V.S. DREAM COACHING

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Indirapuram Ghaziabad

For

H.J.S. P.C.S. (J) A.P.O. & CLAT

Year- 2022

Secret of success is to know something nobody else knows

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NEWS LETTER

October 2022

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Established in sept 2022

For Judicial Service Aspirants

In the service of Judicial Fraternity

V.S. DREAM COACHING

1. About Coaching

V.S. Dream coaching is one of the premiere law institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept -2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

2.About Director and faculty

Ms. Anshu Singh B.A., LL.B is the director of the coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

1. Ms. Anshu Singh B.A(English Literature) LL.B The Director, herself

2. Shri Shantanu Baliyan B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

3. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad -Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government- Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) - Guest Speakers
4. Prof. S.M. Sangal, Ex-Principal of Law College
5. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

4. Library with Research wing

V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book,

brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge..

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content.. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.

Library

Research wing

5.Study Material-Law

A. Law on Bail

1. RIGHT TO PERSONAL LIBERTY NOT AVAILABLE AT THE COST OF LIFE OR LIBERTY OF OTHERS :

Where the accused, a history-sheeter with 30 serious criminal cases pending against him, was granted bail by the Hon'ble Allahabad High Court for the offences u/s 365 & 506 of the IPC without considering the criminal antecedents of the accused, the Supreme Court cancelled the bail and observed that though the High Court and the Court of Sessions have got power to grant bail to an accused u/s 439 of the CrPC but the concept of personal liberty of a person is not in realm of absolutism but is restricted one. The fact that the accused was lodged in jail for the last 07 months melts into insignificance. No element in Society can act in a manner by consequence of which life or liberty of others is jeopardized. See. **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446.**

2.RELEVANT CONSIDERATIONS FOR GRANT OR REFUSAL OF BAIL :

Interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Supreme Court has laid down following considerations for grant or refusal of bail to an accused in a non-bailable offence----

(1). Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(2). Nature of accusation and evidence therefor

(3). Gravity of the offence and punishment which the conviction will entail

(4). Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail

(5). Character and behavior of the accused

(6). Means, position and standing of the accused in the Society

(7). Likelihood of the offence being repeated

(8). Reasonable apprehension of the witnesses being tampered with

(9). Danger, of course, of justice being thwarted by grant of bail

(10). Balance between the rights of the accused and the larger interest of the Society/State

(11). Any other factor relevant and peculiar to the accused.

(12). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. See

(i) Sanghian Pandian Rajkumar Vs. CBI, 2014 (86) ACC 671 (SC) (Three-Judge Bench)

(ii) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446

(iii) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949

(iv) Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189

(v) Gokul Bhagaji Patil Vs. State of Maharashtra, (2007) 2 SCC 475

(vi) Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)

(vii) State of U.P. through CBI Vs. Amarmani Tripathi,(2005) 8 SCC 21

(viii) Surinder Singh Vs. State of Punjab, (2005) 7 SCC 387

(ix) Panchanan Misra Vs. Digambar Misra, 2005 (1) SCJ 578

(x) Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)

(xi) State of Gujarat Vs. Salimbhai Abdul Gaffar, (2003) 8 SCC 50

(xii) Mansab Ali Vs. Irsan, (2003) 1 SCC 632

(XIII) Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466 (para 24)

(XIV) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933

3. CONDITIONS FOR GRANT OF BAIL U/S 437 CR.P.C.ARE ALSO RELEVANT FOR GRANT OF BAIL U/S 439 CRPC:

Relying upon an earlier Three-Judge Bench decision of the Supreme Court in the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, (2004) 7 SCC 528,** it has again been held by the Supreme Court that the conditions/considerations laid down in Sec. 437(1) (i) Cr.P.C. are also relevant for grant of bail even u/s 439 CrPC. [**Dinesh M.N. (S.P.) Vs. State of Gujarat, 2008 Cr.L.J. 3008 (SC)**

See Also ;

1. Aslam Babalal Desai Vs. State of Maharashtra, AIR 1993 SC 1

2. Raghubir Singh and Ors. Vs. State of Bihar, AIR 1987 SC 149

Bail is not a licence for committing any number of crimes. Though bail is related to liberty of a person, but misuse of liberty is not justifiable

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CLASSIFICATION OF LEGAL RIGHTS AND LEGAL DUTIES

Right means claims, titles, liberties, powers, and immunities summed together. Legal right is an interest which is recognised and protected by the law.

Classification Of Rights

1. Perfect and Imperfect Right

A right that is enforceable by law is a perfect right. But a right which is not enforced by law is an imperfect right.

For Example, Time barred debt

Time barred debt is an imperfect right because it is a right which the law recognizes but is not enforceable.

A debt is time-barred when not returned within the period of limitation. The period of limitation for the recovery of money is 3 years as per the Limitation Act. If the money lender doesn't sue within three years, then the debt becomes time-barred, and right becomes imperfect.

2. Right in Rem and Right in Personam

Right in Rem → against the whole world.

For Example, the Right to go on a public road.

Right in Personam → against an individual.

For Example, Right to sue an individual for breach of a contract.

3. Antecedent Right and Remedial Rights

A substantive law may either be antecedent or remedial. Antecedent right may either be a right in rem or a right in personam.

For Example, Purchaser of certain goods has an antecedent right over the goods so purchased. When antecedent right is violated, then the role of remedial right begins.

4. Proprietary and Personal Rights

A person's proprietary rights constitute his estate, his assets, and his property. These rights have some economic or monetary significance and are elements of wealth.

For Example, Money in a man's pocket or bank or land, houses, etc. are proprietary rights.

On the other hand, personal rights are elements of a person's well being. They have no monetary value.

For Example, Right of reputation, personal liberty, freedom from bodily harm, etc.

5. Right in re-propria and Right in re-alina

Right in re-propria means right over one's own property.

Right in re-alina means right over the property of someone else.

6. Principal Right and Accessory Rights

The existence of principal right is independent of any other right. But accessory rights are ancillary to principal right.

Principal right

For Example, The Right to alienate property is the owner's principal right.

Accessory right

For Example, The right to maintenance from husband raises from the rights of the wife being lawfully wedded

7. Vested and Contingent Right

Vested right occurs when all the facts have been completed. Contingent right occurs when some events are necessary to happen.

Vested right

For Example, A is father of S. After the death of A, the property of A will vest in S. It is the vested right of S.

Contingent right

For Example, A has three daughters B, C, and D. A contracts with E, that A will give Rs 2 lakhs to E if E married B. The right of E is contingent in nature.

8. Public and Private Rights

The violation of public rights affects the community as a whole. They are called crimes. Violation of private rights is called civil injuries or tort.

Theories Of Rights

1. Will Theory
2. Interest Theory

Will Theory - Supporters: Hegel, Kant, Hume

According to this theory, a right is an inherent element of the human will. The subject matter of right is derived from human will. The theory suggests that it is through a right that a man expresses his will over an object.

Interest Theory- Supporters: German jurist Ehering

According to this theory, a legal right is a legally protected interest.

Ehering says the basis of a legal right is interest and not will. The main

object of the law is the protection of human interest and resolve the conflicts between human interests.

However, Salmond criticised this theory of Ehering.

Legal Duties

A duty is an obligatory act. It means it is an act the opposite of which would be a

wrong. Thus duties and wrongs are generally co-related. The commission of a wrong is the breach of duty. And the performance of a duty is avoidance of wrong.

Classification of Legal Duties

1. Postitive and Negative Duty

Positive Duties → to do an act. Negative Duties → not to do an act.

2. Primary and Secondary Duty

A duty may be either primary or secondary. Primary duty is independent. Secondary duty is dependent, but exists for the enforcement of other duties.

3. Absolute and Relative Duties

Absolute duties are those duties that are owed only to the state; breach of which is generally called a crime and remedy is punishment. Relative duties are owed to any person; breach of which is a civil injury (tort), and the remedy is compensation.

Austin also supports the view that certain duties are absolute. They do not have a corresponding right.

For Example, Duty towards God, Duty towards the state, Duty towards himself, Duty towards animals.

IN THE SUPREME COURT OF INDIA

Md. Jabbar Ali & Ors.
Vs.
State of Assam
[Criminal Appeal No. 1105 of 2010]

Md. Ajmot Ali
Vs.
State of Assam
[Criminal Appeal No. 1128 of 2010]

HEADNOTE – When the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection

JUDGMENT

Nagarathna, J.

1. These Criminal Appeals have been filed assailing the common impugned judgment and order dated 21.08.2009 passed by the Gauhati High Court in Criminal Appeal No. 48 of 2007 by which the judgment of conviction dated 29.12.2006 and order of sentence dated 30.12.2006 passed in Special Case No.46 of 2004 by the Court of Additional Sessions Judge, Fast Track Court, Barpeta ('Fast Track Court', for the sake of convenience) has been upheld by dismissing the aforesaid appeals and consequently confirming the conviction of all the accused persons.

2. Since both the criminal appeals arise out of a common impugned judgment, these appeals were heard together and are being disposed of by this common judgment.

3. For the sake of convenience, the parties shall be referred to as per their rank before the Fast Track Court.

4. The Fast Track Court vide its judgment dated 29.12.2006 convicted the appellants herein viz., Md. Yunush Ali (accused No.1), Md. Hasan Ali (accused No.2), Md. Omar Ali (accused No.3), Md. Jabbar Ali (accused No.4), Md. Tabibor Rahman (accused No.5), Mustt. Hazerabhanu (accused No.6), Mustt. Chandrabanu (accused No.7), Md. Moyan Ali (accused No.10) and Md. Sahed Ali (accused No.11) [all appellants in Criminal Appeal No. 1105 of 2010] and Md. Ajmot Ali (accused No. 8) [appellant in Criminal Appeal No. 1128 of 2010].

5. The present appeal qua accused No.1 stood abated vide order dated 04.10.2010 since he died on 06.11.2009 during the pendency of the aforesaid appeals.

6. By its judgment dated 30.12.2006, the Fast Track Court sentenced accused Nos.4, 10 and 11 to undergo rigorous imprisonment for life along with a fine of Rs.2,000/- each and in default thereof to undergo rigorous imprisonment for two months more, for commission of offence punishable under Section 302 read with Section 149 of the Indian Penal Code ('IPC', for short). Each of these accused have been sentenced to undergo rigorous imprisonment for one year each for the offence punishable under Section 148 IPC, rigorous imprisonment for six months for the offence punishable under Section 323 IPC read with Section 148 IPC and rigorous imprisonment for two months for the offence punishable under Section 447 IPC read with Section 149 IPC. All the sentences were directed to run concurrently.

7. By the same judgment of the Fast Track Court, accused Nos. 2, 3, 6, 7 and 8 were sentenced to undergo simple imprisonment for a period of one year each for the offence punishable under Section 148 IPC, simple imprisonment for six months for the offence punishable under Section 323 IPC read with Section 149 IPC and simple imprisonment of two months for the offence punishable under Section 447 IPC read with Section 149 IPC. All the sentences were directed to run concurrently.

8. By the judgment of the Fast Track Court, accused Nos.1 and 5 were sentenced to undergo simple imprisonment for a period of one year each for the offence punishable under Section 148 IPC; simple imprisonment for one year for the offence punishable under Section 324 IPC read with Section 149 IPC, simple imprisonment for six months for the offence punishable under Section 323 read with Section 149 IPC and simple imprisonment for two months for the offence punishable under Section 447 IPC read with Section 149 IPC. All the sentences were directed to run concurrently.

9. Currently, all the accused-appellants are on bail. accused No.4 and accused No.10 were granted bail vide order of this Court dated 18.08.2017; accused No.11 was granted bail by order dated 03.04.2017 and the accused Nos.2, 3, 5, 6, 7 and 8 were granted bail vide order dated 25.10.2010.

10. Succinctly stated, the case of the prosecution is that on 19.11.1999 at about 7:00 a.m. when Md. Baju Mollik (PW-6) had gone to plough his land, an altercation took place between him and accused No.11. At that time, the other co-accused armed with falla, jong, dagger, lathi etc. attacked Md. Baju Mollik. Ekkabar Ali, Md. Samad Ali (PW-1) and Jonab Ali (PW-4) came to the place of occurrence whereupon accused No.2 stabbed Ekkabar Ali in the abdomen with a falla as a result of which Ekkabar Ali became unconscious and succumbed to his injury shortly thereafter. That accused No.11 stabbed Md. Samad Ali (PW-1) with a falla whereas

accused No.8 stabbed PW-1 with a fishing prong. Further, accused No.5 stabbed PW-4 with a spear. The other accused were present at the place of occurrence being armed with deadly weapons so that no other person could come and prevent the commission of the alleged offences.

11. An FIR/Ejahar was lodged by Md. Baju Mollik on 19.11.1999 at about 9:00 a.m. which was registered at Police Station, Barpeta being Case No. 1022/99 under Sections 147/148/149/447/323/324/307/302 IPC.

12. After investigation by the police, a Charge Sheet was submitted against the persons accused of the aforesaid offences.

13. The accused appeared before the Court of learned Additional Chief Judicial Magistrate, Barpeta but as the offence punishable under Sections 307/302 are triable by court of sessions the learned ADJ committed the case to the Court of Sessions, Barpeta. The accused appeared before the Court of Sessions, Barpeta but the case was transferred to the Fast Track Court, Barpeta for adjudication.

14. Thereafter, the accused appeared before the Fast Track Court and faced trial. Charges were framed against the accused for the respective offences and the same were read over and explained to the accused to which they pleaded 'not guilty' and claimed to be tried.

15. The prosecution examined altogether ten witnesses. Thereafter, statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC', for short) were recorded. All the accused denied the alleged occurrence and submitted that they were innocent and had been falsely implicated. The accused also examined two witnesses in support of their defence.

16. The Fast Track Court on considering the evidence on record came to the following conclusions:

(i) on minutely scrutinizing the evidence of PW-1 and PW-2, it is noted that the evidence of PW-1 lends support to the evidence of PW-2. The evidence of PWs-1 and 2 also finds corroboration with the medical evidence. The presence of these witnesses at the place of occurrence cannot be doubted. The two are injured witnesses in the occurrence and they sustained injuries on the said day. The defence failed to impeach the credibility of these witnesses in so far as the involvement of accused persons is concerned and therefore, evidence of PW-1 and PW-2 are cogent and reliable and the same are trustworthy witnesses. The ocular evidence of these witnesses found corroboration with the medical evidence adduced by Dr. D.C. Sarma (PW-7) and Dr. S.C. Sarma (PW-9).

(ii) no doubt that there are minor variations in the evidence of PW-6, informant of this case, with the evidence of PWs-1 and 2, but this witness has clearly implicated accused-Sahed Ali which finds corroboration from the evidence of PWs-1 and 2. There is no ground to disbelieve the version of PW-6 as well.

(iii) the evidence of Inam Ali (PW-3) who is a reported witness, Jonab Ali (PW-4) who sustained injury on his left ring finger during the incident and Hakim Khan (PW-5) who was not an eye-witness but saw the accused near the place of occurrence, lends credence to the correctness of the prosecution case.

(iv) the Investigating Officer Biseswar Singha (PW-10) prepared the sketch/map of the place of occurrence and proved the same along with his signature. The sketch/map shows that the place of occurrence is a disputed land. Though, both the informant and the accused have claimed the land, it transpires from the evidence of the prosecution that the disputed land where the incident occurred was in possession of the complainant's party. During investigation, PW-10 also seized the weapon of assault and prepared a seizure list which bears his signature.

(v) the discrepancies pointed out by the learned counsel for the defence are trivial in nature and cannot be said to have destroyed or demolished the case of the prosecution. The discrepancies are due to normal errors of memory or due to lapse of time. Further, the evidence of the two defence witnesses failed to corroborate the plea of alibi taken by the accused.

