order 21, Rule 95 to take delivery of the property, effect of,

Limitation Act (1963), Section 27, Article 134.

In the present case, suit was filed by the plaintiffs, who after losing their right over the suit property in the Court auction, filed the suit for declaration and injunction – First plaintiff lost his right in the suit property, as the suit property was sold in a Court auction – They are not entitled to maintain the suit for declaration and injunction against the respondent / defendant, who is the true owner.

Non filing of an application under Order 21, Rule 95 to take delivery of the property cannot be put against the respondent / defendant – Section 27 extinguishes the right of the party from filing the suit for possession and it cannot be made applicable to an application under Order 21, Rule 95 – Admittedly, an application under Order 21, Rule 95 has to be filed for claiming possession of the property purchased in the Court auction and it cannot be equated to the suit for possession – He becomes a perfect title holder to the suit properties, being a purchaser in a Court auction – Second Appeal dismissed.

2011 - 3 – L.W. 936

Chandra
Vs
Reddappa Reddy and Ors

C.P.C., Order 7, Rule 11/Rejection of Plaint - Petition praying for rejection of tending that the suit is barred by limitation and the relief claimed in the suit has not been properly valued, and the 'B' Schedule has been properly valued – Upon dismissal by trial court, CRP preferred – Objection was raised as to maintainability of revision on the ground that order of lower court passed on an application under Order 7, Rule 11, and is appealable, not sustained.

C.P.C., Order 43, Rule 1 / Appeals from orders,

C.P.C., Section 2(2) / "Decree", definition of; "Deemed to be", meaning of.

Tamil Nadu Court Fees and Suits Valuation Act (1955), Section 12(2) / Application about undervaluation of suit filed at belated stage,

Constitution of India, Article 227 / Maintainability of revision – Objection as to maintainability of revision on the ground that order of lower court was passed on an application under Order 7, Rule 11, and is appealable, not sustained.

Words and Phrases / "Deemed to be" in Section 12(2), C.P.C., meaning of.

Held: It is clear that the present application under Order 7 Rule 11 of the CPC has been filed at a very belated stage of the suit. Admittedly, the entire evidence has been recorded and the evidence has been closed, arguments have been heard and judgment is to be pronounced. At that stage, several other applications have been filed by the plaintiff to drag on the proceedings … In the decision reported in (2007) 10 Supreme Court Cases 59. In this case, the entire trial itself is over, arguments have been advanced, written submissions filed and judgment was to be delivered and therefore, this is a fit case where the trial Judge has correctly dismissed the application. This Court do not find any reason to interfere with the order passed by the Court below.

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HIGH COURT CITATIONS
CRIMINAL CASES

2011 CIJ 428 CTJ (1)

Soundararajan & Ors
Vs
State

Indian Penal Code, 1860 (45 of 1860) – Sec. 34, 324 – Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 294 – Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 – Criminal trial – Appreciation of evidence – Medical evidence – Doctor – Examination – Opinion – Relevancy – Contradiction – Minor contradiction – Common intention – Dangerous weapon – Appellants were prosecuted for causing injuries to the witnesses and murdering a person in which they were convicted for an offence under Sec.304(ii) and 324 etc. IPC against which they preferred appeal – While the appellants contended that as the doctor had opined that the deceased could have died of heart attack, they had to be acquitted and there was no common intention among them to cause the death and there were contradictions in the evidences of the witnesses and they could not be believed - State resisted their plea and contended that the general opinion of the doctor had no value or relevancy at all in the absence of proof to the effect that the deceased in fact suffered from heart desease and the witnesses were injured and minor contradictions had to be ignored – Held, mere general opinion of the doctor as to the probability of the death had no value at all – In the absence of examination of the doctor who had written the opinion, it could not be given any credence by the Court – When large number of persons assaulted many persons, there would be some contradictions and on this ground the evidence of the witnesses were not to be disregarded – As the accused got provoked on seeing the deceased with his wife and the incident took place immediately, there was no common intention to commit the offence and the appellants could not be punished with the aid of Sec.34 IPC – Appeal was partly allowed and the conviction and sentence under Sec.304(ii) was set aside and the appellants were held guilty for their individual overt acts.

Indian Evidence Act, 1872 (1 of 1872) – Sec. 3 – Criminal trial – Appreciation of evidence – Contradiction – Minor contradiction – When large number of persons assaulted many persons, there would be some contradictions and on this ground the evidence of the witnesses are not to be disregarded.

