TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW

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CIVIL CASES

2016-3-L.W.1

The City Municipal Council Bhalki vs. Gurappa (d) By Lrs and another

Date of Judgment : 29.09.2015

C.P.C., Section 11, Res judicata, plea of, proof

Suit for declaration of title, Res judicata, Bar of, whether, when arises

Held: First suit filed for declaration of title and injunction – Second suit for declaration of title, recovery of possession – Plea of Res judicata – whether sustainable – It was contended that earlier suit was dismissed for non-joinder of necessary party – Principle of res judicata, what is, when applies – held: neither parties, nor subject matter was same in earlier suit – Neither reliefs claimed in two suits were identical, nor could decision in first suit said to have been on merits, it cannot be held, suit was barred by res judicata

In a suit for declaration of title and possession, onus is upon plaintiff to prove his title – He must prove his title independently, a decree in his favour cannot be awarded for reason that defendant has not been able to prove his title

2016 (3) CTC 332

Malati Sardar vs. National Insurance Co.Ltd.

Date of Judgment : 05.01.2016

Motor Vehicles Act, 1988 (59 of 1988), Section 166 – Code of Civil Procedure, 1908 (5 of 1908), Section 21 – Accident Claims – Territorial Jurisdiction – Accident occurred at Hoogly, in State of West Bengal – Claimant filed Claim Petition before Tribunal at Kolkatta – Objection of Respondent that accident took place at Hoogly and Claimant resided at Hoogly, therefore Tribunal at Kolkatta did not have jurisdiction to entertain claim – High Court set aside Award for lack of Territorial jurisdiction – Insurance Company being juristic person carried on business at Kolkatta – Whether Order of High Court setting aside Award of Tribunal on ground of lack of jurisdiction in absence of failure of justice – High Court was not justified in setting aside Award of Tribunal in absence of failure of justice – Benevolent provision should be interpreted to advance cause of justice – Claim Petition filed before Tribunal at Kolkatta is maintainable – Law laid down in *Mantoo Sarkar v. Oriental Insurance Co.Ltd*., 2009 (1) TN MAC 68 (SC) followed and applied.

(2016) 4 MLJ 10 (SC)

Raghavendra Swamy Mutt vs. Uttaradi Mutt

Date of Judgment : 30.03.2016

Civil Procedure – Interim Stay – Substantial Question of Law – The Code of Civil Procedure, 1908 (Code, 1908) – Order 41 Rule 5(3) and Section 100 – Plaintiff/Respondent filed suit for perpetual injunction for restraining Defendants/Appellant from entering upon suit property and interfering with possession and enjoyment of suit property – Plaintiff sought for injunction for restraining Defendants

in interfering or disturbing with performance of annual "Aradhana" – Suit preferred by Plaintiff was dismissed by Trial Court – First Appellate Court allowed appeal in part – Plaintiff filed execution petition – Defendant filed interlocutory application seeking temporary injunction against Plaintiff before second appeal was admitted – High Court vacated interim stay – appeal – Whether High Court without admitting second appeal could have entertained interlocutory application seeking interim relief – *Held*, before passing an ex parte order, Court has to keep in mind postulates provided under Order 41 Rule 5(3) of Code, 1908 and section 100 of Code, 1908 – Court has jurisdiction to pass interim order subject to Order 41 Rule 5(3) of Code, 1908 after formulating substantial question of law under section 100 of Code, 1908 – Solely because Court has jurisdiction to pass ex parte order, it does not empower the Court to formulate substantial question of law for purpose of admission, defer date of admission and pass an order of interim stay – High Court rectified its mistake by vacating interim stay – Impugned order impregnable – High Court directed to take up second appeal for admission and proceed with interlocutory application seeking interim stay if substantial question of law is involved – Appeal dismissed.

(2016) 3 MLJ 378 (SC)

Narayan vs. Babasaheb

Date of Judgment : 05.04.2016

Limitation – Sale Deed – Setting Aside of – Limitation Act, 1963 (Act 1963), Sections 7, 60, 109, 110 and 113 – Hindu Minority and Guardianship Act, 1956 (Act 1956), Section 8(1)(2) – Plaintiffs' father/original owner died leaving behind him 1st and 2nd Respondents/1st and 2nd Plaintiffs/sons, 3rd to 5th Respondents/3rd to 5th Plaintiffs/daughters and 6th Respondent/2nd Defendant/widow – After death of original owner, 2nd Defendant, without legal necessity, alienated suit property for meager amount – At execution of second sale deed, though 1st Plaintiff was major, he was shown as minor – In active connivance with 2nd Defendant, Appellant/1st Defendant got sale deed registered with intention to defraud interest of minors – Plaintiffs filed suit for partition and declaration that sale deeds executed by 2nd Defendant to 1st Defendant do not bind on them and to set aside same and for recovery of possession of suit property and mesne profits – Trial Court held that sale deeds do not bind on Plaintiffs and decreed suit – 1st Defendant filed appeal alleging that suit barred by limitation as per Article 60 of Act 1963 – Appellate Court held that suit was within limitation, same challenged – High Court also held that suit was within limitation – Present appeal – Whether suit filed to set aside sale deed was within limitation – *Held*, suit by minor to set aside alienation of his property by his guardian governed by Article 60 of Act 1963 – To impeach transfer of immovable property by Guardian, minor must file suit within prescribed period after attaining majority – Minor Plaintiff challenging transfer of immovable property made by his guardian in contravention of Section 8(1)(2) of Act 1956 and seeking possession of property can file suit only within limitation prescribed – Lower Courts erred in applying Article 109 of Act 1963 – Section 7 of Act 1963 shows that when one of several persons who were jointly entitled to institute suit or make application for execution of decree and discharge can be given without concurrence of such person, time will run against all of them – When no such discharge given, time will not run against all of them until one of them becomes capable of giving discharge – As per Explanation 2 of Section 7 of Act 1963, manager of Hindu undivided family governed by Mithakshara law deemed to be capable of giving discharge without concurrence of other family members – In present case, 3rd to 5th Plaintiffs though majors as on date of institution of suit will not fall under Explanation 2 of Section 7 of Act 1963, as they are not manager or Karta of joint family – 1st Plaintiff was major as on date of institution of suit and no evidence to arrive at different conclusion as to age of 1st Plaintiff – suit was within limitation – Appeal dismissed.