(vi) the defence witnesses failed to establish that the persons accused were not present at the place of occurrence at the time of the incident and that they did not kill the deceased person. The reports of the doctor show that the deceased was killed at 07 or 08 a.m. and the FIR was lodged promptly. All the accused were named in the FIR. The parties were known to each other. Thus, it is proved that all the accused came to the place of occurrence being armed with deadly weapons such as falla, lathi, surki, etc. by forming an unlawful assembly. Out of them, accused Md. Sahed Ali, Md. Jabbar Ali and Md. Hasan Ali assaulted PW-1 with a blunt object; accused-Md. Yunush Ali and Md. Tabibor Rahman assaulted PW-2 with a sharp pointed weapon; accused-Md. Ajmot Ali assaulted PW-4 and accused Md. Sahed Ali assaulted PW-5. accused-Md. Jabbar Ali, Md. Sahed Ali and Md. Moyan Ali gave a fatal blow to Ekkabar Ali as a result of which he died. The weapons used by the accused were dangerous weapons which clearly indicate that the accused had an intention to kill Ekkabar Ali. Thus, all the accused were held guilty and were convicted and sentenced by the Fast Track Court as has already been mentioned above.

17. In the criminal appeal filed by the accused before the High Court, on considering the submissions made on their behalf as well as the State, the High Court noted as under:

(i) the evidence of PW-1, PW-2 and PW-5 make it clear that to prevent PW-6 from ploughing the land where the occurrence took place, the accused had come to the land in question armed with dangerous weapons like lathi, fishing prong, falla and surki. An assembly of the accused persons (who were more than five) was formed on the day of occurrence and deposition of these witnesses make it clear that the persons accused had intended to take possession of the land on which PW-6 was ploughing and to prevent him from further ploughing the land. The prosecution has successfully established formation of an unlawful assembly with a common object.

(ii) the evidence of PW-1, PW-2, PW-5 and PW-6 make it clear that when the deceased Ekkabar Ali tried to intervene in the matter, injuries were caused on his abdomen with a sharp weapon, resulting in his death and the same were caused at the instance of accused-Md. Sahed Ali. The causing of injuries was in furtherance of the common object of unlawful assembly formed by the accused persons. While it is correct that the evidence of the witnesses are at variance as regards which one of the accused had inflicted injury on the abdomen of the deceased, the said fact will not be very relevant if liability is otherwise attributable by virtue of the provisions of Section 149 of the IPC. Thus, it was held that Md. Jabbar Ali, Md. Sahed Ali and Md. Moyan Ali, being members of an unlawful assembly were liable for causing the death of (deceased) Ekkabar Ali.

(iii) it is an established principle of law that evidence tendered by different prosecution witnesses have to be considered as a whole and such evidence cannot be put in different compartments and considered separately. The appreciation must be of the totality of the evidence brought on record by different witnesses. While it is correct that PW-6 had implicated only four of the accused persons, the evidence of the said witness cannot be construed to be another version of the prosecution case. The evidence of PW-6 is supplementary and not in derogation of the evidence of other prosecution witnesses examined in the present case.

(iv) the injuries suffered by PW-1, PW-2, PW-4 and PW-5 are fully corroborated by the evidence of PW-7 and PW-9 as well as the reports of the injuries exhibited by the prosecution witnesses.

(v) the evidence of PW-10 established that PW-6 had given the land for cultivation on 'adhi' basis and that the accused person's right to possess the land is also not established.

(vi) there was no fault with the conviction and sentence of the accused passed by the Fast Track Court under Section 447 of IPC read with Section 149 of IPC. That when all the persons accused in the instant case had formed an unlawful assembly and the death of Ekkabar Ali was on account of injuries caused by some members of the unlawful assembly, the Fast Track Court convicted only three out of eleven accused under Section 302 of IPC read with Section 149 of IPC and the others were acquitted of the said charges. That the reason for such acquittal was not clear, however, since the acquittal of the said accused was not challenged, the High Court refrained from getting further into the said question.
(vii) the judgment and sentence passed by the Fast Track Court in respect of each person accused was thus upheld and affirmed wholly.

18. We have heard Sri Raj Kishor Choudhary, learned counsel for the appellants-accused and Sri Shuvodeep Roy, learned counsel for the respondent-State and perused the material on record.

19. Learned counsel for the appellants submitted that the High Court was not right in confirming the judgment of conviction and sentence passed by the Fast Track Court. The counsel for appellants further contended that the impugned judgments of the Courts suffer from legal as well as factual infirmities and the findings therein are perverse and are to be set-aside and the appellants are liable to be acquitted.

20. The details of the submissions put forth by the learned counsel for the appellants-accused can be epitomised as under:

20.1 there was no evidence to show any alleged unlawful assembly, rioting, murder and all the alleged offences have been falsely fabricated by the Investigating Officer-Biseswar Singha (PW-10).

The case of the appellants is that they were neither present nor participated in the alleged occurrence.

20.2 the investigation by PW-10 was not done as required by law. It was urged by the counsel for the appellants that the prosecution stated that 100 to 150 people gathered at the place of occurrence. However, the prosecution failed to examine any independent and impartial witness. The witnesses examined were under the influence of PW-10 who falsely implicated the appellants. Further, the witnesses, PW-1 to PW-6, who were examined by the prosecution, were related to each other. There are material contradictions in the contents of the FIR and depositions made by the witnesses. The charge sheet submitted by PW-10 did not bear his signatures. The land documents of the appellants were not verified by PW-10 as the same was essential to do so. PW-10 has been negligent in performing his duty and did not carry out the investigation in a proper manner.

20.3 the Courts below failed to note that dispute pertained only regarding land and the ingredients of offence under Section 149 of the IPC were not made out and, as such, the conviction was bad in law. Since the offence under Section 149 of the IPC was not made out, accused Nos. 4, 10 and 11 could not have been convicted under Section 302 of the IPC. There is no clear version as to who gave the fatal blow to the deceased.

20.4 the Courts below ought to have considered the cardinal principle of the administration of criminal justice i.e., presumption of innocence of the accused. In the present case, nothing was proved beyond reasonable doubt and the Courts below were not justified in depriving the accused persons of the benefit of doubt.

21. Per contra, learned counsel appearing for the respondent-State supported the impugned judgment and order passed by the High Court and the Fast Track Court and contended that the Courts below have rightly perceived and assessed the evidence on record.

22. The submissions of the learned counsel for the respondent-State can be summarised as under:

22.1 the present case is a case of clinching evidence and the involvement of the accused in the offence has been proven beyond reasonable doubt by the prosecution on the strength of the depositions of injured eye-witnesses being PW-1, PW-2, PW-4 and PW-5 which has been corroborated by medical evidence duly proved on record.

22.2 both the Courts below have concurrently held that the minor discrepancies in the deposition of PW-6 does not demolish/destroy the consistent depositions of PW-1, PW-2, and PW-5. The same is actually supplementary and not in derogation of the evidence of other prosecution witnesses. The discrepancy regarding who stabbed the deceased does not negate the value of the testimonies of PW-1 and PW-2 as it does not go to the root of the matter. As long as the evidence contains a ring of truth, it cannot be discarded on account of existence of discrepancies. The learned counsel for respondent-State contended that this Court has settled the principles relating to treatment of evidence when discrepancies are alleged and relied on the judgments of this Court in

(i) Sohrab v. State of Madhya Pradesh (1972) 3 SCC 751,
(ii) Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217,
(iii) State of U.P. v. M.K. Anthony (1985) 1 SCC 505,
(iv) Prithu @ Prithi Chand v. State of Himachal Pradesh (2009) 11 SCC 588 and
(v) State of Madhya Pradesh v. Chhaakki Lal (2019) 12 SCC 326.

22.3 the plea of alibi as claimed by the accused has not been sufficiently proven by the defence. It was contended by the learned counsel for the State that in respect of plea of alibi, Section 11 and Section 103 of the Evidence Act, 1872 are relevant. Further, the plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. Neither DW-1 nor DW-2 confirmed the presence of accused Md. Sahed Ali in his house or the alleged incident of dacoity at his alibi. The alibi is weak and does not create a contradiction to the facts presented by the prosecution. Learned counsel for the respondent-State placed reliance on **Dudh Nath Pandey v. State of Uttar (1981) 2 SCC 166, Jitender Kumar v. State of Haryana (2012) 6 SCC 204 and State of Maharashtra v. Narsingrao Gangaram Pimple (1984) 1 SCC 446.**

23. Having heard the learned counsel appearing for the respective parties, the following points would arise for our consideration:

(a) Whether the High Court was justified in confirming the judgment of conviction and sentence awarded to the appellants-accused by the Fast Track Court?

(b) Whether the judgment of the High Court calls for any interference or modification by this Court?

(c) What order?

24. Before proceeding further, it would be useful to recall the approach to be adopted while deciding an appeal against conviction by the Trial Court as well as by the High Court.

25. Section 374 of the CrPC deals with appeals from convictions. Though it is a settled law that this Court shall not reassess the evidence at large and come to fresh opinion as to the innocence or guilt of the accused so as to interfere with the concurrent findings of the Courts below, however this Court may interfere in certain cases. One such case is when there has been an improper reception or rejection of evidence, which, if discarded or received would leave the conviction unsupportable. This Court may also interfere in a case where there has been a misreading of vital evidence or the Court omits to notice the important points in favour of the accused. **{See Saravanabhavan v. State of Madras AIR 1966 SC 1273}**

26. Where the finding of fact by the High Court is perverse, inadequate and had resulted in miscarriage of justice, this Court may itself hear the appeal on the evidence instead of remanding the case to the High Court for a reconsideration of the evidence when the latter course would lead to unnecessary delay or hardship. **{Kashmira Singh v. State of Madhya Pradesh AIR 1952 SC 159}**

27. In order to appreciate the arguments advanced by the learned counsel for the rival parties and to determine the correctness of the conclusions recorded in the judgments passed by the High Court and the Fast Track Court, it will be necessary to discuss the evidence adduced by the witnesses examined by the prosecution as well as the defence.

28. PW-1- Md. Samad Ali, is one of the persons allegedly injured in the occurrence. The deceased Ekkabar Ali was his cousin (paternal uncle's son). According to him, at about 7:00 a.m. on the day of occurrence, PW-6 had gone to plough his field when Md. Sahed Ali took the other accused persons to the field of PW-6. Seeing the persons accused go to the field of PW-6, PW-1 along with the deceased Ekkabar Ali, PW-2 and PW-3 also came to the field. As per this witness, Md. Sahed Ali exhorted the rest of the accused to assault the other persons whereupon accused Md. Ajmat Ali stuck PW-1 in the left arm with a fishing prong whereas accused Md. Hasan Ali tried to stab him in the abdomen with a falla, as a result of which he sustained injury in his left hand. This witness further deposed that Md. Jabbar Ali stabbed the deceased Ekabbar Ali in the lower abdomen with a surki (spear) whereupon the deceased fell down. PW-1 also deposed that injuries were caused to PW-2 and PW-4 and that injured Ekkabar Ali was taken to the house of Barek Bepari where he died. In his cross examination, PW-1 stated that his house is situated at a distance of half a kilometer from the place of occurrence and that Md. Sahed Ali had forcibly taken possession of the land on which the occurrence took place. PW-1 stated that PW-6 is the husband of his niece. PW-1, in his cross examination, further stated that the police did not interrogate him at the place of occurrence. He further stated that some 15-20 people were present at the place of occurrence and that PW-6 was ploughing Md. Sahed Ali's land.

The quarrel took place when Md. Sahed Ali objected to the said act of ploughing his field. PW-1 stated that he did not tell the police about Mr. Jabbar Ali stabbing him in the arm and that Md. Ajmot Ali did it. As per his statement in the cross-examination, he did not tell the police that Md. Tabibor Rahman stabbed him in the right arm. PW-1 stated that he did not tell the police about Md. Jabbar Ali stabbing Ekkabar Ali since the police did not ask him. In his cross-examination, PW-1 stated that it was only when Ekkabar Ali's body was taken from the place of occurrence that he came to know about Md. Jabbar Ali stabbing Ekkabar Ali. PW-1 further refused that he had any land near PW-6's land or Md. Sahed Ali's land.

29. PW-2- Md. Baseruddin is another witness who got injured in the course of the occurrence who has stated that deceased Ekkabar Ali was his paternal uncle and that at about 7:00 a.m. while walking on the road, he heard a hue and cry at the place of occurrence. When PW-2 reached the spot of occurrence, he found all the accused persons present with lathi, falla, hanna, surki etc. and the accused persons were quarrelling with PW-6 over ploughing the land. PW-2 deposed that he had requested

the parties not to quarrel. He deposed that at the time of incident, Md. Sahed Ali exhorted the other accused to stab PW-2. The deceased Ekkabar Ali was infront of him and that Md. Moyan Ali caught hold of Ekkabar Ali while accused Md. Jabbar Ali stabbed Ekkabar Ali in the lower abdomen with a surki.

He deposed that accused Md. Yunush Ali hit him on the upper dorsal side of his right hand with a faska whereas accused Md. Tabibor Rahman had struck him with a falla on the upper dorsal side of his left hand. By seeing this he fled away from the place of occurrence. The accused Md. Ajmot Ali and Md. Hasan Ali injured PW-1 on his hand and arm. That Ekkabar Ali was carried to the house of Barek Bepari where he died and that he underwent treatment for his injuries. In his cross-examination, the place of occurrence of the incident belonged to one Rezzak Ali and that the patta is in his name. He stated that he had no knowledge whether the name of accused Md. Sahed Ali was mutated in the patta or not. He rushed to the place of occurrence after 10-15 minutes wherein 50-60 people gathered there. PW-2 stated Ekkabar Ali sustained injury in the right side of his lower abdomen and that he sustained only one injury. PW-2 further stated in his cross-examination that he did not know if the people were aware of this incident.

30. PW-3-Md. Inam Ali is the brother of deceased Ekkabar Ali who deposed that at about 7:00 a.m. on the day of occurrence, when he had been ploughing the field, a young boy came and informed him of the incident. He deposed that he went to the place of occurrence and found his elder brother Ekkabar Ali lying dead. According to him, PW-4 informed him that Md. Moyan Ali had killed Ekkabar Ali and further that PW-4 and PW-1 were injured by Md. Ajmot Ali. Immediately, on his arrival at the place of occurrence, the accused persons ran away from there. In his cross-examination, PW-3 stated that the land on which occurrence took place is an annual patta land and that he did not know the dag and patta numbers of the land. He refused that he knew the boundaries of the land. He stated that he had also seen some Moslem ploughing the field on which incident took place and that he had been ploughing his land which some 2-3 bighas away from the place of occurrence. On his arrival on the place of occurrence, he did not notice who were present there and that the accused persons ran away. The accused persons have separate homesteads. PW-3, in his cross-examination further stated he told the police that PW-4 told him that Md. Moyan Ali assaulted Ekkabar Ali. The two parties fought over possession of land and that on the day of occurrence itself, Md. Sahed Ali filed a case against them (Jonab, Raju Mallik and Baser) alleging looting of his house

31. PW-4-Md. Jonab Ali is another brother of the deceased. He deposed that at about 7:00 a.m. on the day of occurrence, he was ploughing his land which is at a short distance from the place of occurrence. Seeing 100-150 people gathered at the place of occurrence, he went to the place of occurrence. Md. Ajmot Ali tried to hit him with a faska, as a result of which, he fell on the ground and on standing up he saw 4-

5 men carrying Ekkabar Ali. He also saw injury on the abdomen of Ekkabar Ali who, according to him, was assaulted by Md. Hasan Ali.