Code of Criminal Procedure, 1973 (2 of 1974), Sec. 294 – Indian Evidence Act, 1872 (1 of 1872) – Sec. 3, 32 – Criminal trial – Appreciation of evidence – Medical evidence – Doctor – Examination – Opinion – Relevancy – Any information available in the death intimation sent by a doctor is not a substantive evidence in the absence of examination of the doctor who prepared that document - The opinion contained in any medical record is not admissible in evidence in the absence of the examination of the doctor who gave that opinion.

Indian Penal Code, 1860 (45 of 1860) – Sec. 34 – Criminal trial – Appreciation of evidence – Common intention – To invoke Section 34 of IPC, the prosecution should prove the pre-meeting of mind, evolving a common design to do a crime – If the entire occurrence was so sudden and it was due to provocation, the accused could not be punished with the help of Section 34 of IPC.

Indian Penal Code, 1860 (45 of 1860) – Sec. 324 – Criminal trial – Dangerous weapon – Spade Handles and Crow–Bar, if used as weapons of crime, are dangerous weapons.

Ratios:

- **When large number of persons assaulted many persons, there would be some contradictions and on this ground the evidence of the witnesses are not to be disregarded.**
- **Any information available in the death intimation sent by a doctor is not a substantive evidence in the absence of examination of the doctor who prepared that document.**
- **The opinion contained in any medical record is not admissible in evidence in the absence of the examination of the doctor who gave that opinion.**
- **To invoke Section 34 of IPC, the prosecution should prove the pre-meeting of mind, evolving a common design to do a crime.**
- **If the entire occurrence was so sudden and it was due to provocation, the accused could not be punished with the help of Section 34 of IPC.**
- **Spade Handles and Crow-bar, if used as weapons of crime, are dangerous weapons.**

(2011) 3 MLJ (Crl) 433

A. Chinnaponnu W/o. Annamalai
Vs
State of Tamil Nadu rep by the Secretary, (Department of Home), Fort St. George, Chennai-9 and Ors

Constitution of India (1950), Article 226 – Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 7–A – Juvenile Justice (Care and Protection of Children) Rules, 2007, Rules 97 and 98 – Habeas Corpus Petition – Disposal of cases of juveniles in conflict with law – Conviction and sentence by trial Court – Claim of juvenility by detenu after dismissal of appeal by High Court – Detenu undergoing sentence – Plea of juvenility can be raised at any stage, even after disposal of case – Juvenile Justice Board directed to review case of detenu by conducting an enquiry as to his age as on date of occurrence and pass necessary orders in accordance with Juvenile Justice Provisions.

RATIONES DECIDENDI:

I. **The relief on plea of juvenility in disposed off cases may be granted by the Government or the Juvenile Justice Board either suo motu or on an application in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, by reviewing the case of a person / juvenile in conflict with law and determine his juvenility as on date of commission of an offence.**

II. **The plea of juvenility can be raised before any court at any stage of the proceedings, even after the disposal of the case and such claims shall be determined in terms of provisions of the Juvenile Justice Act (Care and Protection of Children) Act, 2000 and the Rules made thereunder.**

(2011) 3 MLJ (Crl) 440

A. Devaraj
Vs
Rajammal

Indian Evidence Act (1 of 1872), Section 45 – Negotiable Instruments Act (26 of 1881), Section 138 read with 142 – Cheque bouncing – Determination of "age of ink" in cheque – Dismissal of petition filed by accused seeking expert opinion on "age of ink" in cheque – Concurrent findings – Issuance of cheque to complainant disputed by accused – Central Forensic Science Laboratory having facility to ascertain age of ink – Accused entitled to chance of ascertaining age of ink as part of a fair trial – Petition allowed.