(2016) 4 MLJ 368 (SC)

Balram Yadav vs. Fulmaniya Yadav

Date of Judgment : 27.04.2016

Court – Jurisdiction of Family Court – Marital Status – Family Courts Act, 1984, Sections 7, 8 and 20 – Appellant filed suit before Family Court for declaration that Respondent was not his legally married wife, same decreed – Being aggrieved, Respondent moved High Court – High Court held that Family Court lacked jurisdiction to deal with matter – Appeal – Whether Family Court has jurisdiction to deal with matter in relation to marital status of person – *Held*, under Section 7(1) Explanation (b), suit or proceeding for declaration as to validity of both marriage and matrimonial status of person is within jurisdiction of Family Court, since under Section 8, jurisdictions covered under Section 7 excluded from purview of jurisdiction of Civil Courts – If there is dispute on matrimonial status of person, declaration in that regard to be sought only before Family Court and it makes no difference as to whether it is affirmative relief or negative relief – Section 20 has overriding effect on other laws – Impugned judgment set aside – Matter remitted to High Court to be decided on merits – Appeal allowed.

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SUPREME COURT CITATIONS
CRIMINAL CASES

(2016) 2 MLJ (Crl) 69 (SC)

Don Ayengia vs. State of Assam

Date of Judgment : 28.01.2016

Negotiable Instruments – Cheque – Discharge of Liability – Negotiable Instruments Act, 1881, Section 138 – Complaint under Section 138 of Act 1881 was filed by Appellant against both debtor and Respondent – Since debtor had passed away, proceedings against him abated but trial court found Respondent guilty and accordingly convicted him for offence punishable under Section 138 of Act 1881 – Aggrieved by judgment and order passed by trial court, Respondent preferred Criminal Appeal before Sessions Judge who while upholding conviction of Respondent modified sentence awarded to him to payment of fine – Sentence of imprisonment was, in that view, set aside by appellate court – Criminal Revision challenged conviction of Respondent by trial court and affirmed by Appellate Court for offence under Section 138 of Act – High Court set aside conviction of Respondent and allowed Criminal Revision – Appeals – Whether cheques issued by Respondent were meant to discharge, in whole or part, "any debt or other liability" within meaning of Section 138 of Act 1881 – *Held*, existence of debt/liability was never in dispute – It was acknowledged and promise was made to liquidate same within one month – Failure on part of debtor to do so could lead to only one result, viz. presentation of cheques for payment and in event of dishonor, launch of prosecution – Argument that Respondent had no liability to liquidate debt owed by debtor, has not impressed Court – Besides fact that there is presumption that negotiable instrument is supported by consideration there was no dispute that such consideration existed in as much as cheques were issued in connection with discharge of outstanding liability against debtor – At any rate endorsement made by Respondent on promissory note that cheques can be presented for encashment clearly shows that cheques issued by him were not ornamental but were meant to be presented if amount in question was not paid within extended period – High Court fell in error in upsetting conviction recorded by Courts below who had correctly analysed factual situation and applied law applicable to same – Appeals allowed.

(2016) 1 MLJ (Crl) 687 (SC)

B.Virupakshaiah vs. State of Karnataka

Date of Judgment : 12.02.2016

Murder – Appeal on Acquittal – Indian Penal Code, 1860, Sections 143, 147, 148, 341, 109, 120B, 302 and 149 – Respondents/accused charged under Sections 143, 147, 148, 341, 109, 120B, 302 read with Section 149 – Trial Court convicted accused for hatching conspiracy and in furtherance of conspiracy, for killing deceased and his driver and sentenced them to life imprisonment, same challenged – High Court set aside judgment and order passed by Trial Court and acquitted accused of charges – Appeals – Whether High Court justified in acquitting accused of charges framed against them – *Held*, material on record shows that PW2 and PW3 seem to be chance witnesses who were in close proximity to place of incident due to their job – PW1, PW4, PW5 and PW6 are other eye-witnesses, but faith cannot be reposed on them and material alterations in their statements from testimonies of PW2 and PW3 and even with deposition of PW71/Investigating Officer – High Court considered recovery of weapons and other articles and rightly disbelieved them – Though Forensic

Science Laboratory Report to be filed, it will not come to aid of prosecution, as recovery was not established – Even number of assailants doubtful ever since beginning, such lacuna in investigation goes on to hit root of prosecution case – PW61, PW65 and PW67/attesting witnesses to recovery of articles turned hostile – Regarding conspiracy, PW17 and PW23 did not state as to what conspiracy was being hatched – PW46, PW47 and PW48 specified existence of conspiracy, but in their cross-examination, their conduct doubted – No evidence produced to link recovery of mobile to accused – Recovery of mobile is already stated to be not supported by evidence – Recovery of weapon not established, since witness for seizure Panchnama turned hostile – No reasons found to interfere with impugned judgment passed by High Court – Appeals dismissed.

(2016) 2 MLJ (Crl) 73 (SC)

Shahid Khan vs. State of Rajasthan

Date of Judgment : 02.03.2016

Murder – Eye-Witnesses – The Indian Penal Code, 1860 (IPC) – Sections 147, 148, 149, 302 and 397 – Appellants along with another accused were charged for offences under sections 147, 148, 302/149 and 397 of IPC – Trial Court acquitted other accused of all charges but convicted Appellants under sections 302, 148 and 149 of IPC and awarded life imprisonment – High Court dismissed appeals against judgment of Trial Court – Aggrieved, Appellants filed present appeals – Whether Lower Courts justified in convicting Appellants based on evidence of eyewitness – *Held*, from medical evidence adduced, clear that deceased died of homicidal violence – PW 20, PW 24 and PW 25 examined as eye-witnesses to incident – PW 20 declared hostile – PW 9 and PW 19 on intimation reached place of occurrence but did not state that they saw PW 24 and PW 25 – In complaint lodged by PW 9, names of assailants and persons present during occurrence not mentioned – Nothing is established by use of van for transporting deceased to hospital and this will not clinch presence of PW25 at place of occurrence – PW 24 and PW 25 slipping away unnoticed by others unbelievable and unreal – PW 24 and PW 25 did not render any help for shifting injured to hospital nor had courtesy to go inside hospital to ascertain condition and also did not inform occurrence to police – Aspect of fear is without any foundation and not supported by any evidence of act or conduct – Statements of PW 24 & PW 25 recorded after three days of occurrence and no explanation offered for delay – Delay in recording statements causes serious doubt about PW 24 and PW 25 being eye-witnesses to occurrence and do not appear as wholly reliable witnesses – No Corroboration of their evidence from other independent source – Unsafe to rely only upon evidence of PW 24 and PW 25 to uphold conviction and sentence of Appellants – Conviction and sentence of Appellants set aside – Appeals allowed.