In his cross-examination, he stated that deceased Ekkabar Ali and PW-6 had a quarrel over possession of the land. He did not see injury on anyone at the place of occurrence except for on Ekkabar Ali. As per this witness, PW-2 came to the place of occurrence afterwards. He did not know the name of the persons who told him that Md. Hasan Ali had assaulted Ekkabar Ali and that he did not tell that to the police. In his cross-examination, PW-4 makes a mention of some other quarrel that took place between the two groups at some place 10-15 bighas away from Md. Sabed Ali's house. He also made a mention of the case filed against them alleging dacoity being committed by them in Md. Sabed Ali's house. In his cross-examination, PW-4 stated that he cannot say if the accused persons were present at the place of occurrence. PW-1 and PW-3 are his brothers and PW-6 is the husband of his niece.

32. PW-5- Md. Hakim Khan, who is the brother-in-law of deceased Ekkabar Ali, in his deposition stated that at about 8:00 a.m. on the day of occurrence, he was going home on a bicycle after purchasing some fertilizer. As per this witness, Md. Sahed Ali, Md. Tabibur Rahman, Md. Sabed Ali, Mustt. Chanderbhanu, Mustt. Hazarabhanu and Md. Yunus Ali came together towards him and said 'Ekkabar Ali' is finished. Catch this one'. According to him, Md. Sahed Ali hit him on his right shoulder with a lathi, as a result of which, he fell down and became unconscious and was taken to the hospital by his eldest son Anowar Khan, son-in-law and his wife. PW-5 stated that Ekkabar Ali sustained injuries in his right kidney. In his cross-examination, this witness stated that he was attacked and injured near the house of one Jittu Ali at Keotpara. The incidents of assault took place at two places. the distance between the places where he was attacked and Ekkabar Ali was killed is one furlong. This witness stated that he did not know what the rest of the accused persons had done other than running towards him and attacking him. The cause of quarrel was unknown to him. In his cross-examination, this witness stated that he did not tell the police about the accused persons assaulting Ekkabar Ali.

33. PW-6- Baju Mollik, the first informant, deposed that on the morning of the day of occurrence, at about 7:00 a.m. when he was ploughing his land, the accused, namely, Md. Sahed Ali, Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu came to the land and asked him not to plough the same. An argument took place over the said issue. As per this witness, at that time, deceased Ekkabar Ali was going along the road to his place of work. PW-6 called Ekkabar Ali to his land and the latter asked the accused persons not to quarrel with PW-6. PW-6 deposed that at that time, Md. Sahed Ali ordered that Ekkabar Ali should be assaulted and therefore Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu held

Ekkabar Ali tightly while Md. Sahed Ali stabbed him in the abdomen with a falla. As per his deposition, there was an attempt to assault him also but he ran away.

While running away, he met PW-4 and informed him of the incident. PW-6 also informed the villagers regarding the said incident and on returning to the place of occurrence, he found Ekkabar Ali lying in the field in an injured state. In his cross-examination, he stated that he was ploughing was his own land however he did not know the dag and patta of his own land. He stated that he had seen only accused Md. Sahed Ali, Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu and none others at the place of occurrence and he informed the same to PW-4 when he was running away. After 10-15 minutes, he returned to the place of occurrence and saw only aforesaid 4 accused persons and no other person. He stated that there was only Ekkabar Ali and him on the place of occurrence. He also deposed in his cross examination that he did not know if any other man sustained injuries.

He stated that Md. Sayed Ali had asked him not to plough the field. The said land was given to him by his maternal uncle Md. Rezzak Ali however he has not obtained mutation in that respect. This witness stated he did not tell the police about accused Md. Sayed Ali stabbing PW-1 with a falla. According to him, PW-1 held it with his hand and as a result of that, he sustained injury in the hand. He also stated that he did not tell the police that Md. Yunus Ali had injured PW-2 and that Md. Hasan Ali injured Ekkabar Ali. He did not know of any incident happening near Md. Sayed Ali's house. He denied that the land where the incident took place belonged to Md. Sahed Ali. He even stated in his cross-examination that he cannot say as to who assaulted whom. This witness also deposed in his cross-examination that the deceased Ekkabar Ali was his maternal uncle-in-law.

34. PW-7- Dr. D.C. Sarma who was working in Barpeta Civil Hospital, deposed that on 19.11.1999, he examined PW-1, PW-4 and PW-5. The report was prepared and signed by PW-7 and was exhibited by the prosecution as Ext.2,4, and 3 respectively. The injuries as mentioned in the injury reports were simple and were found to be caused by a blunt weapon.

35. PW-8- Dr. P.N. Uzir conducted post-mortem examination on the dead body of Ekkabar Ali. The post-mortem report Ext.5 indicated that one stab injury was found on the left side of the lower abdomen and that the rupture of the peritoneum was found along with perforation of the large intestine. As per the opinion of the doctor, the cause of death was shock and haemorrhage due to the injury sustained. Only one injury was found on the body of the deceased. In his report, he stated that the injury might have been caused by a sharp weapon.

36. PW-9-Dr. S.C. Sarma had examined PW-2 at Barpeta Civil Hospital on 19.11.1999 and in his report, Ext.6, it was mentioned that he found two small

punctured injuries at the dorsal of the right hand. The injuries were simple and caused by pointed weapon.

37. PW-10-Biseswar Singha is the Investigating Officer in the instant case who deposed that PW-6 lodged a written Ejahar. He stated that he registered the complaint, interrogated the complainant, visited the place of occurrence, questioned the witnesses and drew a sketch/map- Ext.7 of the place of occurrence along with his signature- Ext.7(i). He deposed that he seized a 10 feet 7 inches bamboo pole fitted with 9 inches long pointed iron prong, 9 inches long iron falla fitted to a 2 feet 11 inches long bamboo pole and an 11 feet 2.5 inches long bamboo pole fitted with 14-inch-long pointed iron falla vide seizure list- Ext.9 along with his signature- Ext.9(i). Ext.10 (1) is the signature of Inspector Tanu Hazarika. As per this witness, he sent the body of the deceased Ekkabar Ali to the Barpeta Civil Hospital for autopsy and on completion of the investigation, he submitted a chargesheet against the accused. In his cross-examination, he stated that the incident took place on Muslimuddin's land and that he did not verify the land documents of PW-6 i.e., the first informant and of the accused persons. In the diary, there is no mention that the accused Sayed Ali's house was ransacked. The chargesheet did not bear his signature. In his cross-examination, PW-10 stated that he did not see the articles seized by him in the court on the day of his deposition. He further stated that he did not examine Anowar Khan as a witness. PW-10 stated that PW-6 and PW-4 told him about the incident.

38. The accused examined two witnesses. DW-1- Phul Khatun in his examination-in-chief, deposed that a quarrel took place in the house of Md. Sahed Ali, over some land, about 4-5 years ago. DW-1 however stated that she could not say whether at the time of occurrence, Md. Sahed Ali was present or not. DW-1 stated that she had not seen the occurrence of the incident. In her cross-examination, DW-1 deposed that she was not present at the time of the occurrence.

39. DW-2- Md. Abu Ahmed, in his witness, deposed that on coming to know of the arrival of the police at the place of occurrence, he had gone there and found the dead body of Ekkabar Ali lying in the courtyard of the house of Barek Bepari. In his cross-examination, this witness stated that he was not present at the time when deceased Ekkabar Ali was killed.

40. On reappreciation of evidence of the prosecution witnesses, it is noted that PW-1 who is one of the injured witnesses has stated that on the fateful day, it was Md. Sahed Ali who exhorted the other accused to assault and as a result of the said exhortation Md. Jabbar Ali stabbed Ekkabar Ali in the in the lower abdomen with surki (spear) whereupon the deceased fell down. PW-2 has also stated that Md. Moyan Ali caught hold of Ekkabar Ali while accused Md. Jabbar Ali stabbed Ekkabar Ali in the lower abdomen with a surki. That Md. Yunsh Ali hit him on the upper dorsal side of his right hand with a falla and Md. Tabibur Rahman had struck

him with a falla on the upper dorsal side of his left hand. As a result, he fled from the place of occurrence. PW-3-Md. Inam Ali is not eye witness but on information has deposed that he went to the place of occurrence of the incident and found Ekkabar Ali lying dead. According to this witness who is a hearsay witness, PW-4 informed him that Md. Moyan Ali had killed Ekkabar Ali. PW-4 further stated in his evidence that he saw the injuries on the abdomen of Ekkabar Ali who, according to him, was assaulted by Md. Hasan Ali.

But he has not stated that he had seen Md. Hasan Ali assaulting Ekkabar Ali. Also, PW-5-Md. Hakim Khan has deposed that Md. Sahed Ali hit him on his right shoulder with a lathi and as a result he fell down and became unconscious and was taken to the hospital. He has also not stated as to who assaulted Ekkabar Ali. Similarly, PW-6-Baju Mollik, the first informant has stated that on the exhortation of Md. Sahed Ali, Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu held Ekkabar Ali tightly while Md. Sahed Ali stabbed him in the abdomen with a falla and as there was an attempt to assault him also, he ran away. While running away, he met PW-4 and informed him of the incident. Thus, PW-4 is also not an eye witness of the incident as they were not present at the time when Ekkabar Ali was assaulted.

41. On an analysis of the evidence produced by both the parties, what emerges is that there are variations in the evidence of PW-6 who was the first informant in the instant case and the evidence of PW-1, PW-2 and PW-4 regarding as to who gave the fatal blows to deceased Ekkabar Ali. As per the deposition of PW-6, accused Md. Sahed Ali stabbed the deceased Ekkabar Ali in the abdomen with a falla while as per the deposition of PW-1 and PW-2, accused Md. Jabbar Ali stabbed Ekkabar Ali in the lower abdomen with a surki, whereafter he fell on the ground and was later taken to house of Barek Bepari where he succumbed to his injuries. But, PW-1 has admitted in his cross examination that he had not told the police about Md. Jabbar Ali stabbing Ekkabar Ali and when the latter's body was being taken from the place of the occurrence, he came to know that Md. Jabbar Ali had stabbed Ekkabar Ali. PW-4 deposed that Md. Moyan Ali had killed Ekkabar Ali.

From the evidence of the witnesses, what emerges is that there is no consistency in the depositions of the aforesaid witnesses as to who amongst the accused persons gave a fatal blow to the deceased Ekkabar Ali. When it is not clear as to who stabbed the deceased Ekkabar Ali, the finding of the Fast Track Court, that the evidence of PW-6 finds corroboration with the evidence of PW-1 and PW-2 is erroneous and cannot be sustained. The Fast Track Court as well as the High Court ought not to have relied on the evidence of these witnesses which are highly inconsistent with each other in holding the concerned accused guilty.

42. The evidence of PW-3, who was the brother of the deceased, also does not support the case of the prosecution since PW-3 was not an eye-witness but was merely a hearsay witness who, in his deposition, categorically stated that while he was ploughing his field, a young boy came and informed him about the incident. After hearing about the incident, this witness rushed to the place of occurrence and saw the dead body of the deceased Ekkabar Ali. Further, in his deposition, PW-3 also stated that he was informed by PW-4 that accused Md. Moyan Ali stabbed the deceased Ekkabar Ali and that PW-1 and PW-4 were further injured by the accused Md. Ajmot Ali. On examining the deposition of this witness PW-3, it is clear that the same is not corroborated by the evidence of any other witness such as PW-1 and PW-2 who stated that accused Md. Jabbar Ali stabbed the deceased Ekkabar Ali and PW-6 who stated that accused Md. Sahed Ali stabbed the deceased Ekkabar Ali. The finding of the Fast Track Court that the evidence of PW-3 lends support to the correctness of the prosecution case is therefore incorrect. Thus, the evidence of PW-3 in no way lends succor to the case of the prosecution.

43. Moving on to the evidence of PW-4, who is also alleged to be injured in the said incident was also not an eye-witness to the occurrence. As per his own deposition, he went to the place of occurrence after he saw many people gathered there. According to this witness, accused Md. Hasan Ali assaulted the deceased Ekkabar Ali, however, during his cross-examination, he clearly stated that he did not know as to who told him that accused Md. Hasan Ali stabbed the deceased Ekkabar Ali.

44. Further, PW-5 was also not an eye-witness to the incident of deceased Ekkabar Ali being killed by the accused persons. According to this witness, the accused persons Md. Sahed Ali, Md. Sabed Ali, Mustt. Chandabhanu, Mustt. Hazerabhanu and Md. Yunush Ali came towards him and told that they had killed the deceased Ekkabar Ali. However, this witness has failed to state which one of the accused persons actually stabbed the deceased Ekkabar Ali. The evidence of PW-5 thus, does not lend any credence to the case of the prosecution.

45. On scrutinizing the evidence of PW-10 i.e., the Investigating Officer, it is clear that PW-10 did not verify the land documents/land records of PW-6 as well as of the persons accused. The Fast Track Court has held that on the relevant day i.e., on the day of the incident, PW-6 was cultivating the land however the accused Md. Sahed Ali also claimed to be owner of the land. Also, witness PW-10 did not collect the blood stains from the place of occurrence.

46. Hence, we find there is no clinching evidence so as to prove beyond reasonable doubt the case of the prosecution as there are contradictions in the evidence/depositions of PW-1, PW-2 and PW-5. Moreover, the evidence of PW-6, the informant is inconsistent with the depositions of PW-1, PW-2 and PW-5. We find that the inherent contradictions in the evidence of the prosecution-witnesses

does not prove the case of the prosecution beyond reasonable doubt. Therefore, the evidence of the defence witnesses in relation to the alibi of Md. Sahed Ali need not be considered as such.

47. It is pertinent to mention here that the finding of the High Court as well as of the Fast Track Court is erroneous since no document was brought on record to prove the possession or the ownership of the said disputed land. The Fast Track Court arrived at a conclusion that the disputed land where the occurrence took place was in possession of the complainant's party on mere conjectures. Hence, we express no opinion on that aspect of the case.

48. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of Gangadhar Behera and Ors. v. State of Orissa (2002) 8 SCC 381, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

49. In **Raju alias Balachandran and Ors. v. State of Tamil Nadu (2012) 12 SCC 701,** this Court observed:

"29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh [AIR 1953 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the following words: (Sarwan Singh case [(1976) 4 SCC 369, p. 376, para 10)

"10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

50. Further delving on the same issue, it is noted that in the case of **Ganapathi and Anr. v. State of Tamil Nadu (2018) 5 SCC 549,** this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

51. It is thus settled that the evidence of the related witnesses have to be considered by applying discerning scrutiny. In the instant case, it is seen from the testimonies of the prosecution witnesses that all the witnesses are related to the deceased Ekkabar Ali and therefore all the witnesses being related to each other. In order to elucidate on the said aspect, it is pertinent to note the relationship of the witnesses and to the deceased Ekkabar Ali. PW-1 in his deposition stated that the deceased Ekkabar Ali was his cousin (paternal uncle's son) and PW-6 is the husband of his niece. PW-2 stated that the deceased Ekkabar Ali was his paternal uncle. PW-3 and PW-4 deposed that they were brothers of the deceased. PW-5 was the brother-in-law of the deceased and PW-6 stated that the deceased was his maternal uncle in law. It is necessary to state here that the evidence of the related witnesses can be rejected if there are material contradictions and inconsistencies found in their testimonies. It is observed that there have been material improvements in the testimony of PW-1. PW1- in his examination deposed that accused Md. Jabbar Ali stabbed Ekkabar Ali however in his cross-examination, PW-1 stated that he had not told the police that Md. Jabbar Ali stabbed Ekkabar Ali. The same is an improvement in the testimony which has to be borne in mind.