RATIO DECIDENDI: **Determination of age of the ink used can be ordered by the Court where the issuance of cheque is disputed by accused, as part of fair trial to give a chance to accused to prove his case when the facility is available.**

(2011) 3 MLJ (Crl) 494

R. Jayachandran
Vs
State, rep. by the Inspector of Police, Perambalure Police Station

Indian Penal Code (45 of 1860), Sections 448 and 307 – House trespass and attempt to murder – Conviction and sentence – Appeal – Testimonies of interested witnesses can be relied on basis of cogent and convincing evidence – Sufficient time for witness to perceive identity of accused – Non–holding of Test Identification Parade not affecting prosecution case – Sufficient proof of intention to murder – Conviction confirmed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 161 – Indian Evidence Act (1 of 1872), Sections 145 and 155 – Contradiction in former statement of witness – Contradictory portion to be brought to notice of maker of statement to seek his explanation – Evidence of witness can be impeached under Section 155 on proving contradictory portion in former statement through the maker – Contradictory portion requires to be brought to notice of maker of statement as per Section 145 – Compliance of legal requirements of Section 145 by defence a pre-requisite for accused to make use of contradiction – Non – compliance of legal requirements under Section 145 – Contradiction cannot be considered for the purpose of holding accused not guilty – Conviction confirmed.

RATIONES DECIDENDI:

I. **Non–holding of Test Identification parade cannot be a ground for setting aside conviction if such failure has not in any manner caused any dent in the case of the prosecution.**

II. **Testimony of interested witnesses requires a cautious approach by the Court.**

III. **The evidence of a witness can be impeached under Section 155 of the Evidence Act once a former statement of such witness recorded under Section 161 of the Cr.P.C. is used for contradicting him and the said contradictory portion in the former statement is proved through the maker of the statement after complying with the legal requirement under Section 145 of the Evidence Act by bringing the statement to the notice of the witness.**

2011 CIJ 524 CTJ (1)

P. Muthupandi
Vs
State

Indian Evidence Act., 1872(1 of 1872) – Sec.3, 32 – Indian Penal Code, 1860(45 of 1860) – Sec.302, 304 -Murder - Burning - Circumstantial evidence - Dying declaration – Appreciation - Appellant's wife died of burn injuries and he also sustained severe burn injuries in his leg which resulted in amputation – Based upon the three consistent dyeing declarations of the deceased before the doctor, police and magistrate, the trial Court convicted the appellant for murder against which he preferred appeal - While the appellant contended that the death of his wife was a result of suicide, and the dying declaration could not be believed, the State submitted that on intimation from the police, the magistrate recorded her dying declaration and there were other dying declarations before the doctor and the police which were consistent with each other and justified the finding of the trial Court – Held, a person could be convicted based upon a consistent and reliable dying declaration – As the dying declarations of the deceased were consistent, the charge was held as proved - Since the accused committed the offence as a result of his frustration and without any premeditation and he also lost one of his legs in the incident, conviction was altered from Sec.302 IPC to Sec.304 Part.1 – Appeal was allowed partly.

Indian Evidence Act, 1872 (1 of 1872) – Sec.3, 32 - Criminal trial – Appreciation of evidence – Circumstantial evidence - Standard of proof - Dying declaration - Magistrate – In order to sustain a conviction based on circumstantial evidence, it must be complete and must be incapable of any explanation or hypothesis other than that of the guilt of the accused – A dying declaration made before the Judicial Magistrate has a higher evidentiary value – The Judicial Magistrate is presumed to know how to record a dying declaration.

Indian Evidence Act, 1872(1 of 1872)-Sec.3, 32 - Criminal trial-Circumstantial evidence - Dying declaration – Appreciation - Conviction – In criminal trial, conviction can be based on the dying declaration of the victim alone and in a given case even without corroboration, provided the same is truthful, reliable, trustworthy and inspires confidence.

Indian Penal Code, 1860(45 of 1860) - Sec.302, 304 – Murder – Burning - Sudden provocation – Frustration - Death of the wife caused in frustration, without pre meditation and on sudden provocation would be punishable only under Sec.304 IPC and not under Sec.302 IPC.

Ratios:

a. **In order to sustain a conviction based on circumstantial evidence, it must be complete and must be incapable of any explanation or hypothesis other than that of the guilt of the accused.**

b. **A dying declaration made before the Judicial Magistrate has a higher evidentiary value.**

c. **The Judicial Magistrate is presumed to know how to record a dying declaration.**

d. **In criminal trial, conviction can be based on the dying declaration of the victim alone and in a given case even without corroboration, provided the same is truthful, reliable, trustworthy and inspires confidence.**

e. **Death of the wife caused in frustration, without premeditation and on sudden provocation would be punishable only under Sec.304 IPC and not under Sec.302 IPC.**

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