(2016) 2 MLJ (Crl) 631 (SC)

Amal Kumar Jha vs. State of Chhatisgarh

Date of Judgment : 26.04.2016

Sanction – Sanction to Prosecute – Official Duty – Code of Criminal Procedure 1973 (Code 1973), Section 197 – Indian Penal Code 1860 (Code 1860), Section 304-A – Police filed charge sheet under section 304-A Code 1860 against Appellant and another – Both of them filed application for discharge under section 197 Code 1973 on ground that sanction to prosecute was required – Application filed by Appellant was rejected on ground of negligence in not providing vehicle for shifting patient to hospital – Revision was preferred against rejection and petition filed under section 482 Code 1973 before High Court – Same having been dismissed, Appellant is before Court in appeal – Whether rejection of application by Lower courts filed by Appellant for discharge on ground of requirement of sanction to prosecute under Section 197 of Code 1973 justified – *Held*, allegation

against Appellant is of omission in discharge of official duty – Accused/Appellant was acting in discharge of his official duty when he refused to provide official vehicle – Refusal is directly and reasonably connected with his official duty, thus sanction is required for prosecution as provided under section 197(1) Code 1973 – Question arises a as to whether omission to provide official jeep which was not meant for patients, would constitute omission in discharge of his duty – Though public servant is not entitled to indulge in criminal activities in course of his duty but act in question had relation to discharge of official duty of accused – It was clearly connected to performance of his official duty – Clear that omission complained of due to which offence is stated to have been committed, was intrinsically connected with discharge of official duty of Appellant – As such protection under section 197 Code 1973 from prosecution without sanction of competent authority is available to App – In case sanction is granted only then Appellant can be prosecuted and not otherwise – Appeal allowed.

(2016) 2 MLJ (Crl) 542 (SC)

Subramanian Swamy vs. Union of India

Date of Judgment : 13.05.2016

Constitution – Constitutional Validity of Provision – Defamation proceeding – Constitution of India, 1950, Articles 14, 19(1)(a), 19(2) and 226 Code of Criminal Procedure, 1973 (Code 1973), Sections 156(3), 199(1) to 199(6), 202 and 482 – Indian Penal Code, 1860 (Code 1860), Sections 499 and 500 – Challenging constitutional validity of Sections 499 and 500 of Code 1860 and Section 199 of Code 1973 upheld and Sections 199(1) to 199(4) of Code 1973, Petitioners contend that rather than protecting individual reputation, these sections have a chilling effect on free speech and cause discomfort to Articles 19(1)(a) and 14 of Constitution – Petitioners allege that differential treatment to civil servants is discrimination and for said reason, provisions of Sections 199(2) to (4) of Code 1973 liable to be struck down – Whether provisions of Sections 499 and 500 of Code 1860 and Sections 199(1) to 199(4) of Code 1973 are constitutionally valid – *Held*, right to freedom of speech and expression valued, but Constitution conceives of reasonable restriction – Criminal defamation as contemplated in Sections 499 and 500 of Code 1860 is not restriction on free speech that can be characterized as disproportionate – Free speech cannot mean that citizen can defame other – Protection of reputation is fundamental right and human right – Plea that provisions as to criminal defamation not saved by doctrine of proportionality as it determines limit that is not impermissible within criterion of reasonable restriction, cannot be accepted – Section 199(6) of Code 1973 gives to a public servant what every citizen has, as he cannot be deprived of a right of a citi – If sanction not given by State to public servant to protect his right, he can file case before Magistrate – Once held that public servants constitute different class in respect of conduct pertaining to their discharge of duties and functions, engagement of Public Prosecutor cannot be found fault with – Code 1973 governs territorial jurisdiction and if there is abuse of such jurisdiction, person grieved by issue of summons can take appropriate steps as per law, but it cannot be reason for declaring provision unconstitutional – Section 199 of Code 1973 envisages filing of complaint in Court – In case of criminal defamation, neither FIR can be filed nor direction be issued under Section 156(3) of Code 1973 – In case of criminal defamation, burden is on Magistracy to scrutinize complaint – Magistrate has to keep in view language in Section 202 of Code 1973 and must be satisfied that ingredients of Section 499 of Code 1860 satisfied – Plea that if Exception to Section 499 of Code 1860 should be taken into consideration at time of issuing summons, would be contrary to established criminal jurisprudence and stand that it cannot be taken into consideration makes provision unreasonable is unsustainable, same repelled – Constitutional validity of Sections 499 and 500 of Code 1860 and Section 199 of Code 1973 upheld – Writ petitions disposed of – Transfer petitions disposed of.

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HIGH COURT CITATIONS
CIVIL CASES

(2016) 2 MLJ 169

Jerry Garman @ Geraldine @ Jayalakshmi vs. A.S.Sethuraman

Date of Judgment : 29.01.2016

Hindu Law – Dissolution of marriage – Religion – Hindu Marriage Act 1955, Section 5 – Christian Marriage Act 1872 – Indian Divorce Act – Appellant/Wife herein had filed petition under Indian Divorce Act for dissolving marriage solemnized between Appellant and Respondent/husband – Respondent filed Interlocutory Application to dismiss petition on ground that marriage was solemnized as per Hindu rites and customs, hence, Petition under Indian Divorce Act was not legally maintainable – Additional Family Court by impugned order allowed Interlocutory Application in favour of Respondent – Appeal by Appellant/wife – Whether lower Court justified in allowing Interlocutory Application while holding that marriage was solemnized as per Act 1955 – *Held*, apart from Marriage Certificate issued by Government and admission made by Respondent as R.W.1, by way of his deposition, it has been made clear that Appellant was Christian, on date of their marriage – It is not case of Respondent that Respondent could marry Christian under Act 1955 – Marriage could not have been taken place between Respondent and Appellant who is Christian without conversion to Hinduism, to be solemnized, as per Section 5 of Act 1955 – On other hand, such marriage could be possible, if one party is Christian as per provisions of Act 1872 – It is clear that marriage took place as per Act 1872 and hence, it could not be dissolved as per provisions of Section 5 of Act 1955 – It is clear that for marriage to be solemnized as per Act 1955, both should be Hindus – In this case, it is clear that Appellant is Christian and she has not converted to Hinduism – Without considering it properly Court below has passed impugned order, which is against law and accordingly, order of Trial Court liable to be set aside – Appeal allowed.