52. Further as already stated above, all the witnesses have given contradictory versions as to who gave the fatal blow to deceased Ekkabar Ali and the same amounts to material contradictions. It is reiterated that the testimony of PW-6 is inconsistent with the testimonies of PW-1, PW-2 and PW-5 This Court in the case of **State of Rajasthan v. Kalki & Anr. (1981) 2 SCC 752**, distinguished between the normal discrepancies and material discrepancies. This Court held that the Courts have to label as to which category a discrepancy can be categorized. The material discrepancies corrode the credibility of the prosecution's case while insignificant discrepancies do not do so.

53. Keeping in view the aforesaid principle, this Court would hold that in the present case, there are material discrepancies in the testimonies of the witnesses and the same is fatal to the case of the prosecution. The prosecution has thus failed to prove the guilt of the accused-appellants beyond reasonable doubt.

54. In the present case, owing to the substantial and material contradictions in the testimonies of the prosecution witnesses, the evidence of the prosecution is considered wholly unreliable. Additionally, the prosecution has examined only

related witnesses and not a single independent witness. Therefore, in the facts and circumstances of the case, the evidence does not prove the alleged offences against the accused-appellants.

55. Another aspect that this Court would like to look into is as to what extent this Court can reappreciate and reappraise the evidence on record. In a catena of cases, it has been held that though in cases of concurrent findings of fact, this Court will ordinarily not interfere with the said findings, this Court is empowered to do so if in case it finds inter alia, misreading of the evidence or where the conclusions of the High Court are manifestly perverse.

56. Reliance in this regard is placed on the recent judgment of this Court in **Ashoksinh Jayendrasinh v. State of Gujarat (2019) 6 SCC 535**, wherein it has categorically held that when the High Court has failed to appreciate the oral evidence, it would definitely be entitled to appreciate the evidence in its correct perspective. In the present case at hand as well, the finding of conviction was recorded overlooking the material contradictions in the evidence of the prosecution witnesses and therefore the said conviction deserves to be set-aside. The relevant portion from the aforesaid judgment is quoted as:

"We are conscious that the Supreme Court would be slow to interfere with the concurrent findings of the courts below. In an appeal under Article 136 of the Constitution of India, concurrent findings of fact cannot be interfered with unless shown to be perverse (vide Mahesh Dattatray Thirthkar v. State of Maharashtra (2009) 11 SCC 141: (2009) 4 SCC (Civ) 468]). Where the appreciation of evidence is erroneous, the Supreme Court would certainly appreciate the evidence. In our considered view, the High Court ought to have weighed and considered the materials. When the findings of the trial court and the High Court are shown to be perverse and there is no proper appreciation of evidence qua the appellant, the Supreme Court would certainly interfere with the findings of fact recorded by the High Court and the trial court."

57. It is further noted that the injuries caused to PW-1, PW-2, PW-4 and PW-5 are simple in nature as per the medical reports submitted by PW-7 and PW-9. The witnesses PW-7 and PW-9 have categorically stated in their reports that the injuries were caused by a blunt weapon and therefore the High Court and the Fast Track Court has grossly erred in convicting and sentencing the accused Nos. 1, 2, 3, 5, 6, 7 and 8 for simple imprisonment for one year.

58. In our view, the High Court as well as the Trial Court have failed to take into consideration, the vital discrepancies and inconsistencies in the evidence of the prosecution witnesses and therefore the High Court was not justified in reaffirming the judgment and order of conviction passed by the Fast Track Court.

59. Having re-appreciated the evidence of the witnesses, we find that the High Court was not justified in affirming the judgment of conviction and sentence passed by the Fast Track Court, of the first three appellants herein, namely, Md. Jabbar Ali (accused no.4), Md. Moyan Ali (accused no.10) and Md. Sahed Ali (accused no.11) to undergo life imprisonment and of the other appellants namely Md. Omar Ali (accused no.3), Md. Hasan Ali (accused no.2), Mustt. Hazerabhanu (accused no.6), Mustt. Chandrabhanu (accused no.7), Md. Tabibor Rahman (accused no.5) and Md. Ajmot Ali (accused no.8- appellant in the connected matter) to undergo simple imprisonment for one year.

60. In view of the aforesaid discussion, we find that the Session Court as well as the High Court were not right in convicting and sentencing the appellants herein and therefore, the impugned judgments are liable to be set aside.

61. In the result, the appeals filed by the appellants-accused are allowed and the impugned judgments passed by the High Court affirming the conviction and sentence by the Fast Track Court are hereby quashed and set aside. The appellants are acquitted of all the charges levelled against them in the instant case.

62. Pending application(s), if any, shall stand disposed of in the above terms.

..............................J. (AJAY RASTOGI)

..............................J. (B.V. NAGARATHNA)

NEW DELHI;

17th October, 2022.

IN THE SUPREME COURT OF INDIA

Mahesh Govindji Trivedi
Vs.
Bakul Maganlal Vyas & Ors.

[Civil Appeal No. 7203 of 2022
arising out of S.L.P. (Civil) No. 20578 of 2021]

HEADNOTE – Code of Civil Procedure, 1908 – Order VIII Rule 6A - There is no bar in taking on record a counter claim filed long after filing of written statement but before framing of issues.

JUDGMENT

Dinesh Maheshwari, J.

1. Leave granted.

2. This appeal by the defendant in a pending suit for specific performance (Suit No. 1821 of 2004) is directed against the judgment and order dated 30.11.2021, as passed by the Division Bench of the High Court of Judicature at Bombay in Appeal No. 10 of 2020 arising from an order dated 02.05.2019 in Notice of Motion (L) No. 1014 of 2019 in the said suit.

2.1. By the said order dated 02.05.2019, the learned Single Judge of the High Court dealing with the trial of suit in question, had accepted the notice of motion moved by the defendant-appellant so as to take the belatedly filed counter-claim on record. The Division Bench of the High Court has, however, set aside the order so passed by the Single Judge and has remitted the matter for consideration afresh, essentially on the ground that the plaintiffs were not afforded adequate opportunity to file reply and to contest the said notice of motion.

3. In this appeal, the main plank of submissions on behalf of the defendant-appellant is that in view of the order dated 26.02.2021 as passed by this Court in relation to the incidental proceedings pertaining to the same suit, the proceedings in question need to progress with the counter-claim on record; and, in any case, there was no justification for the Division Bench interfering with the considered order of the Single Judge taking the counter-claim on record. On the other hand, it is submitted on behalf of the plaintiffs-respondents that the Division Bench of the High Court has rightly interfered because the order dated 02.05.2019 was passed by the Single Judge

without giving opportunity to the plaintiffs-respondents to contest the notice of motion; and in the true operation of the applicable rules of procedure, the counter-claim in question, which was filed nearly 13 years after filing of the written statement, could not have been taken on record, particularly when there had not been a semblance of reason for such a gross and inordinate delay.

3.1. Thus, the short question calling for determination in this appeal is as to whether the Division Bench of the High Court has been justified in interfering with the order passed by the Single Judge for taking the counter-claim on record.

4. Apropos the foregoing outline and the short question involved, the background aspects of the matter could be noticed in brief, and only to the extent relevant for the present purpose.

4.1. In relation to the suit property situated at Vile Parley, Dadabhai Road, Mumbai, the plaintiffs-respondents have filed the suit in question bearing No. 1821 of 2004 on 10.06.2004, seeking specific performance of an alleged agreement for transfer dated 28.05.2001, said to have been executed by its owner, late Ramalaxmi Ravishankar Trivedi, who was the sister of the appellant and who expired on 31.01.2004. In the said suit, apart from the appellant, other legal heirs of the deceased owner were also arrayed as defendants. The appellant filed his written statement in the suit on 16.11.2005.

4.2. It has been pointed by the appellant that he had acquired all the rights in the suit property by testamentary succession and by settlement with the said other legal heirs of the deceased owner. According to the appellant, the matter relating to his succession to the suit property ultimately got settled only on 05.04.2017. Thereafter, on 16.01.2018, for the appellant having acquired ownership rights in the suit property, Chamber Summons (L) No. 559 of 2017 was filed in order to delete other defendants from Suit No. 1821 of 2004; the said chamber summons was allowed and the defendant Nos. 1,2,4, & 5 were deleted from the array of parties.

4.3. Thereafter, on 07.09.2018, the defendant-appellant filed his counter-claim (signed on 18.08.2018) in this suit in the registry of the High Court. When the suit was taken up for framing of issues on 05.12.2018, the learned Single Judge of the High Court dealing with the suit took objection against such filing of counter-claim much after the defendant had entered his written statement and without taking leave of the Court, particularly with reference to Rule 95 of the Bombay High Court (Original Side) Rules1. The learned Single Judge, therefore, ordered that the counter-claim be de-registered and be returned to the counsel for the appellant. The counsel representing the defendant appellant sought leave to file an appropriate application for liberty to file the counter-claim. The learned Single Judge declined this prayer, lest it was construed as some sort of permission for filing the counter-

claim belatedly. Thereafter, the learned Single Judge framed the issues that very day (05.12.2018) and the matter was posted for evidence. For its relevance, we may reproduce the contents of the order so passed by the learned Single Judge on 05.12.2018 as under: -

"1. The suit is for framing issues. Defendant No. 3, the sole surviving Defendant entered his Written Statement on 16th November 2005. It appears that, entirely contrary to the provisions of Rule 95 of the Bombay High Court (Original Side) Rules, the 3rd Defendant has very recently purported to lodge a Counter- Counter-Claim. In some fashion that I am wholly unable to comprehend, the 3rd Defendant has, without prior leave of the Court, got a lodging number for the Counter-Claim.

2. Rule 95 is in pari material with Order VIII Rule 6-A of the Code of Civil Procedure, 1908 ("CPC"). Both say that a Counter-Claim proceeds like a cross-suit. This means that, exactly as in the case of a plaint, every Counter-Claim is also subject to issues of statutory limitation. But in addition, Counter-Claims are subject to a further stipulation not applicable to a suit. Both Rule 95 and Order VIII Rule 6-A specify an outer limit beyond which no Counter-Claim can be filed. In other words, it is not open to a defendant to file a Counter-Claim at any time that defendant chooses. It must be filed along with the defence or before the time limited for filing the defence has expired. In no view of the matter could the 3rd Defendant have lodged any Counter-Claim in 2018.

3. The Registry is not to accept Counter-Claims in this manner contrary to the express wording of Rule 95 of the Bombay High Court (Original Side) Rules without an order of the Court. It is not even to accept a Counter-Claim for presentation or lodging beyond the time prescribed in Rule 95.

4. The existing Counter-Claim (L) No. 186 of 2018 will be de-registered and returned to the Advocate for Defendant No. 3 forthwith.

5. Mr Tamboly seeks leave to file an appropriate application for liberty to file a Counter-Claim. I cannot grant any such leave, lest it be construed as some sort of permission or a finding that a Counter-Claim can be filed well after the time period set out in Rule 95. I am therefore neither granting or refusing leave.

6. There is also a pending Notice of Motion by the 3rd Defendant, Notice of Motion No. 1713 of 2018. The Additional Affidavit in Support of that Notice of Motion is to be filed in the Registry on or before 7th December 2018. Affidavit in Reply by the Plaintiff is to be filed and served on or before 1st February 2019. No Rejoinder is to be filed without leave of the Court.

7. List Notice of Motion for hearing and final disposal on 6th February 2019.

8. The Suit is taken up for framing issues. Issues are framed and these are appended to this order.

9. The Plaintiffs shall, on or before 18th January 2019 file (i) the Evidence Affidavit of the Plaintiff; (ii) an Affidavit of Documents; and (iii) a Compilation of Documents duly indexed and paginated. Copies of each of these will be served on the Advocates for the Defendants on or before that date.

10. Discovery and inspection are to be completed and statements of admission and denial are to be exchanged on or before 1st February 2019.

11. There will be no extension of time. In default of compliance, the suit will stand dismissed without further reference to the Court.

12. On the Plaintiffs complying with these directions, the matter will be taken up for marking of the Plaintiffs' documents and further directions on 8th February 2019 irrespective of the caption under which the matter appears.

13. The Plaintiffs are not to tender original documents and are required to file and serve a compilation of authenticated copies. The Plaintiffs agree and undertake to preserve the originals and produce it in Court as and when required until final disposal of the Suit.

14. It is clarified that all subsequent events, i.e., those after the filing of the suit may be referred to in the Affidavit in lieu of Examination-in-Chief of either side."

4.4. The defendant-appellant challenged the aforesaid order dated 05.12.2018 in an intra-court appeal. In the said appeal, it was submitted on behalf of the appellant that an appropriate application seeking leave to present the counter-claim shall be filed to which, the learned counsel appearing for the plaintiffs-respondents submitted that the appropriate application could be dealt with by the Single Judge on its own merits and the plaintiffs-respondents will not raise objection to the application seeking such leave on the ground that the issues had already been framed and documentary evidence presented. In view of the submissions so made, the Division Bench of the High Court, by its order dated 29.03.2019, granted permission to the appellant to file the necessary application within two weeks, while leaving it open for the Single Judge to decide the same on its own merits on consideration of objections that might be raised by the plaintiffs. The relevant contents of order so passed by the Division Bench of the High Court on 29.03.2019 read as under: -

"1]The appellant is objecting to the order passed by the learned Single Judge dated 5th December, 2018 in Notice of Motion No.1713 of 2018 in Suit No.1821 of 2004

directing the de-registration and return of counter claim (L) No.186 of 2018 presented by the appellant - original defendant no.3. The counter claim has been returned back essentially for the reason that the application seeking leave has not been presented by the appellant.

2] The learned Senior Counsel appearing for the appellant states that he will tender an appropriate application seeking leave to present the counter claim. Learned counsel appearing for the Respondent contends that if appropriate application is presented, the same can be dealt with on its own merits and appropriate order can be passed by the learned Single Judge dealing with Suit and that the Respondent - original plaintiff will not raise the objection to the application seeking leave on the ground that the issues have already been framed and documentary evidence has been presented.

3] Without considering merits of the controversy, we permit the appellant herein - original defendant to present an application seeking leave, together with counter claim in Suit No.1824 of 2004. If the appellant-original defendant presents an application seeking leave within a period of two weeks from today, the learned Single Judge may consider and decide the same, on consideration of the objections those may be raised by the respondent-original plaintiff on its own merits and in accordance with law. In view of the above, the appeal stands disposed of. In view of disposal of the appeal, pending Notice of Motion does not survive and stands disposed of."