(2016) 2 MLJ 174

S.K.M. Egg Products Exports (India) Ltd. vs. V. Jothimani

Date of Judgment : 04.02.2016

(A) Order – Recalling of – Extension of time – Code of Civil Procedure, 1908, Sections 149, 151 and Order VII Rule 11 – Constitution of India, 1950, Article 227 – Respondent/Plaintiff filed suit against Petitioner/Defendant for recovery of money along with interest and cost – Due to insufficient Court fee stamps, plaint returned for re-presentation after supplying necessary Court fee stamps – After extension of time, deficit Court fee supplied and plaint numbered as suit – Subsequently, Petitioner filed applications under Section 151 of Code 1908 to recall orders passed by Trial Court extending time for payment of deficit Court fee – Petitioner also filed application under Order VII Rule 11 of Code 1908 for rejection of plaint – Trial Judge dismissed applications by common order – Revision petitions – Whether impugned order granting extension of time for payment of deficit Court fee should be recalled – *Held*, as per Section 149 of Code 1908, Court in its discretion could permit payment of deficit Court fee and condone delayed payment of such fee – If same done by Court, it shall have effect as if Court fee paid in first instant itself – Not open to Petitioner to contend that order granting extension of time for payment of deficit Court fee should be recalled – If Petitioner had chosen to approach High Court under Article 227 of Constitution against impugned order, such petition would have been decided on its own merits – But, Petitioner chose to approach very Court which granted

extension of time with petition under Section 151 of Code 1908 for recalling such order – Question of Civil Court recalling its order after disposal of application for extension of time shall not arise – If Petitioner is of view that suit was not properly instituted because of filing of plaint with deficit Court fee, Petitioner can take defence plea on ground of suit being barred by limitation and contest suit – Petitions dismissed.

(B) Plaint – Rejection of – Code of Civil Procedure, 1908, Order VII Rule 11 and Order XXX Rule 10 – Constitution of India, 1950, Article 227 – Petitioner sought rejection of plaint for reasons that Respondent/Plaintiff had no locus standi to file suit, suit filed with insufficient stamps, which was rectified subsequently and suit barred by limitation – Whether plaint filed by Plaintiff should be rejected – *Held*, proprietary concern is not juristic person and no suit can be filed in name of proprietary concern as Plaintiff – Order XXX Rule 10 permits that if person carries on business in name or style other than his name, such person may be sued in such name or style as if it were a firm name – Rule 10 enables only persons dealing with proprietary concern to sue Proprietor in name of Proprietary concern and it does not permit Proprietor to sue in name of Proprietary concern – Even if false claim made, same shall not be a ground for rejection of plaint and it shall be valid ground of defence for Defendant in such suit – Question of limitation is mixed question of law and fact, same to be raised and decided as issue in suit – If plaint averments themselves *prima facie* show that suit barred by limitation, Defendant can seek rejection of plaint on that ground – Facts on record show that contentious issue as to whether suit barred by limitation, cannot be decided based on pleadings alone and has to be decided after allowing parties to lead evidence – Evidence is to be led for rendering decision on particular issue that cannot be ground on which plaint shall be rejected – Impugned order dismissing application filed for rejection of plaint cannot be interfered by exercising power under Article 227 of Constitution.

(2016) 3 MLJ 59

Sundaram vs. R. Balasubramanian

Date of Judgment : 09.02.2016

Property Laws – Suit for Permanent Injunction – Proof of Possession – Appellants/Plaintiff filed suit for permanent injunction against Respondent/Defendant – Courts below held that Appellants/Plaintiffs failed to prove possession of Schedule Property – Respondent/Defendant raised issue of limitation – Aggrieved, Appellants/Plaintiffs filed present second appeal – Whether Appellants/Plaintiffs are entitled to permanent injunction restraining Respondent/Defendant without establishing possession in schedule property – *Held*, second appeal cannot be decided on merely equitable grounds as observed by Apex Court – Concurrent findings on facts, however, erroneous cannot be interfered with by High Court – Respondent/Defendant, in written statement raised issue of maintainability of suit on ground of limitation – Courts below had lost the sight upon this vital point – As found by Courts below, Appellants/Plaintiffs failed to prove their possession in respect of schedule property – Suit not filed by Appellants/Plaintiffs within prescribed period of three years – Suit itself barred by limitation – Joint patta issued in names of Appellants/Plaintiffs and Respondent/Defendant cancelled by Tahsildar – Though thirty days of time was given for filing appeal against order of Tahsildar, Appellants/Plaintiffs failed to prefer any appeal – Respondent/Defendant categorically contended by producing acceptable and legal documents to show that Appellants/Plaintiffs not in possession in respect of schedule property even on date of filing of suit – Judgment and Decree of Courts below do not require interference – Findings of Courts below confirmed – Appeal dismissed.

2016 (2) MLJ 619

M.Janaki vs. K.Vairamuthu

Date of Judgment: 15.02.2016

Hindu Law – Divorce – Minor at marriage – Hindu Marriage Act, 1955, Sections 13(1)(i-a) and 13(2)(iv) – Prohibition of Child Marriage Act, 2006, Sections 2(a) and 3 – Appellant/Petitioner/wife filed petition seeking relief under Section 13(1)(i-a) of Act 1955 with allegation that Respondent/husband treated her with cruelty – Lower Court rejected petition filed by wife holding that Petitioner was minor at time of marriage and neither marriage invitation nor photograph filed and no evidence to show person in photograph produced was Petitioner's husband – Appeal – Whether Lower Court justified in rejecting petition filed by wife seeking relief under Section 13(1)(i-a) of Act 1955 – Held, even in Section 13 of Act 1955, only provision relatable to age is to be found in Section 13(2)(iv) of Act 1955 – Section 3 of Act 2006 makes provision for avoidance of marriage by contracting party, who was child at time thereof, through filing petition for annulling marriage by such party – Impugned order shows that Lower Court was under mistaken impression of marriage involving child being void – Other reasons for rejection reflect most presumptuous view on considerations, which are matters for trial – Presumption of marriage may arise even on proof of prolonged cohabitation – Order of Lower Court set aside – Appeal allowed.