4.5. In view of the liberty so given by the Division Bench, the appellant filed Notice of Motion (L) No. 1014 of 2019 (later numbered as Notice of Motion No. 1547 of 2019) seeking leave to file the counter-claim claiming possession of the suit property. A copy of the affidavit filed in support of this notice of motion has been placed before us wherein the appellant has stated the reason and basis of his filing counter-claim to avoid multiplicity of proceedings without altering the nature of the suit in question; and has also pointed out that the counter-claim was filed before framing of issues and only after he became entitled to the suit property upon finalisation of the dispute relating to succession. The appellant, inter alia, stated in this affidavit as under: -

"17. I say that I have therefore filed the present notice of motion seeking leave of this Hon'ble court to file the Counter claim for effective adjudication of disputes between the parties. In view of following reasons

a. The suit is for specific performance of the agreement dated 28th May 2001, clause no. 4 of the suit agreement clearly records that the Plaintiffs were put in vacant and peaceful possession upon execution of the agreement.

b. In the event the above suit is dismissed by this Hon'ble court, then this Defendant would be entitled to seek vacant and peaceful possession from the Plaintiff which the plaintiffs are enjoying under the Suit Agreement and hence the Counter Claim seeking vacant possession of the suit property is necessary to avoid multiplicity of proceedings and to avoid delay.

c. The claim of possession is not Barred by limitation, As this defendant would be entitled to seek possession only upon dismissal of the suit and both issues can be decided together simultaneously. As of today the Plaintiff is claiming possession of the Suit Property under the suit agreement and not either adverse possession or illegal trespass. My counterclaim claiming possession of the suit property is based on my title to the suit property. I am a lawful owner of the suit property. My right to recover possession of the suit property will start from the date the plaintiff refuses to hand over the possession and/or claims adverse possession of the suit property. In these circumstances my claim of possession in the suit property is not barred by law of limitation.

d. That the counter claim was filed prior to framing of the issues in the above suit.

e. This Defendant became entitled to the suit property only upon settlement of disputed between the legal heirs of Smt. Ramalaxmi Trivedi and finalization of the probate in 2017.

f. This Defendant or the original defendants never made any attempts to delay the proceedings and on the contrary after this defendant obtained probate, this defendant took steps to get the hearing of the above suit and the suit was proceeded till the framing of issues and filing of affidavit of evidence along with the compilation of documents.

g. The counter claim will not materially change the nature of the suit and only additional issues will be required to be framed so that both the counter claim and the suit can be decided together.

f. Permitting this defendant to file the counter claim will not cause any prejudice to the plaintiff as there will not be any change of cause of action in the suit and the Counter claim is only in the nature consequential reliefs."

4.6. While considering this notice of motion, the learned Single Judge felt satisfied to grant leave to file the counter-claim, particularly to avoid multiplicity of proceedings. Therefore, by the order dated 02.05.2019, the learned Single Judge made the notice of motion absolute with the clarification that all the defences of the plaintiff, including as to limitation were kept open. In fact, the learned counsel appearing for the plaintiffs also waived service of the writ of summons of the

counter-claim and agreed that the written statement (to the counter-claim) shall be filed before 21.06.2019. The relevant contents of this order dated 02.05.2019 read as under: -

"1. The Suit is for specific performance. The Defendant filed a Written Statement on 16th November 2005. He did not file any Counter Claim. Leaving aside the very many interim orders, on 5th December 2018 the suit was notified for framing issues. I found that the Defendant had purported to lodge a Counter Claim. I held that Rule 95 of the Bombay High Court (Original Side) Rules is in pari materia with the provisions of Order VIII Rule 6-A of the Code of Civil Procedure 1908. If a Counter Claim was not filed before the Defendant delivered its defence, then leave of the Court would be required. In paragraph 3 of my order of 5th December 2018, on an interpretation of Rule 95 of the Bombay High Court (Original Side) Rules, I held that the Counter Claim required an order of the Court. I directed the existing Counter Claim to be returned. The Defendant carried the matter in Appeal. The appellate order of 29th March 2019, without going in to the merits permitted the Defendant to present an application seeking leave along with the Counter Claim. This Motion is that application. It seeks precisely that leave under Order 8 Rule 6-A and Rule 95 read with Order VIII Rule 9 of the Code of Civil Procedure 1908.

2. This having been done, I can see no reason to refuse the leave. The defendant could as well have instituted a separate suit. Had he done so, the cross suit would have been tagged with the present suit. The subject matter of the two suits is the same. The Counter Claim will serve as a convenient method of disposing of both rival claims together and possibly even with common evidence, thus preventing multiplicity of proceedings. The Defendant has also to pay the full Court fee on the Counter Claim.

3. In these circumstances, the Notice of Motion is made absolute in terms of prayer clause (a) with a clarification that all defences of the Plaintiff including as to limitation are specifically kept open. The Counter Claim has already been lodged. It will be numbered within a week from today. A copy has been served.
4. The Plaintiff waives service of the Writ of Summons of the Counter Claim. She agrees that the Written Statement will be filed and served on or before 21st June 2019."

4.7. The aforementioned order dated 02.05.2019 was challenged by the plaintiffs-respondents an intra-court appeal that has been considered and allowed by the impugned order dated 30.11.2021. Before adverting to the contents of the impugned order dated 30.11.2021, it shall be worthwhile to take note of the other incidental and ancillary proceedings in the course of the trial of this suit after passing of the said order dated 02.05.2019.

5. On 28.06.2019, the plaintiffs-respondents sought extension of time for filing written statement to the counter-claim, which was granted and the matter was adjourned to 11.07.2019. Then, on 09.07.2019, the written statement to the counter-claim was filed by the plaintiffsrespondents. However, before further progress of the matter, the appellant filed Notice of Motion No. 2601 of 2019 on 18.09.2019, seeking leave to transfer right, title and interest in the suit property to third parties. This notice of motion was dismissed on 21.01.2020. Thereafter, on 28.01.2020, issues were framed on the counter-claim; examination-inchief of PW-1 and marking of documents was completed; and commissioner was appointed to record the cross-examination of PW-1.

The proceedings of commission for recording cross-examination were held from 05.02.2020 onwards. In the meantime, the appellant preferred intra-court appeal against the aforesaid order dated 21.01.2020, being Appeal No. 67 of 2020. This appeal was considered and disposed of by the Division Bench of the High Court on 20.01.2021 providing for expeditious disposal of the suit but not granting the prayer of the appellant, for leave to transfer the property in question during the pendency of the suit. Being aggrieved, the appellant approached this Court by filing a petition for Special Leave to Appeal, being SLP (C) No. 1786 of 2021.

6. The order passed by this Court on 26.02.2021 in disposal of the said SLP (C) No. 1786 of 2021 is of bearing in the present appeal in view of the submissions made before us and, therefore, it would be appropriate to take note of the salient features and the relevant contents thereof in necessary detail. Therein, this Court took note of the submissions made by the parties, including the anxiety of the appellant to dispose of the property in view of his advanced age as also the undertaking of the prospective purchasers to abide by the outcome of the suit. After interacting with the learned counsel for the concerned parties, this Court passed the order delineating the conditions agreed upon by the appellant and the prospective purchasers.

This Court also took note of the apprehension expressed on behalf of the plaintiffs-respondents about the legal heirs of the appellant later on claiming rights in the property and counter submissions in this regard on behalf of the appellant. Thus, having settled the matter relating to the prayer of the appellant for leave to transfer the right, title and interest in the property in question, this Court expected all the parties to extend the co-operation in early disposal of the suit as already directed by the Division Bench of the High Court. The order so passed by this Court on 26.02.2021 reads as under: -

"A peculiar issue arises for our consideration. The petitioner had approached the High Court by way of Notice of motion No. 2601 of 2019 in Suit No. 1821/2004, in which the petitioner is defendant, for limited relief of permitting the petitioner to dispose of the suit property without prejudice to the rights and contentions of the

respondent(s)-plaintiff(s) as he had already reached the advanced age (87 years) and wanted to settle all his issues at the earliest possible opportunity. The Single Judge declined to grant that relief to the petitioner, so also the Division Bench vide impugned judgment and order. The Division Bench, however, thought it appropriate to expedite the suit pending since 2004 and issued suitable directions in that regard. The grievance of the petitioner is that although the suit is directed to be disposed of expeditiously, it is unlikely that the litigation would finally end in the near future.

Considering the advanced age of the petitioner, therefore, it may not be just and proper to keep the petitioner waiting for the outcome of the proceedings, especially when the petitioner as well as the third party-proposed purchasers are willing to abide by the outcome of the pending suit and also give necessary undertaking within two weeks from today, including to indemnify the respondent(s)- plaintiff(s), if and when occasion arises.

Considering this submission, we called upon the petitioner to give notice to the proposed purchasers. They are represented through Mr. Gopal Shankaranarayanan, learned senior counsel instructed by Mr. Ajit Wagh, learned counsel. On the oral request made by the learned counsel for the petitioner, we permit the petitioner to implead the proposedpurchasers as party respondents in these proceedings. Amendment be carried out forthwith. After interacting with the counsel for the concerned parties, we record the agreement reached between them and dispose of this petition on that basis.

It is agreed, in principle, by all concerned that the proposed sale of the suit property by the petitioner be made subject to the outcome of the pending Suit No.1821/2004 and without prejudice to the rights and contentions of the respondent(s)-plaintiff(s), in any manner.

The conditions agreed upon by the petitioner and the proposed purchasers (added respondents) are delineated as follows: -

(a) The transfer deed in respect of suit property between the petitioner and proposed purchasers (added respondents) shall be executed within three weeks in the name of "AMAR LIFESPACES LLP", a family firm and the three partners thereof, namely, Dinesh Joshi and his two sons (i) Gaurav Joshi and (ii) Hemang Joshi.

(b) The original deed to be so executed shall be submitted by the petitioner and the proposed purchasers (added respondents) in the High Court and would continue to abide by the orders of the High Court in that regard.

(c) The petitioner and the proposed purchasers (added respondents) undertake that they shall not create any third party right, title or interest in the suit property or indulge in further alienation thereof.

(d) The petitioner as well as the proposed purchasers (added respondents) shall file an undertaking within two weeks from today in this Court and also indemnity bond so as to fully secure the interest of the respondent(s)-plaintiff(s) with regard to the right, title and interest of the suit property including to indemnify in respect of legal expenses to be incurred and liability of damages in that regard in any future litigation. (This indemnity is not applicable to the pending litigation between the petitioner and respondents and now the added respondents, namely suit No. 1821/2004. In other words, the parties will bear their own legal expenses in respect of the present suit proceedings.).

(e)The proposed purchasers (added respondents) shall be impleaded in the suit pending before the High Court, who in turn undertake to adopt the written statement and counter claim filed by the petitioner in Suit No.1821/2004 as it is. They will not make any request for filing further written statements or independent written statement as such.

(f) The suit shall proceed from the stage where it is presently pending and the proposed purchasers (added respondents) will not move any application for filing independent evidence/document.

(g) Neither the petitioners nor the proposed purchasers (added respondents) will approach the occupants of the suit property either directly or indirectly or through their relatives and enter upon the suit property.

(h) The petitioner as well as the proposed purchaser (added respondents) shall not claim any equity in any respect and abide by the outcome of the Suit No. 1821/2004.

(i) The proposed purchasers (added respondents) shall record in the undertaking that they shall not transfer their share/change the composition of the firm nor dissolve the firm during the pendency of the suit.

Respondents-plaintiffs have expressed apprehension through counsel that the legal heirs of the petitioner may later on claim rights in the suit property, despite the sale in favour of the proposed purchasers (added respondents). This plea is refuted by the learned counsel for the petitioner on the argument that since the petitioner is claiming right, title and interest in the suit property on the basis of the will which stood probated in favour of the petitioner, the question of legal heirs claiming any right or obstructing the proposed transaction being entered into between the

petitioner and added respondents, does not arise; nor they can do so during the life time of the petitioner.

Needless to observe that all parties including the newly added respondents shall extend full cooperation for early disposal of the suit as directed by the Division Bench of the High Court. The special leave petition and pending applications are disposed of in the above terms. Liberty is given to the parties to apply, if necessary. Registry is directed to accept the Vakalatnama/Appearance to be filed by the advocate-on-record for the impleaded/newly added party within one week from today."

7. Thereafter, while the suit in question had been proceeding in evidence, the said intra-court appeal bearing No. 10 of 2020, which was filed against the order dated 02.05.2019 taking the counter-claim on record, was taken up for consideration by the Division Bench of the High Court on 30.11.2021. The aforesaid order of this Court dated 26.02.2021 was placed before the Division Bench for consideration but the Division Bench also took note of the grievance of plaintiffs that they were not given adequate opportunity of contesting the notice of motion for taking the counter-claim on record; and considered it proper to remit the matter for consideration afresh by the Single Judge while setting aside the order dated 02.05.2019. The judgment and order so passed by the Division Bench of the High Court on 30.11.2021 is in challenge in this appeal and reads as under: -

"1. By the above Appeal, the Appellant has impugned the Order passed by the Learned Single Judge dated 2nd May, 2019 granting leave to the Respondent to file Counter Claim almost after a period of seventeen years. Admittedly, the matter had appeared before the Court for the first time on 2nd May, 2019, when the Junior Advocate representing the Appellants requested for time to file Reply. However, the Learned Judge declined to grant time and proceeded to pass an Order in favour of the Respondent. In fact, the Respondent before us has relied on an order dated 26th February, 2021 passed by the Supreme Court which is passed subsequent to the passing of the impugned order by the learned Single Judge. In view thereof, we pass the following order :

(i) The impugned Order dated 2nd May, 2019 is set aside.

(ii) The Appellants shall file their response to Notice of Motion No. 1014 of 2019 within a period of one week from today.

(iii) The Respondent shall file his Rejoinder to the Reply within a period of one week thereafter.

(iv) The Learned Single Judge is requested to hear the parties and dispose off the Notice of Motion afresh within a period of two weeks from the date of filing of the Rejoinder, without being influenced by the Order passed by the Learned Single Judge dated 2nd May, 2019.

(v) All contentions of the parties are kept open.

2. The above Notice of Motion is accordingly disposed off."

8. Learned senior counsel Mr. Shyam Divan appearing for the appellant has referred to the background aspects and has contended that the impugned judgment and order dated 30.11.2021 remains unsustainable for several reasons including the fundamental one that it stands in the teeth of the order passed by this Court on 26.02.2021. The learned senior counsel would submit that in view of the order passed by this Court, the question of receiving the counter-claim on record no longer remained open to be re-agitated, particularly when this Court approved the proposition that the proposed purchasers, (who were to be impleaded in the suit), shall adopt the written statement as also the counter-claim filed by the appellant, as existing; and the suit would proceed further from the stage it stood at the time of the passing of the order by this Court. The learned senior counsel would submit that the said order dated 26.02.2021 was placed before the Division Bench and despite noticing the same, the Division Bench has failed to consider that the question of taking counterclaim on record could not be reopened.

8.1. The learned senior counsel has further contended that in the impugned order, the Division Bench of the High Court has proceeded in a rather cursory manner inasmuch as no reason whatsoever is assigned for setting aside the considered order passed by the learned Single Judge on 02.05.2019.

8.2. The learned senior counsel has also referred to the said order dated 02.05.2019 and has submitted that the learned Single Judge has assigned proper reasons for granting leave to the appellant to submit his counter-claim and has left all the defences of the plaintiffs, including that of limitation open. This order, according to the learned senior counsel, was not suffering from any infirmity so as to warrant interference.

9. Per contra, the learned senior counsel Mr. Shekhar Naphade appearing for the contesting respondents has made a detailed reference to the proceedings in the suit and has emphatically argued that in this civil suit, which was filed way back in the year 2004 and in which the written statement was filed by the appellant on 16.11.2005, the attempt to present a counter-claim nearly 13 years later could not have been countenanced.

9.1. The learned senior counsel has particularly referred to the order dated 05.12.2018 and has submitted that surreptitiously filed counterclaim by the appellant was rightly taken off the record, particularly when written statement had been filed more than 13 years back and not even an application was moved to seek permission to place the counter-claim on record. The learned senior counsel would further submit that even if in the appeal against the order dated 05.12.2018, serious objections were not raised on the question of filing of the application by the appellant and a concession was stated for not raising objection with reference to the stage of suit where issues had already been framed, such a concession cannot bind a party contrary to law nor could be read as acceptance of filing the counter-claim at a belated stage.

9.2. The learned senior counsel has further submitted that the order dated 02.05.2019 had been a cryptic and non-speaking order and therein, the learned Single Judge failed to consider the law applicable to the case including Rule 95 of the Bombay High Court (Original Side) Rules. The learned senior counsel has also submitted, with a strong reliance on a 3- Judge Bench decision of this Court in the case of **Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Ors.: (2020) 2 SCC 394** that belatedly filed counter-claim in the present matter is directly hit by the law declared by this Court.