2016-2-L.W.327

P. Gowrilingam vs. P. Nesamani

Date of Judgment : 16.02.2016

C.P.C., Section 115, proviso/xerox copy of will, marking of, secondary evidence

Succession act, Section 213/xerox copy of will, marking of, secondary evidence

Practice/xerox copy of will, secondary evidence, marking of

Petition filed for marking xerox copy of will as a document was dismissed

Held: order is excluded from revisable orders – Will executed within Ordinary Original jurisdiction of Madras High Court, property dealt with in the Will also situate within local limits of ordinary original jurisdiction of the Madras High Court

No right can be established without being probated by a competent court or a letters of administration – Refusal by the trial court to admit xerox copy as secondary evidence not erroneous

2016-2-L.W.340

Muthuganesah vs. Thillaimani and others

Date of Judgment : 18.02.2016

Constitution of India, Article 227, Re-presentation, returning of plaint

Practice/plaint, re-presentation, scope

Plaint returning of, for compliance at representation, what to be looked into and what not – court cannot at time of admitting plaint go into whether persons, who ought to have been made parties, have been made parties to suit or not – orders of trial court returning plaint insisting upon making left

out persons as parties in suit cannot be sustained – It is for defendants to contend suit is bad for non-joinder of necessary parties

2016 (1) TN MAC 453 (DB)

B.M., ICICI Lombard General Insurance Co. vs. Kaliyamoorthy

Date of Judgment : 04.03.2016

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 166 – Married Sister of deceased, if, can maintain claim for Compensation – Section 166 speaks about entitlement of "Legal Representatives" to claim Compensation – Section does not restrict entitlement of married sister/daughter to prefer claim – Section 166 does not speak about "dependants", but "Legal Representatives" – If claim of Compensation restricted to "dependants", word "dependant" as defined in Section 2(1)(d) of WC Act would have been incorporated in MV Act – Married sister/daughter, a Legal Representative as per Law of Succession, may not depend upon income of deceased but monetary assistance from deceased cannot be ruled out – Exclusion of married daughter/sister/brother from Claim Petition altogether would amount to substituting words "Legal Representative" with "dependants" and would be opposed to object of Act as same would amount to adding words to legislation, which Court not supposed to do – Words "Legal Representatives" in Section 166 of MV Act, being Beneficial legislation, to be interpreted in such a way as not to take away their rights – Legal Representatives cannot be interpreted to mean only "dependants" – Therefore, married sister/daughter living with her husband separately also entitled to claim Compensation as a Legal Representative – Case-law discussed.

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 166 – WORKMEN'S COMPENSATION ACT, 1923 (8 of 1923), Sections 2(1)(d) & 3 – Entitlement to claim of Compensation under – Distinction – Under MV Act, Section 166, Legal Representatives of deceased entitled to claim Compensation, whereas under WC Act, dependants of deceased alone entitled to claim Compensation – WC Act does not confer statutory right to married daughter/sister to claim Compensation – Married daughter/sister being Legal representative of deceased entitled to claim Compensation under Section 166, MV Act.

INTERPRETATION OF STATUTES – Welfare/Beneficial Legislation – Construction of – Harmonious Construction – Words/expressions used in such statute to be interpreted to effectuate object of Statute – Approach of Court needed to be object-oriented approach – Duty of Court is to act upon true intention of legislature *i.e. "Mens or sententia legis"* – Words "Legal Representatives" used in Section 166, MV Act cannot be interpreted to mean "dependants".

AGE – Fixation of – Tribunal fixing age of deceased at 29 yrs. on basis of Post-mortem Certificate – *Held*, not erroneous in view of decisions in *Fakeerappa* (SC) & *Mary* (DB) (Mad.).

INCOME – Fixation of – Deceased, aged 29 yrs., a Welder, working in foreign country/Abu Dhabi – Accident took place when he visited India during vacation – Documents *viz.* Passport/Ex.P7, ID Cards/Ex.P.9, 11 & 19 issued by Employer Company, ID for Residence/Ex.P10, Income Certificate/Ex.P13 produced to prove avocation and employment in Abu Dhabi – Tribunal on basis of same fixed income at Rs.12,000 p.m. – Tribunal though omitted to consider "Future Prospects", fixation of income at Rs.12,000 p.m. confirmed.

PERSONAL EXPENSES – Deduction – Deceased aged 29 yrs., a bachelor – Claimants : Parents and married sister – Deduction of ¼ of income towards Personal Expenses – Not proper –

Number of Claimants being only 3, Tribunal ought to have deducted 1/3rd as per ratio in *Sarla Verma* (SC).

MULTIPLIER – Proper Multiplier – Deceased aged 29 yrs., a bachelor – Claimants : Parents and married sister – Application of Multiplier of 17, *held*, not erroneous – Confirmed.

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 173 & 168 – Appeal against award of Compensation by Tribunal – Deceased aged 29 yrs., a bachelor, employed in foreign country/Abu Dhabi as "Welder" – Claimants : Parents and married sister of deceased – Award of Rs.19,11,000 as Compensation, if, excessive – *Income* : Tribunal, on basis of evidence on record, concluded that deceased was employed in Foreign country and fixed income at Rs.12,000 p.m. : Tribunal though failed to consider "Future Prospects", fixation of Income at Rs.12,000 p.m. confirmed in absence of any contra-evidence – *Personal Expenses* : Deduction of 1/4th : *Held*, not proper considering number of Claimants : 1/3rd to be deducted – *Multiplier* : of 17 held to be proper – *Loss of Income* : Rs.16,32,000 [Rs.12,000 – 1/3 = Rs.8,000 x 12 x 17] arrived at as against Rs.18,36,000 – *Loss of Love & Affection* : Rs.25,000 to parents and Rs.15,000 to sister : Not proper : Rs.75,000 ought to have been awarded to each *Funeral Expenses* : Rs.10,000 awarded by Tribunal, *held*, not proper : Enhanced to Rs.25,000 following SC in *Rajesh* – In absence of any award under Future Prospects and Loss of Estate as also in view of award of lesser Compensation under Loss of Love & Affection and Funeral Expenses, *held*, Rs.19,11,000 as awarded by Tribunal cannot be said to be excessive – Confirmed in Appeal – Dismissing Appeal, Insurer/Appellant directed to deposit entire Award amount within period of 8 weeks.

2016 (3) CTC 489

Ambuja Narasimhan vs. Maxworth Home Ltd.

Date of Judgment: 17.03.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rules 3 & 10 & Order 22, Rule 1 & Section 151 - Impleadment of Parties – Cause of Action – Suit for bare Injunction – Suit instituted against sole Defendant 'A' – Defendant 'A' was not alive on date of presentation of Plaint – Impleadment Application filed to implead Revision Petitioners as Defendants – Suit filed on cause of action that Defendant 'A' had caused interference in enjoyment of Suit property – Impleadment allowed – Cause of action was not available even on date of filing of Suit – Suit stood abated under Order 22, Rule 1, CPC – Suit filed against particular person based on personal cause of action – Cause of action does not survive death of person – Impleadment of parties in bare injunction Suit is not proper.