9.3. It has also been submitted on behalf of the respondents that the subject matter of the said SLP (C) No. 1786 of 2021 before this Court was concerning transfer of the suit property by the appellant to a third party and no question regarding counter-claim was mentioned or argued therein. Hence, the order dated 26.02.2021 passed in disposal of the said SLP does not operate against the objections of the respondent concerning the counter-claim.

10. In his rejoinder submissions, learned senior counsel for the appellant would submit that the said decision in Ashok Kumar Kalra (supra) does not operate against the prayer of the appellant for taking the counter-claim on record and rather, the principles of law enunciated therein support the submissions made on behalf of the appellant.

11. Having given thoughtful consideration to the rival submissions and having examined the material placed on record, we are clearly of the view that neither the impugned order of the Division Bench of the High Court could be approved nor the submissions made on behalf of the respondents against the legality and validity of the order dated 02.05.2019 could be accepted.

12. As regards the provisions of law applicable to the case, we may usefully take note of the provisions contained in Order VIII Rule 6-A of the Code of Civil

Procedure, 19083 and Rule 95 of the Bombay High Court (Original Side) Rules as follows: -

Order VIII Rule 6-A CPC:

"6-A. Counterclaim by defendant.- (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not: Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counterclaim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the court.

(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints."

Rule 95 of the Bombay High Court (Original Side) Rules:

"95. A defendant in a suit, in addition to his right of pleading a setoff under Order VIII, Rule 6 of the Code of Civil Procedure, may set-up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to the defendant either before or after the filing of the suit but before the defendant has delivered his defence and before the time limited for delivering his defence has expired, whether such counter-claim sounds in damages or not, and such counter-claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim; and the plaintiff (if so advised) shall be at liberty to file a reply to the counter-claim of the defendant within eight weeks after service upon him or his Advocate on record of a copy of the defendant's counter-claim; and the Court or the Judge in Chambers may, on the application of the plaintiff before trial if in the opinion of the Court or the Judge such counter-claim cannot be disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof and require him to file a separate suit in respect thereof."

13. In Ashok Kumar Kalra (supra), the 3-Judge Bench of this Court essentially considered the question on reference as to whether it is mandatory for a counter-claim of the defendant to be filed along with the written statement. While answering this question, this Court underscored the basic principles that procedural law should not be construed in such a way that it would leave court helpless; and that a wide discretion had been given to the Civil Court regarding the procedural elements of a suit. Having said so, this Court observed that a counter-claim is designed to avoid multiplicity of proceedings; that time limit for filing a counter-claim is not explicitly provided for but there is limitation as to the accrual of the cause of action. However, the majority opinion has been that the defendant cannot be permitted to file counter-claim after the issues are framed and the suit has proceeded substantially. It was observed and held in the lead judgment, inter alia, as under: -

"18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to CPC.

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21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give

absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

(i) Period of delay.
(ii) Prescribed limitation period for the cause of action pleaded.
(iii) Reason for the delay.
(iv) Defendant's assertion of his right.
(v) Similarity of cause of action between the main suit and the counterclaim.
(vi) Cost of fresh litigation.
(vii) Injustice and abuse of process.
(viii) Prejudice to the opposite party.
(ix) And facts and circumstances of each case.
(x) In any case, not after framing of the issues."

13.1. In the partly dissenting and partly concurring judgment, one of the Hon'ble Judges of the Bench stated his opinion that though the normal rule is that subsequent to filing of written statement, counter-claim cannot be filed after issues have been framed, under exceptional circumstances, counter-claim may be permitted to be filed even after issues have been framed, but before commencement of recording of plaintiff's evidence. The Hon'ble Judge observed, inter alia, as follows: -

"31. From the foregoing discussion, it is clear that a counterclaim can be filed if two conditions are met: first, its cause of action complies with Order 8 rule 6-A(1); and second, it is filed within the period specified under the Limitation Act. Clearly, by itself, Rule 6- A does not specifically require that a counterclaim has to be filed along with the written statement. In the absence of a particular mandate under this Rule, it is necessary to look to other provisions of CPC to determine whether a counterclaim can be filed after a written statement.

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38. A conjoint and harmonious reading of Rules 6-A, 9 and 10 of Order 8 as well as Order 6 Rule 17 CPC thus reveals that the court is vested with the discretion to allow the filing of a counterclaim even after the filing of the written statement, as long as the same is within the limitation prescribed under the Limitation Act, 1963. In this regard, I agree with the propositions laid down in the decisions discussed below.

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56.The above discussion lends support to the conclusion that even though Rule 6-A permits the filing of a counterclaim after the written statement, the court has the discretion to refuse such filing if it is done at a highly belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counterclaims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time.

*** *** ***

60. ....I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counterclaim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim maybe permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff."

14. In a conspectus of the aforesaid and while proceeding on the fundamental principles that the rules of procedure are intended to subserve the cause of justice rather than to punish the parties in conduct of their case, we are clearly of the view that the counter-claim in question could not have been removed out of consideration merely because it was presented after a long time since after filing of the written statement. Indisputably, the counter-claim was filed on 07.09.2018 and until that date, issues had not been framed in the suit. In fact, the issues were framed only on 05.12.2018, the very date on which the learned Single Judge in the first round of these proceedings took the counter-claim off the record for no permission/leave having been sought for its presentation.

In appeal against the order dated 05.12.2018, the Division Bench permitted filing of the requisite application seeking permission to file the counter-claim, while taking note of the submissions of the plaintiffs-respondents that they will not raise an objection to such application on the ground that the issues had already been framed and documentary evidence had been presented; and the Division Bench expected the learned Single Judge to deal with such an application on its own merits. Pursuant to the liberty so granted by the Division Bench, the appellant moved the application seeking permission to place the counterclaim on record and in support thereof, filed a detailed affidavit stating specific reasons for which the counter-claim was sought to be filed, including that of avoiding the multiplicity of proceedings.

The appellant also pointed out the fact that he was earlier engaged in the dispute concerning succession to the property, which came to be settled in his favour only in the year 2017. The learned Single Judge, while passing the order dated 02.05.2019, did not elaborate much on the other aspects but pointed out the reason for accepting the prayer of the appellant that it would avoid multiplicity of proceedings; and in all fairness to the plaintiffs respondents, kept all their defences, including as to limitation, specifically open. The said order dated 02.05.2019, even if passed by the learned Single Judge on the very first day of consideration of the application moved by the appellant, had been a just and proper order which was conducive to the proper progression of the proceedings while avoiding multiplicity of litigation. There was no justified reason for the Division Bench to have interfered with the order so passed by the learned Single Judge.

14.1. In the totality of the facts and circumstances of the present case, we are clearly of the view that neither the requirements of Order VIII Rule 6-A CPC or Rule 95 of the Rules nor the principles enunciated and explained in Ashok Kumar Kalra (supra) operate as a bar over the prayer of the appellant for taking the belatedly filed counter-claim on record, which was indeed filed before framing of issues.

15. Apart from the above, there are a few other reasons, for which we find the impugned order of the Division Bench to be wholly unjustified.

15.1. As noticed, in the order dated 26.02.2021, this Court had provided for expeditious proceedings while taking note of the submissions of the parties and while ensuring that even if the appellant shall transfer his right, title and interest to third parties, such transferees will not seek filing of further pleadings and shall remain bound by the proceedings of the suit in question. In that context, it was provided that the proposed purchasers shall be impleaded in the suit; and their undertaking was also recorded that they will adopt the written statement and counter-claim filed by the appellant and will not make any request for filing further written statements or independent written statement as such. This Court further provided that the suit shall proceed from the stage where it was pending and the proposed purchasers will not move any application for filing independent evidence/document.

15.2. True it is, as contended on behalf of the respondents, that the subject matter of the said SLP before this Court was of the proposition of the appellant to transfer the suit property to a third party and not regarding the permissibility to file counter-claim but, for this reason alone, the substance and impact of the order passed by this Court is not whittled down. Even when the subject matter of the said SLP related to the proposition of the appellant to transfer the suit property to a third party and even when the arrangement provided by the order dated 26.02.2021 was essentially concerning the defendant-appellant and the prospective transferees, fact of the matter

remains that the said order was passed in the presence of the plaintiffs-respondents, whose apprehension of a different nature, about the likely claims in future by the legal heirs of the appellant, was also taken note of with its response on behalf of the appellant. This Court, thereafter, re-emphasised the requirements of expeditious proceedings.

15.3. When construed on its pith and substance, the impact of the said order dated 26.02.2021 on the procedural aspect concerning pleadings has clearly been that existence of the counter-claim on record was taken by this Court as a fait accompli; and this order left a little, rather nil, scope for upsetting the existing pleadings. The expectations had been that the proceedings in the suit coupled with the counter-claim shall be taken forward from the given stage onwards.

15.4. On a comprehension of the impugned order dated 30.11.2021, we are impelled to observe that even when this Court's order dated 26.02.2021 was placed before it, the Division Bench of the High Court did not consider its purport and meaning as also its impact on the suit proceedings and on the question of filing of counter-claim. There was no reason for re-opening of the question relating to the filing of counter-claim after the said order of this Court dated 26.02.2021.

16. Apart from the above, on the date on which the Division Bench chose to upset the proceedings of the suit in question by setting aside the order dated 02.05.2019, much progression had taken place, including the filing of written statement by the plaintiffs to such counter-claim; framing of issues on the counter-claim; and recording of the plaintiffs' evidence. Moreover, expeditious proceedings were required to be ensured by all the concerned, in view of the earlier orders passed by the Division Bench of the High Court as also by this Court.

16.1. With respect, it appears that the Division Bench of the High Court, while passing the impugned order dated 30.11.2021, proceeded in a rather cursory manner in directing reconsideration of the prayer of the appellant for taking the counter-claim on record without considering the relevant aspects of the proceedings in the suit and the law applicable thereto as also without considering the likely impact of its order on the proceedings, which had already taken place and which were under progress. Viewed from any angle, the impugned order deserves to be set aside.

17. In the passing, we may observe that one small segment of arguments on behalf the appellant had also been concerning maintainability of intra-court appeal against the order dated 02.05.2019 for no valuable rights having been decided, which had been duly countered on behalf of the respondents. However, this aspect need not be dealt with in this appeal, looking to the facts and circumstances of the present case, where the impugned order of the Division Bench is not being approved on its merits. Other questions are left open, to be examined in an appropriate case.

18. Before parting, we may also observe that during the course of submissions, it has been pointed out before us that the subject suit is proceeding in defendant's evidence, particularly after this Court had stayed the operation and effect of the impugned order dated 30.11.2021 by the order dated 03.01.2022. Needless to reiterate what has already been observed in the previous orders that the parties shall be expected to extend full co-operation for early disposal of the suit.

19. In the result, this appeal succeeds and is allowed; the impugned order dated 30.11.2021 as passed by the Division Bench of the High Court is set aside; and order dated 02.05.2019 as passed by the learned Single Judge is restored. No costs.

....................................J. (DINESH MAHESHWARI)

....................................J. (ANIRUDDHA BOSE)

NEW DELHI;

OCTOBER 12, 2022.

IN THE SUPREME COURT OF INDIA

Subramanya
Vs.
State of Karnataka

[Criminal Appeal No. 242 of 2022]
Decided on 13-10-2022

HEADNOTE – Extra judicial confession of a co-accused cannot be relied on as substantive evidence. It is only a corroborative piece of evidence

JUDGMENT

J.B. Pardiwala, J.

1. This statutory criminal appeal is at the instance of a convict accused charged with the offence of murder of one Kamalamma (deceased) and is directed against the judgment and order of conviction passed by the High Court of Karnataka dated 02.07.2019 in the Criminal Appeal No. 473 of 2013 by which the High Court allowed the acquittal appeal filed by the State of Karnataka against the judgment and order of acquittal passed by the Principal Sessions Judge, Chikmagalur dated 20.12.2012 in the Sessions Case No. 59 of 2011 and held the appellant herein guilty of the offence of murder punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC'). The High Court sentenced the appellant herein to undergo life imprisonment with fine of Rs. 25,000/and in the event of default of payment of fine to undergo further simple imprisonment for a period of six months.

CASE OF PROSECUTION

2. The appellant herein along with two other coaccused, namely, Gowri alias Gowramma wife of late Nagaraj and Seetharam Bhat son of late Nagabhatt were put to trial in the Sessions Case No. 59 of 2011 for the offences punishable under Sections 120B, 302, 379 and 201 read with Section 34 of the IPC. All the three accused were put to trial in the court of Principal Sessions Judge, Chikmagalur. The original accused No. 2, namely, Gowri (acquitted) was born in the wedlock of one Manjappanaika and his first wife. The deceased, namely, Kamalamma was the second wife of the Manjappanaika. Gowri (original accused No. 2) happens to be the step daughter of the deceased Kamalamma. After the demise of Manjappanaika his immovable properties were divided between the deceased Kamalamma and Gowri (A2).

In the wedlock of Manjappanaika and the deceased two daughters were born, namely, Sugandha (PW 1) and Sujatha. The deceased Kamalamma used to reside all alone at the village Horabylu adjacent to the house of the original accused No. 2 Gowri. Gowri is a widow and at the relevant point of time was staying along with her two children. It is the case of the prosecution that Gowri (A2) had an illicit relationship with the appellant herein. The deceased Kamalamma was highly opposed to such illicit relationship and used to reprimand both, the appellant and Gowri.

3. According to the case of the prosecution, the appellant herein and Gowri conspired on 23.08.2010 to do away with the deceased Kamalamma. Both are alleged to have entered her house and somewhere near the cattle shed, the deceased was hit on her head and neck with a hard object like a club. Later, the appellant and Gowri are alleged to have removed the gold chain, a pair of ear studs and one gold ring from the body of the deceased Kamalamma. They took away her mobile also.

4. It is the case of the prosecution that after the deceased Kamalamma was done to death, the original accused No. 3, namely, Seetharam Bhat came into picture. Seetharam Bhat (A3) is alleged to have helped the appellant and Gowri in wrapping the dead body of the deceased in a sari and thereafter dumping it on the land of one Dinamani. The land of Dinamani is situated besides a water channel. It is alleged that with the aid of a crowbar, a pit was dug and the dead body of the deceased was buried with the intention to destroy the evidence.

5. According to the case of the prosecution, the appellant sold the gold ornaments to a jeweller, namely, Somashekhara Shetty (PW 9). PW 9 Somashekhara Shetty at the relevant point of time was running a jewellery shop at Rippanpet. So far as the mobile is concerned, the same is said to have been sold by the appellant herein to one Ashok alias Meeranath (PW 16). Ashok alias Meeranath (PW 16) is a resident of a place called Surathkal.

6. On 24.08.2010, Alok (son of Gowri) informed the soninlaw of the deceased, namely, H.T. Yogesh (PW 7) that his motherinlaw (deceased) had been missing since 23.08.2010. In such circumstances, H.T. Yogesh went (PW 7) to the Koppa, Police Station (P.S.) and filed a missing complaint.

7. On 09.12.2010 at 21:30 hours, Seetharam Bhat (A3) is said to have met H.T. Yogesh (PW7) and made an extra judicial confession before him stating that about four months back the appellant herein and Gowri had lured him with a bottle of brandy and saying so had asked him to accompany them as they had some work. Thereafter, the appellant and Gowri are said to have revealed or rather made an extra judicial confession before Seetharam Bhat (A3) that they had committed murder of the deceased Kamalamma and had kept the body in a cattle shed.

8. The appellant and Gowri asked Seetharam Bhat (A3) to help them in disposing of the dead body. When Seetharam (A3) declined to help them, he was threatened by the appellant and Gowri. Accordingly, Seetharam Bhat (A3) accompanied them and helped in removing the gold ornaments from the body of the deceased and burying the body at the field of one Dinamani.

9. On 10.12.2010, H.T. Yogesh (PW 7) went to the Police Station and lodged a First Information Report for the offence of murder.

10. Upon registration of the First Information Report, the investigation had commenced. All the three accused persons came to be arrested. While the appellant herein and Gowri (A2) were in custody of the Police they are said to have made statements that they would show the place where the dead body had been buried and also the place where the weapon of offence (club) had been concealed. The appellant is also said to have made a statement that he would also show the place where he had sold of the ornaments of the deceased.

11. Accordingly, a discovery panchnama Ex. P.3 was drawn under Section 27 of the Indian Evidence Act, 1872. The photographs of the exhumation of the body were also taken and admitted as Ex. P.4. The Inquest panchnama of the body of the deceased, Ex. P.14 was also drawn.

12. The ornaments said to have been sold by the appellant herein to a jeweller, Somashekhara Shetty (PW 9), were collected from his shop by drawing a panchnama Ex. P.1.

13. The clothes of the appellant herein are said to have been discovered at his instance from the place nearby the house of the deceased by drawing a panchnama Ex. P.6. The weapon of offence (club) was also discovered at the instance of the appellant herein by drawing a panchnama Ex. P.8. It appears that one more weapon in the form of a spade was discovered at the instance of the original accused No. 3 Seetharam by drawing a panchnama Ex. P.8.

14. The dead body of the deceased was sent for postmortem at the General Hospital, Koppa.

15. The postmortem report Ex. P.17 reveals that the cause of death was due to head injuries in the form of fractures.

16. At the end of the investigation, the Investigating Officer filed chargesheet against the appellant and the two coaccused for the offences enumerated above.

Upon filing of the chargesheet, the case was committed by the Magistrate under Section 209 of the Cr.P.C. to the Sessions Court which came to be registered as the Sessions Case No. 59 of 2011 in the court of Principal Sessions Judge, Chikmagalur.

17. The trial court framed charge against all the accused persons vide order dated 20.12.2012. Appellant herein and the other two coaccused pleaded not guilty to the charge.

18. The prosecution adduced the following oral evidence in support of its case:
(1) PW 1 Sugandha, CW 7, daughter of the deceased.
(2) PW 2 Vishwa K. K., CW 9, panchwitness to the discovery of the ornaments from the shop of the jewellery and also the discovery of the dead body.
(3) PW 3 Nandi Purela, CW 11, panchwitness.
(4) PW 4 H.S. Sathyamurthi, CW 13, panchwitness.
(5) PW 5 T. Somaiah, CW18, panchwitness.
(6) PW 6 Sridhar Shetty, CW 20, panchwitness.
(7) PW 7 H. T. Yogesh, CW 1, soninlaw of the deceased before whom original accused No. 3 is said to have been made extra judicial confession.
(8) PW 8 H. M. Ravikanth, CW 4, panchwitness.
(9) PW 9 I. Somashekhara Shetty, CW 14, jeweler to whom the ornaments were sold.
(10) PW 10 Ravi Shetty, CW 22, panchwitness to the discovery of the mobile.
(11) PW 11 Dr. J. Neelakantappa Gowda, CW 29, panchwitness.
(12) PW 12 C.V. Harish, CW 26 panchwitness.
(13) PW 13 Thousif Ahmed, CW 32, panchwitness to the place of incident.
(14) PW 14 J.K. Shivakumar, CW 37, Revenue Officer.
(15) PW15 Dayanand Gowda, CW 28, Assistant Commissioner.
(16) PW 16 Meeranath Gowda, CW 24, Cook at Sharath Bar and Restaurant. The appellant used to assist the PW 16 at the restaurant.
(17) PW 17 Mahesh E.S., CW 41, Police Officer.
(18) PW 18 Manjeshwara Kalappa, CW 40, Police Officer.
(19) PW 19 T. Sanjeeva Naik, CW 42, Police Officer.
19. The prosecution also adduced documentary evidence in the form of FIR, Inquest panchnama, discovery panchnamas etc.

20. The trial court framed the following points of determination in its judgment:

"1) Whether the prosecution proves that Kamalamma, w/o late Manjappanaika died a homicidal death?

2) Whether the prosecution proves that on or about 23.8.2010, in Hirekudige village in Koppa Taluk, accused Nos. 1 and 2, in furtherance of their common intention or otherwise, agreed and conspired with each other to murder Kamalamma, w/o late

Manjappanaika, and thereby committed an offence of criminal conspiracy, punishable under Section 120B read with Section 34 of I.P.C?

3) Whether the prosecution proves that on the aforesaid date at about 9.00 PM, in the house of Kamalamma at Hirekudige village in Koppa Taluk, accused Nos.1 and 2, in furtherance of common intention, did commit murder by intentionally and knowingly causing the death of Kamalamma, by assaulting on her head and neck by means of club, and thereby committed an offence punishable under Section 302 read with Section 34 of I.P.C?

4) Whether the prosecution proves that on the aforesaid date, time and place, accused No.1, committed theft of a gold chain, a pair of earstuds, one gold ring and a mobile handset belonging to deceased Kamalamma and thereby committed an offence punishable under Section 379 of I.P.C?

5) Whether the prosecution proves that on or about the aforesaid date, in furtherance of common intention, accused Nos.1 and 3, knowing that the offence of murder, punishable with death or imprisonment for life, has been committed by accused Nos. 1 and 2, caused certain evidence to disappear, to wit, buried the dead body of Kamalamma, by the side of the Government channel at Horabylu, with an intention to screen the offenders (accused Nos.1 and 2) from legal punishment, and thereby committed an offence punishable under Section 201 read with Section 34 of I.P.C?

6) What order?"

21. The aforesaid points of determination came to be answered by the trial court as under:
"POINT No. 1: In the affirmative;
POINT No.2: In the negative;
POINT No.3: In the negative;
POINT No.4: In the negative;
POINT No.5: In the negative;
POINT No.6: As per final order, for the following:"

22. The prosecution in the course of the trial relied upon the following circumstances to prove its case against the accused persons:
(1) Motive to commit the crime. According to the prosecution, the appellant herein had illicit relationship with original accused No. 2, namely, Gowri and the deceased was coming in their way. In such circumstances, the appellant herein and the original accused No. 2 had the motive to commit the crime.
(2) Extra judicial confession alleged to have been made by the accused No. 3 Seetharam Bhat before the PW 7 Yogesh (soninlaw of the deceased) after four months of the date of incident.

(3) Discovery of the dead body at the instance of the appellant herein by drawing a panchnama under Section 27 of the Evidence Act.
(4) Recovery of the ornaments from the shop of the Jeweller (PW 9) at the instance of the appellant herein by drawing a panchnama.
(5) The discovery of the weapon of offence, mobile of the deceased and the clothes of the appellant accused at the instance of the appellant herein under Section 27 of the Evidence Act.

23. We shall now look into the reasonings assigned by the trial court while not accepting any of the aforesaid circumstances, as incriminating circumstances, establishing the guilt of the accused persons. We quote as under:

"34. The first circumstance which the prosecution is intending to rely upon is motive that A1 was having illicit relation with A2 and in that context, deceased Kamalamma used to abuse them and she was also making propaganda about the same and the accused persons were enraged by that and thinking that she is an obstacle for their relation, they conspired to get rid of her and murdered the deceased. In circumstantial evidence, motive plays important role and it must be strong and reliable. If prosecution fails to prove the motive, it will be beneficial to the accused.

Even though P.Ws.1, 2 and 7 have deposed that the mother of P.W.1, the deceased used to tell her that A1 and A2 are having illicit relation and she used to scold them for having such illicit relation, but if we see the crossexamination of P.W. 1, it discloses that A1 is distant brother to A2 and that there was a panchayath before the division of the properties between the deceased and A2.

Even in the case of the prosecution, the prosecution has not proved by examining any witness to substantiate the said fact of illicit relation between A1 and A2, who have either seen them together or that they have advised them to give up the same. Even though P.W.1, the daughter and P.W.7, the soninlaw of the deceased have deposed about the illicit relation between A1 and A2, but they have deposed that the deceased used to tell about the illicit relations and they are not the direct witnesses to substantiate the said fact. Their evidence is only hearsay in nature. As such, the evidence regarding the illicit relation is not acceptable and reliable in law.

35. The second circumstance which the prosecution is intending to rely upon is the confession made by A3 before P.W.7, the soninlaw of the deceased. It is the specific case of the prosecution that on 9.12.2010 he had been to Gadikallu and at about 9.30 PM, near the Circle, A3 met him and there he told that about 3 or 3 1/2 months back he had been called by A1 and told that he had murdered Kamalamma and in order to bury the dead body, asked his help by providing two bottles of brandy and he also told that if he is not going to obey, he will also kill him as done to his brotherinlaw

Srinivase Gowda. He also told that he helped him in carrying the dead body to the mound near the land of Dinamani and buried it.

During the course of crossexamination, he has admitted that he is not going to ask any personal matters of A3 nor he will tell his personal matters to him. He has further admitted that he is not having any confidence in him and vice versa, A3 is also not having any confidence in him. A3 is also not a friend or relative of P.W.7. In order to establish that A3 made a confession before P.W.7, A3 must have reposed confidence in him and he must have some faith with the person to whom he is making such a confession. When P.W.7 is neither a relative nor a friend, why A3 is going to make such a confession before P.W.7 who is a close relative of the deceased, is a mystery. Under the facts and circumstances of the present case on hand, it is very difficult to believe that A3 would make such a confession before P.W.7 about the crime committed by them.

While considering the evidence of extra judicial confession, the Court must also verify whether the accused could repose confidence in such a person so as to disclose a secret aspect of his life. For this proposition of law, I want to rely upon the decision reported in **AIR 1975 SUPREME COURT 258, [THE STATE OF PUNJAB v/s BHAJAN SINGH & OTHERS]** wherein it is held as under: "(C) Evidence Act (1872), S.24 Extra judicial confession - Value of the evidence of extra judicial confession in the very nature of things is a weak piece of evidence. (The evidence adduced in this respect in the instant case, held, lacked plausibility and did not inspire confidence.) Para 15"

36. In another decision reported in **[2011] ACR 704 in the case of SK. YUSUF v/s STATE OF WEST BENGAL,** the Hon'ble Supreme Court of India has again held as under:
" C. Evidence Act, 1872 S. 25 Extra judicial confession - Extra judicial confession must be established to be true and made voluntarily and in a fit state of mind Extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Para 22"

37. Leave apart this, as per the evidence of P.W.7, A3 met him 3 1/2 months or 4 months after the incident. Usually, if at all, a confession is going to be made by the offenders in respect of the commission of the offence, it will be made immediately after the incident which they have committed and not after a long gap and the confession is going to be made immediately before the person who come across with him and with whom he is having full faith. In this behalf also the evidence which has been produced before the court is not cogent and reliable and the prosecution has utterly failed to prove the said circumstance which it is intending to rely upon.

38. The third circumstance which the prosecution is intending to rely upon is that of accused showing the place of commission of offence and the place of burial of the dead body. As per the evidence of P.W.19, the Investigating Officer, on 10.12.2010, C.Ws.36 and 37 produced accused No.1 at about 9.00 PM; C.Ws.34 and 35 produced accused No.2 at the same time; and P.Ws.17 and C.W.38 produced accused No.3 at the same time. He has further deposed that thereafter he recorded their voluntary statements and on the basis of that, he traced the place of burial. If we see the voluntary statement of A1 as per Ex.P.28, he has stated that he will show the place of burial.

He has also volunteered that he has committed the murder of deceased Kamalamma and he will produce the club, mobile, spade and another club which has been used for the purpose of transportation of the dead body and he will also produce the ornaments which he has taken from the body and the same has been marked as Ex.P.28. Accused nos.2 and 3 have volunteered to show the place where they have buried the dead body. If we see the evidence of this witness with the evidence of the other witnesses, it is not accused nos.2 and 3 who took the IO and the panch witnesses and showed the place of burial.

P.Ws.2 and 8 have deposed that about one year back, he saw the dead body of deceased near a halla situated at Dinamani land at a mound and there, the Dy.S.P. and the A.C., were also present. A1 and A3 showed the place of burial of the dead body. But, nowhere these witnesses have spoken that A1 and A3 led them and showed the place of burial. If already the said burial spot was known to the Dy.S.P, and the A.C., then under such circumstances, it cannot be held that it is at the instance of the accused that the said place has been discovered.

If we see the evidence of P.W.8, he has deposed that the said body was fully decomposed and one blouse and one petticoat were found on the dead body and if we see the evidence of P. W.15, he has deposed that accused nos.1 and 3 led them to a mound in survey No.121 and showed the place where they had buried the dead body of deceased Kamalamma and he got it exhumed through A1, A3 and P.W.3. The said body was highly decomposed and an old type blouse and a petticoat were there over the said body. But if we see the crossexamination of this witness, he received the requisition on 10.12.2010 and thereafter on 11.12.2010 he fixed the timing to exhume the body and he went there at about 10.30 AM and when he was about to enter the village, police were also there along with A1 and A3 and other witnesses, Doctor and Videographer were also present.

Then, under such circumstances, the evidence of P.W.15 that A1 and A3 led them and showed the place where they had buried the dead body is also not believable and reliable. It is not for the first time that he came to know about the dead body in that place. He has categorically deposed that the body was highly decomposed. But if we

see the evidence of P.W.11, the Doctor, he found a semi decomposed, legs little semi flexed in position, head was covered with black and gray hairs measuring 12 inches in length, 2/3rd of the body was decomposed and breast was also semidecomposed.

If the alleged murder has taken place on 23.8.2010, with the above condition of the body, the exhumation of the body must have been done earlier to 11.12.2010 and not on 11.12.2010, 3 1/2 months later as contended by the prosecution, or else, the death must have taken place at a later date which is closer to the date of exhumation and examination. According to P.W.19, accused nos.2 and 3 volunteered to show the place where they have buried the dead body, but as per the case of the prosecution, accused nos.1 and 3 have showed the place. That also creates a doubt. In that behalf, there is no consistency in the evidence to show that it is at the instance of A1 and A3 by their voluntary statement, the fact about the place of burial has been discovered. Under such circumstances, this circumstance which the prosecution is intending to rely upon, cannot be said to be proved beyond reasonable doubt.

39. The next circumstance which the prosecution is intending to rely upon is that of recovery of the ornaments at the instance of accused No. 1. In this behalf, the prosecution is intending to rely upon the evidence of P.W.2 and P.W.9. P.W.2 in his evidence has deposed that after 2 or 3 days again police called him and along with C.W.13, A1 was also present and that himself, C.W.13 and the PI were led by A1 to Rippanpet. There, A1 took them to Someshwara Jewellers shop and there A1 asked to give the gold ornaments given by him and C.W.14 returned the said gold ornaments and the same were seized by drawing a Mahazar as per Ex.P.1. Admittedly, this witness is the nephew of the deceased and even though by the side of the Police Station and the jewellery shop there are so many shops and other persons were available, but why this particular person has been chosen as a witness is also not forthcoming.

40. P.W.9 is the owner of the jewellery shop. He has deposed that A1 came and sold the gold articles prior to 3 1/2 months back by coming to his shop and he returned the said articles and they were seized by drawing a Mahazar as per Ex.P.1. During the course of crossexamination, he has deposed that they will not maintain any receipt book for having purchased the gold and he has also further deposed that when he purchased the gold articles, they were just like new and there will be wear and tear found on the gold articles even though they have been renewed with new coatings. When the said articles appear to be new one and even after 3 1/2 months of their purchase by P.W.9 who is a jeweller, they were in the same condition in which they have been recovered at the instance of A1 is hard to believe and in this behalf also, the case of the prosecution is not worthy of acceptance.