2016-2-L.W.309

A/m. Vadapalani Andavar Temple Devasthanam
vs.
The Society of St. Joseph College, Tiruchirapalli and others

Date of Judgment : 21.03.2016

C.P.C., Section 80(1), notice, waiver, plea of, when applicable, Section 9, suit for declaration of title, proof of

Suit for declaration of title filed by respondent society as appellant's name was included in revenue records – Effect of such inclusion, whether gives Title – plea of suit not maintainable for want of service of notice on appellant-temple under S.80(1) – whether correct

Appellant/temple was represented by its Executive officer, government servant in the rank of Deputy commissioner – First respondent has not sought any relief against executive officer as a public servant

Deity of appellant/temple possesses juristic personality, it can be sued and be used in its own name, not entitled to a notice under Section 80(1), suit not affected by absence of service of notice – Absence of Notice, not raised earlier, waiver, by, giving up parties, effect of

First respondent society proved passing of consideration for sale, traced its title – Appellant has not adduced evidence to show how it got derivative title or it acquired title by adverse possession – Animus necessary for constituting adverse possession not pleaded – It relied on revenue records and settlement proceedings

Presence of title deeds like sale deeds, patta, shall not be a document of title – survey resettlement register, adangal register, reliance of, whether as owner; can be accepted

Before making entry settlement officer passed an order with no notice to either vendor of first respondent/plaintiff or to society – Property is admittedly a vacant land in an urban area not put to cultivation, principle "possession follows title" attracted – Adverse possession not proved

2016 (3) CTC 149

R.A.Karunambal vs. Loganathan

Date of Judgment: 25.04.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Amendment of Pleadings – Nature and scope – Theory of prejudice – Liberal approach – Suit for Partition and Maintenance – Transposition of one of Plaintiff as Defendant in Suit – Change of proportion of shares – Plaintiff filed Application for Amendment of Plaint seeking correct proportion of share in Suit property – Trial Court dismissed Amendment Application – Amendment sough is imperative for proper and effective adjudication of case – Alteration of shares is imperative on account of transposition of one of Plaintiff as Defendant – Amendment sought by Plaintiff would not cause any prejudice to Defendants – Courts should adopt pragmatic approach while dealing with Applications for amendment of Plaint – Order of Trial Court liable to be set aside.

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(2016) 2 MLJ (Crl) 265

Balasubramanian vs. State

Date of Judgment : 10.12.2015

Suicide –Abetment to Suicide – Cruelty – Indian penal Code 1860, Sections 498-A, 304 B and 306 – Evidence Act (Act), Section 113-A – Accused 1 was married to deceased and Accused 2 is mother of Accused 1 – Accused 1 and 2 are alleged to have abetted suicide of deceased – Trial Court on examination of evidence and witnesses found both Accused guilty of offences under Sections 498-A and 306 of Code 1860 – Appeal against conviction – Whether Trial Court justified in convicting Accused 1 and 2 for offences punishable under Section 498-A and 306 Code 1860 – Held, even if it is taken for granted that demand was to lend money, as it was coupled with threat to arrange for second marriage of Accused 1 and treatment of deceased with cruelty and harassment in order to coerce deceased to get money from her parents, will nevertheless bring said act on part of Accused under definition of cruelty as defined under Section 498-A Code 1860 – It is true that all witnesses spoke about threat made by Accused 2 and no direct overt act is attributed to Accused – 1 – Clear from consideration of evidence that Accused 1 was also acting in union with his mother, namely Accused 2 as he caused mental cruelty – Clear testimony of PW12 that when she took deceased to leave her at her husband's house, Accused 2 shouted at them stating that deceased should not enter house as if she was not able to give birth to child and that she was going to arrange for second marriage of Accused 1 – It is her further testimony that Accused 1, who was present at that point of time, did not question the propriety of said act on part of Accused 2 – Said part of testimony of PW12 remains unchallenged has no cross-examination was done regarding said aspect – As such there are ample evidence to show that Accused 1 and 2 acted in unison in ill-treating and harassing deceased – No defect or infirmity in decision taken by trial Court to draw presumption of abetment of suicide as contemplated under Section 113-A of Act – Said presumption has not been rebutted by Accused person proving at least improbability of prosecution case as to abetment of suicide by preponderance of probabilities – Finding of trial Court that Accused 1 and 2 were proved to be guilty of offences punishable under Section 498-A and 306 Code 1860 got to be confirmed as there shall be no justification to interfere with same – Finding holding Accused guilty of said offences deserves to be confirmed – Appeal dismissed.

(2016) 2 MLJ (Crl) 98

S. Arunkumar vs. State

Date of Judgment : 11.01.2016

Release – Release of Property – Valuable Items – Code of Criminal Procedure 1973, Section 457 – Gold ornaments, jewellery and cash were stolen from custody of Petitioner/Finance Company – Items were recovered from accused and seized – Petitioner applied for release of property – Trial Court passed impugned order imposing strict conditions for release of property – Petitioner contends Trial Court while passing impugned order had not borne in mind that seized properties are in nature of gold ornaments and that photographs of same along with other jewels is enough for Investigating Agency to complete Investigation – Whether gold Jewellery and ornaments are to be released to petitioner and whether photographs of same are sufficient for investigation process – Held, court of law can take photographs of such valuable articles and same being attested or counter-signed by complainant,

accused as well as by person to whom custody is handed over – Possession of valuable articles like silver or gold ornaments should be restored to individual from whom it was taken by criminal act of theft – Even bona-fide purchaser of such stolen property cannot acquire any title – Trial Court had not borne in mind that Petitioner/Finance Company is registered under Companies Act (as NBFC) – Insofar as jewels were pledged with them, Petitioner in law becomes 'Bailor" and persons who pledged their jewels become "Bailee' – Petitioner/Finance Company legitimately entitled to stake its rightful claim for interim custody of jewels and cash in question – Trial Court to bear in mind only aspect of possession and right of possession alone – Impugned order passed by trial court in imposing conditions appears to be harsh, burden-some and onerous from point of view of Petitioner/Revision Petitioner/Accused – Revision allowed.

(2016) 2 MLJ (Crl) 172

M. Senthilkumar vs. P. Ramalingam

Date of Judgment: 18.03.2016

Warrant - Suspension of Sentence - Non-Bailable Warrant – Code of Criminal Procedure 1973, Section 397(1) – Petitioner was sentenced to undergo simple imprisonment – According to Petitioner, in his absence, judgment and order of sentence was passed by trial Court and immediately, trial Court issued Non-Bailable Warrant to secure Petitioner to serve period of sentence – petitioner prayed for suspension of sentence passed by trial Court till disposal of criminal appeal – Trial Court while dismissing petition directed Petitioner to surrender – Against said order, Petitioner filed present Revision Petition – Whether Court was right in rejecting petition seeking suspension of sentence of Petitioner on ground that non-bailable warrant was pending – Held, insofar as 'relief of suspension of sentence' is concerned, in respect of Revision against conviction, accused need not surrender and undergo confinement for seeking relief of suspension of sentence pending disposal of Criminal Revision – Revisional Court may decline to exercise power under Section 397(1) of Code 1973, to suspend sentence imposed on accused, considering merits of each case in respect of seriousness and gravity of offence – In regard to revision against conviction and sentence for granting relief of suspension of sentence accused need not surrender and undergo confinement and filing of revision without surrendering and confinement is well within purview of Section 397(1) of Code 1973 – Court to prevent aberration of justice and in furtherance of substantial justice, sets aside impugned order passed by Principal Sessions Judge – Revision allowed.

(2016) 2 MLJ (Crl) 103

R. Rajam vs. State

Date of Judgment : 28.01.2016

Discharge – Framing of Charge – Code of Criminal Procedure 1973, Section 239 – Indian Penal Code 1860, Section 109 – Challenging correctness, validity and legality of orders passed by Special Judge (Chief Judicial Magistrate), Revision Petitioner/Petitioner has preferred present Criminal Revision Petition basically contending that impugned order is opposed to facts of case, illegal and improper one – Revision Petitioner takes plea that trial court should have considered specific allegation against Revision Petitioner/A-4 and circumstances pertaining to invocation of Section 109 of Code 1860 and ought not to have taken into account facts which were not related to Petitioner – Revision Petitioner contends trial court should have considered specific allegation against each accused particularly against Revision Petitioner/A-4 for limited purpose of finding out whether there are any grounds to proceed further – Whether Petitioner/accused can be discharged on ground that charges are baseless or groundless – Held, application to discharge accused under Section 239 of Code 1973 arises when concerned court considers charge against accused to be baseless or groundless one – Acid test for

deciding whether charge should be considered groundless is that where materials are such that even if unrebutted make out no case whatsoever – It is not for Court of Law to indulge in detailed enquiry as to whether materials collected by Respondent/Prosecution are sufficient for convicting accused – It is enough that materials so collected by Respondent/Prosecution exhibits prima facie case for Court of Law to proceed further against accused – Only right accused has at that stage is of being heard and nothing more than that – Even sifting and meticulous scanning of evidence in elaborate manner is not permissible at time of framing charge – Strong suspicion based on materials before concerned court is sufficient for framing charge – Taking note of entire attendant facts and circumstances of case in integral manner, court comes to inescapable conclusion that there are prima facie materials/grounds to frame necessary charge/charges against Revision Petitioner/accused – In short, said materials cannot be said to be in any manner 'Groundless one' – Revision dismissed.

(2016) 2 MLJ (Crl) 235

Jayakannan vs. State

Date of Judgment: 05.02.2016

Murder –Extra Judicial Confession – The Indian Penal Code, 1860 – Sections 201 and 302 – Accused/Appellant charged for offences under sections 201 and 302 of Code, 1860 – Trial Court convicted accused under section 302 of Code, 1860 and acquitted accused for offence under sections 201 read with 302 of Code, 1860 – Appeal against conviction - Whether conviction of accused based on extra judicial confession without any corroboration justified – Held, Prosecution proved enmity between accused and deceased by examining family members of deceased - Prosecution has successfully proved that motive – Difficult to believe that accused would have chosen total stranger (P.W.1) to make confession about his guilt, same creates doubt in veracity of evidence of P.W.1 – After completing investigation, Ex.P1 had been created as though accused had gone to P.W.1 to make confession and same has been forwarded to Magistrate – This is only inference, which could be drawn out of this unexplained delay – Ex.P1 is doubtful document and does not inspire confidence of Court – Extra judicial confession is very weak piece of evidence – Unless it inspires of confidence of Court and in absence of corroboration from independence source, not safe to rely on extra judicial confession to convict accused – no evidence against accused either independently or to corroborate Ex.P1 – Recovery of M.O.5-aruval immaterial – Link between M.O.5 and crime has not been established – Weapon was not sent for chemical examination – Prosecution failed to prove case beyond reasonable doubts – Conviction and sentence set aside – Appeal allowed.

(2016) 2 MLJ (Crl) 365

C. Guhamani vs. State

Date of Judgment: 11.02.2016

Court – Assistant Sessions Judge – Jurisdiction – Code of Criminal Procedure, 1973 – Sections 10 and 408 – Tamil Nadu public Property (Prevention of Damage and Loss) Act,1992 – Sections 3(i) and 8 – Indian Penal Code, 1860 – Sections 147, 148, 447, 448, 451, 452, 365, 354, 379, 380, 386 and 506(ii) – Case registered against accused under Section 120B read with Sections 147, 148, 447, 448, 451, 452, 365, 354, 379, 380, 386 and 506(ii) of Code 1860 and 3(i) of Act 1992 – On completion of investigation, charge sheets filed before Jurisdicitonal Court at Perundurai, which later committed same to Principal Sessions Judge at Erode and trial also commenced – Accused filed petitions under Section 10 read with Section 408 of Code 1973 seeking to transfer session case from Principal Sessions Court at Erode to Assistant Sessions Judge at Perundurai – Principal Sessions Judge at Erode ordered transfer of cases to Assistant Sessions Judge at Perundurai – present petitions by defacto complainants – Whether Assistant Sessions Judge has jurisdiction to try offence relating to Act 1992 by virtue of Section 8 of Act 1992 – Held, Section 8 of Act 1992 shows that no Court inferior to that of

Chief Metropolitan magistrate, Court of Session alone is appropriate to try offence punishable under Act 1992 – Accused were charged apart from offences punishable under Code 1860, but also for offence under Section 3(i) of Act 1992 – Having regard to term in Section 8 of Act 1992, except Sessions Court, no other Court can try offence punishable under Section 3 of Act 1992 – Assistant Sessions Judge has no jurisdiction to try offence under Act 1992 – Orders passed by Principal Sessions Court set aside – Petitions allowed.

(2016) 2 MLJ (Crl) 333

R. Murugesan vs. Subordinate Judge

Date of Judgment : 29.02.2016

Criminal Proceeding – Initiation of Proceedings – Power of Subordinate Judge – Code of Criminal Procedure, 1973, Sections 195 and 340 – On dispossession from leasehold property, Petitioner gave complaint to Police praying for initiating action against persons named in complaint apart from filing civil suit – Petitioner filed complaint before Subordinate Judge to take appropriate action as contemplated under Sections 340 and 195(1)(b) – Subordinate Judge passed order forwarding Petitioner's complaint to Chairman of District Legal Services Authority for initiating appropriate proceedings – Petitioner filed present writ petition alleging that Subordinate Judge, without analyzing complaint simply passed impugned order stating that Court was not empowered to deal with Petitioner's complaint – Whether Subordinate Judge has power to deal with petitioner's complaint for initiating appropriate proceedings – Held, Sections 195 and 340 show that Subordinate Judge empowered to deal with Petitioner's complaint – If Court records finding after satisfaction that offences under Section 195 made out in complaint submitted before it, recourse shall be made to forward report to Magistrate to initiate prosecution – If Court not satisfied as to existence of prima facie case to proceed further, it shall record reasons for not forwarding complaint as contemplated under Section 340(1)(c) – Facts show that Petitioner's complaint relates to fraud committed in proceedings before Subordinate Judge – When such complaint received, Subordinate Judge ought to have caused proper enquiry to ascertain correctness of Petitioner's complaint and to arrive at conclusion – Act of Subordinate Judge referring Petitioner's complaint to Chairman of District Legal Services Authority for adjudication, not warranted – Subordinate Judge failed to exercise his powers conferred under Section 340 – Impugned order set aside – Subordinate Judge directed to take Petitioner's complaint on his file, deal with it as per procedures in Section 340 of Code 1973 and to proceed further as per law – Petition allowed.

(2016) 2 MLJ (Crl) 261

Palanisamy vs. State

Date of Judgment: 29.02.2016

Murder – Dying Declaration – The Indian Penal Code, 1860 (IPC) – Section 302 – Appellant/accused charged for offence under section 302 IPC for murdering his wife by pouring kerosene and setting fire - Trial court convicted Accused and sentenced accordingly – Appeal against conviction – Whether dying declaration made by deceased can be relied upon to convict accused – Held, PWs 1 to 3 stated that accused suspected deceased regarding chasity of deceased, said circumstance has been proved – From out of motive, it cannot be concluded that accused committed crime – Prosecution relied on earliest statement made by deceased to PW 6, (doctor) – At the time of making statement, deceased was under influence of P.Ws 1 to 3 – Much weightage cannot be given to statement of deceased, as there is likelihood of PWs 1 to 3 having tutored deceased – Failure to record judicial dying declaration of deceased creates doubt about genuineness of statement said to have been made by deceased to PW6 – Doubtful whether deceased was in fit state of mind to make dying declaration – No corroboration to statement made by deceased – Trial Court not right in convicting

accused – accused entitled for acquittal – Conviction and sentence imposed on accused for offence under Section 302 IPC set aside – Appeal allowed.

(2016) 2 MLJ (Crl) 129

Srinivasan vs. State

Date of Judgment : 03.03.2016

Murder – Eye-witnesses – The Indian Penal Code, 1860 (IPC) – Sections 34 and 302 – Appellants/accused were charged with murder of deceased – Deceased was wife of Accused No. 1 – Accused no 2 and 3 are brother and mother respectively of Accused no. 1 – P.Ws 1 and 2, brother and sister of deceased claim to have witnessed entire occurrence – Trial Court convicted all Accused under sections 302 read with 34 IPC and sentenced accordingly – Appeal against conviction – Whether conviction of Appellants based on evidence of PWs 1 and 2 justified – Held, having invited deceased to come back to matrimonial home, difficult to believe that Accused no. 1 would have murdered deceased – It will not strike prudence of reasonable man that Accused would have murdered deceased in presence of PWs 1 and 2, without there being any quarrel or any other immediate cause for doing such a cruel act – Difficult to believe that PWs 1 and 2 were present at time of occurrence – Explanation for delay in First Information Report (FIR) reaching Judicial Magistrate cannot be believed – No witness examined to show that delay was caused because Judicial Magistrate was discharging his function on dias without break – Investigating officer did not verify correctness of explanation offered by PW 8, carrier of FIR – Delay in forwarding FIR to Court remains unexplained and said delay creates enormous doubt in case of prosecution – Recovery of knife does not carry any weightage - Knife was not sent for chemical examination and no link established between knife and Crime – Not safe to act upon evidence of PWs 1 & 2 who claim to have witnessed entire occurrence – Evidences of PWs 1 and 2 rejected – Prosecution failed to prove case beyond reasonable doubt – Appellants entitled for acquittal – Appeal allowed.

(2016) 2 MLJ (Crl) 513

Steepen vs. State

Date of Judgment: 16.03.2016

Murder – Unsound Mind – Indian Penal Code, 1860 (Code, 1860) – Sections 84, 299, 302 and 309 – Accused/Appellant was charged with offence punishable under sections 302 and 309 of Code, 1860 for death of his son and for attempting to commit suicide – Trial Court convicted accused under sections 302 and 309 of Code, 1860 and was sentenced accordingly – Appeal against conviction – Whether act of accused causing death of his son and attempting to commit suicide would amount to any offence warranting punishment under sections 302 and 309 of Code, 1860 – Held, not every homicide is made punishable under Code, 1860 – Only culpable homicide is punishable – Person of unsound mind as defined in section 84 of Code, 1860 cannot have intention or knowledge in terms of section 299 of Code, 1860 – Essential that cognitive faculty of accused should have been stable to know consequences of act – If accused attempted to commit suicide, not under control of cognitive faculty, them it is not an offence – In cross examination, PW1/father in law of accused stated that accused was highly depressed and not in normal sense – C.W.1/doctor recorded that on date of examination, accused was under severe mental depression – Clear that cognitive faculty of accused was not under his control and he was not conscious of consequences of his act – From medical evidence, it is established that accused was suffering from unsoundness of mind at time of occurrence in terms of section 84 of Code, 1860 – Act of accused in causing death of his son as well as in attempting to commit suicide, would not make out any offence, either under sections 302 or 309 of Code, 1860 – Accused entitled for acquittal – After treatment, accused became mentally sound, therefore trial of accused in accordance with law – Conviction and sentence of accused set aside – Appeal allowed.

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