41. The next circumstance which the prosecution is intending to rely upon is the recovery of the club, umbrella, mobile and spade and the seizure of the clothes of A1 and A3. Even though the recovery evidence has been given by P.Ws.8, 10,16 and P.Ws.4 and 5, but if we closely scrutinise their evidence, the club which has been recovered is also not having stains and it is a new one.

Even it is not believable that the said clubs which have been thrown by the accused persons in that particular area will be available in the condition in which they have been thrown even after 3 1/2 months. By bare looking by this court, M.Os. 9 and 14 are just like new clubs. If they are exposed to rain, water and sun, definitely they would have changed their colour and shape. So also, the recovery of the clothes of the accused persons. In this behalf also, the recovery evidence of all these articles has not been proved by the prosecution beyond all reasonable doubt.

42. Even though the learned Public Prosecutor vehemently argued and contended that at the instance of the accused, the body has been exhumed and the recovery has been done and A3 has also confessed before P.W.7 and the prosecution has also proved the motive that A1 and A2 were having illicit relation, the same is not acceptable under the above said circumstances.

43. The material witnesses in this case have not been examined by the prosecution for the reasons best known to it. It is the specific case of the prosecution that one Alok, son of accused No.2 informed P.W.7 about the missing of the deceased. But the said Alok has not been examined. The body of deceased is found buried in Survey No.121 of Dinamani and Narayanaswamy, and when the said body was found there in the said land belonging to them, then, under such circumstances, they are considered to be material witnesses. Nonexamination of these material witnesses will also not fill up the gap which the prosecution has to fill up to prove its case beyond all reasonable doubt.

From what date that the deceased was missing and how nobody noticed about the missing of the deceased is also not brought on record by the prosecution, for the reasons best known to it. This particular doubt also goes to the benefit of the accused. Even though P.W. 1 was knowing that the deceased, her mother, was having a mobile and after coming to know about the missing of her mother on 24.8.2010, she will not make any efforts to make a call to the mobile of her mother which is an unnatural conduct on her part. No daughter, after coming to know that the mother is missing, will keep quiet, that too when she knows that her mother is having a mobile. Definitely she could have made a call. For what reasons P.W. 1 did not make any call to her mother's mobile is also a doubtful circumstance.

44. It is settled principle of law that when two views are possible from the prosecution evidence, the one which is favourable to the accused shall have to be

taken and the benefit of doubt shall have to be given to the accused. Taking into consideration the above said facts and circumstances of the case, I answer point Nos.2 to 5 in the negative."

24. Thus, the trial court, upon appreciation of the oral as well as documentary evidence, came to the conclusion that the prosecution had failed to prove its case against the accused persons beyond reasonable doubt and accordingly, vide the judgment and order dated 20.12.2012, acquitted the appellant herein and the other two coaccused of all the charges.

25. The State of Karnataka being dissatisfied with the judgment and order of acquittal passed by the trial court challenged the same by filing the Criminal Appeal No. 473 of 2013 in the High Court of Karnataka. The High Court upon reappreciation of the entire oral as well as the documentary evidence on record dismissed the acquittal appeal so far as the original accused No. 2 Gowri alias Gowramma is concerned thereby affirming her acquittal. However, the appellant herein came to be convicted for the offence of murder punishable under Section 302 of the IPC and was sentenced to undergo life imprisonment with fine of Rs. 25,000/.

Appellant was also convicted for the offence punishable under Section 201 read with Section 34 of the IPC and was sentenced to undergo simple imprisonment for five years with fine of Rs. 5,000/. The original accused No. 3 Seetharam Bhat came to be convicted for the offence punishable under Section 201 read with Section 34 of the IPC and was sentenced to undergo simple imprisonment for a period of three years with fine of Rs. 5,000/and in case of default to undergo further simple imprisonment for a period of two months.

26. We are informed that the original accused No. 3 Seetharam Bhat accepted the conviction and has undergone the sentence. The original accused No. 3 thought fit not to file any appeal before this Court.

27. It is the appellant herein (original accused No. 1), who is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT CONVICT

28. Mr. Krishna Pal Singh, the learned counsel appearing for the appellant convict vehemently submitted that the High Court committed a serious error in passing the impugned judgment and order of conviction by reversing the wellreasoned judgment and order of acquittal passed by the trial court. According to the learned counsel, while sitting in judgment over an acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable.

If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained, in view of any of the above infirmities, it can then - and then only - reappraise the evidence to arrive at its own conclusions. The principal argument of the learned counsel appearing for the appellant convict is that in the case on hand, there is no finding recorded by the High Court that the judgment of the trial court is palpably wrong, manifestly erroneous or demonstrably unsustainable.

29. The learned counsel would further submit that the High Court committed a serious error in making the extra judicial confession alleged to have been made by the original accused No. 3 Seetharam Bhat before the PW 7 almost after four months from the date of the incident is the basis and thereafter, trying to search for corroboration. It was argued that even otherwise, an extra judicial confession is a weak piece of evidence. He would argue that in the case on hand, the High Court should not have relied upon the extra judicial confession alleged to have been made by the accused No. 3 Seetharam before the PW 7 Yogesh for the purpose of convicting the appellant herein.

30. The learned counsel also submitted that the High Court committed a serious error in relying upon the various discoveries like the weapon of offence, jewellery, mobile, clothes etc. under Section 27 of the Evidence Act.

31. In such circumstances referred to above, the learned counsel prays that there being merit in his appeal, the same may be allowed and the impugned judgment and order passed by the High Court may be set aside.

SUBMISSIONS ON BEHALF OF THE STATE

32. Mr. V.N. Raghupathy, the learned counsel appearing for the State of Karnataka, on the other hand, has vehemently opposed this appeal submitting that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order. He would submit that the circumstances are fully established pointing only towards the guilt of the appellant convict. In such circumstances referred to above, the learned counsel appearing for the State prayed that there being no merit in the present appeal, the same may be dismissed.

ANALYSIS

33. Having heard the learned counsel appearing for the parties and having gone through the material on record, the only question that falls for our consideration is

whether the High Court committed any error in passing the impugned judgment and order of conviction.

34. The High Court should have been mindful of the fact that it was dealing with an acquittal appeal filed by the State under Section 378 of the Cr.PC. It would be useful to review the approach to be adopted while deciding an appeal against the acquittal by the trial court.

35. In one of the earliest cases on the powers of the High Court, in dealing with an appeal against an order of acquittal the Judicial Committee of the **Privy Council, in Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (193334) 61 IA 398 : AIR 1934 PC 227 (2),** considered the provisions relating to the power of an appellate court in dealing with an appeal against an order of acquittal and observed as under:

".....But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

It was stated that the appellate court has full powers to review and to reverse the acquittal.

36. Following the Sheo Swarup (supra) this Court in Chandrappa and Others v. State of Karnataka reported in (2007) 4 SCC 415 held as under:

"16. It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court."

37. In **Atley v. State of Uttar Pradesh, AIR 1955 SC 807,** the approach of the appellate court while considering a judgment of acquittal was discussed and it was

observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in Sanwat Singh and Others v. State of Rajasthan, AIR 1961 SC 715 in para 9 held as under:

"9. The foregoing discussion yields the following results:
(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded;
(2) the principles laid down in Sheo Swarup's case, 61 Ind App 398 : (AIR 1934 PC 227 (2) afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and
(3) the different phraseology used in the judgments of this Court, such as,
(i) "substantial and compelling reasons",
(ii) "good and sufficiently cogent reasons", and
(iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

38. The need for the aforesaid observations arose on account of the observations of the majority in Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426, which stated that for the High Court to take a different view on the evidence "there must also be substantial and compelling reasons for holding that the trial court was wrong".

39. M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235, is the judgment of the Constitution Bench of this Court, speaking through Gajendragadkar, J. (as his Lordship then was). This Court observed that the approach of the High Court (appellate court) in dealing with an appeal against acquittal ought to be cautious because the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial".

40. In Shivaji Sahabrao Bobade and Another v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033, in para 6, Krishna Iyer, J., observed as follows:

"6. .....In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set

the delinquent free and chopping the logic of preponderant probability to punish marginal innocents....."

41. This Court in Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972, in para 7 spoke about the approach of the appellate court while considering an appeal against an order acquitting the accused and stated as follows:

"7. .....While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions....."

The object and the purpose of the aforesaid approach is to ensure that there is no miscarriage of justice. In other words, there should not be an acquittal of the guilty or a conviction of an innocent person.

42. In **Ajit Savant Majagvai v. State of Karnataka, (1997) 7 SCC 110** in para 16, this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the trial court:

"16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witnessbox.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

43. This Court in Chandrappa (supra) highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in

an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

44. In **Nepal Singh v. State of Haryana, (2009) 12 SCC 351,** this Court reversed the judgment in the **State of Haryana v. Nepal Singh, CRAD No. 99DBA of 1993, order dated 2171997 (P&H),** of the High Court which had set aside the judgment of acquittal pronounced by the trial court and restored the judgment of the trial court acquitting the accused on reappreciation of the evidence.

45. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarised as follows:

45.1.Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. **[State of Uttar Pradesh v. Sahai and Others, (1982) 1 SCC 352].**

Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. **[Arunachalam v. P.S.R. Sadhanantham and Another, (1979) 2 SCC 297].** An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. **[State of Haryana v. Lakhbir Singh and Another, 1991 Supp (1) SCC 35 : 1990 Cri LJ 2274].**

45.2.However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

45.2.1. Where the approach or reasoning of the High Court is perverse:
(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. **[State of Rajasthan v. Sukhpal Singh and Others, (1983) 1 SCC 393].** For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. **[State of U.P. v. Shanker, 1980 Supp SCC 489 : 1981 SCC (Cri) 428].**
(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. **[State of U.P. v. Hakim Singh and Others, (1980) 3 SCC 55].**

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. **[State of Rajasthan v. Sukhpal Singh and Others, (1983) 1 SCC 393].**

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. **[Arunachalam v. P.S.R. Sadhanantham and Another, (1979) 2 SCC 297].**

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. **[State of Uttar Pradesh v. Ranjha Ram and Others, (1986) 4 SCC 99].**

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; **[State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610]** or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. **[Gurbachan Singh v. Satpal Singh and Others, (1990) 1 SCC 445].**

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish "motive". **[State of Andhra Pradesh v. Bogam Chandraiah and Another, (1986) 3 SCC 637].**

45.2.2. Where acquittal would result in gross miscarriage of justice:

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, **[State of U.P. v. Pheru Singh and Others, 1989 Supp (1) SCC 288]** or based on extenuating circumstances which were purely based in imagination and fantasy **[State of Uttar Pradesh v. Pussu alias Ram Kishore, (1983) 3 SCC 502].**

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. **[State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610].**

46. Having gone through the entire impugned judgment passed by the High Court, we do not find any satisfaction recorded therein that the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. In the absence of such satisfaction, the High Court, in our opinion, should not have disturbed a wellreasoned judgment of acquittal, passed by the trial court. We shall assign reasons hereafter why the High Court should not have disturbed the acquittal recorded by the trial court.

PRINCIPLES GOVERNING APPRECIATION OF CIRCUMSTANTIAL EVIDENCE

47. A three Judge Bench of this Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116,** held as under:
"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] .** This case has been uniformly followed and applied by this Court in a large number of later decisions uptodate, for instance, the cases of **Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] .**

It may be useful to extract what Mahajan, J. has laid down in **Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]** : It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and

tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783]** where the following observations were made **: [SCC para 19, p. 807 : SCC (Cri) p. 1047]**

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.
(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
(3) the circumstances should be of a conclusive nature and tendency,
(4) they should exclude every possible hypothesis except the one to be proved, and
(5) 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

48. In an Essay on the Principles of Circumstantial Evidence by William Wills by T. and J.W. Johnson and Co. 1872, it has been explained as under:

"In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions.

The term **PRESUMPTIVE** is frequently used as synonymous with **CIRCUMSTANTIAL EVIDENCE**; but it is not so used with strict accuracy, The word" presumption," ex vi termini, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.
The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum."

49. Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

ANALYSIS OF THE CIRCUMSTANCES RELIED UPON BY THE HIGH COURT

50. It is the case of the prosecution that the original accused No. 3 Seetharam Bhat had made an extra judicial confession before the PW 7, H.T. Yogesh (soninlaw of the deceased). PW 7 in his examination-in-chief, recorded by the trial court on 21.01.2012 has stated as under:

"1. I know the accused persons who are present before the court. Deceased Kamalamma is my motherinlaw. C.W.8 is my wife. P.W.1 is my wife's sister. C.W.12 is the husband of P.W.1. C.W.5 and 6 are the brothers of the deceased. I know other witnesses. My motherinlaw died on 23.08.2010 due to murder. The son of A2 Gowramma by name Alok on 24.08.2010 came at about 6.30 a.m. and told that my motherinlaw Kamalamma is not found since yesterday night.

A2 is the daughter of first wife of the husband of deceased Kamalamma. Deceased used to reside Hosamane, Hirekudige village. By the side of the house of deceased

A2 used to reside. Deceased alone used to stay there and A2 and their children used to stay by the side of the house of the deceased. Husband of A2 is no more. We also came. By telling to all we searched for my motherinlaw Kamalamma. As we could not trace at about 1 p.m. I went to Police Station and filed a missing complaint. I did not get any information about my motherinlaw even after giving the missing complaint.

2. On 09.12.2010 I had been to Gadikallu. At about 9.30 p.m. at Gadikallu circle A3 Seetharam Bhat met me and there he told that about 3 or 3 1/2 months back he had been called by A1 and told that he had murdered Kamalamma and in order to bury the dead body asked his help by providing two bottles of brandy and he also told that if he would not obey he will also kill him as done to his brotherinlaw Srinivase Gowda. He also told that he helped him in carrying the dead body to Dhare near the land of Dinamani and there they have buried the body.

3.Deceased Kamalamma used to tell that A2 is having illicit relation and they are not liking her as she is telling to everybody.

4. Thereafter I went to Police Station on 10.12.2010 and filed the complaint. Now I see the said complaint. The same is now marked as Ex.P11. Ex.P11(a) is my signature.

5. Next day when police and Assistant Commissioner came to the spot I was also called there. C.W.2 to 4 were also called. There A1 and A3 showed the place where they had buried the body of Kamalamma to us and also to the police and Assistant Commissioner. Thereafter with the help of P.W.3 the dead body of Kamalamma was exhumed. The dead body was buried in survey No.121, the Govt. land by the side of a channel at Horabylu. When the body was exhumed it was fully decomposed. Over the body one petticoat, one blouse were there. There the Assistant Commissioner draw the body exhumed mahazar. Now I see the same. The same is already marked as Ex.P3. Ex.P3(b) is my signature. At that time photographs were also taken. Now the three photos have been marked as Ex P4. Apart from me C.Ws. 2 to 4 and P.W.3 also signed.

6. On 14.12.2010 again police called me at about 2 p.m. to the Police Station. In the said police station A1 was also present. Police brought C.W.24 Meeranath and he produced a mobile. The said mobile was of the deceased Kamalamma. The same was seized in the presence of C.W.22 and 23 by drawing a mahazar. Now I see the same. The same is now marked as Ex.P12. Ex.P12(a) is my signature. At that time photo was also taken. Now the said photo is marked as Ex.P13. I can identify the mobile if shown to me. The same is already marked as M.O.4. I do not remember the cell number of my motherin law. She has studied upto 4th standard.

7. My motherinlaw used to wear a chain with Ganapathi pendant which is already marked as M.O.1, one pair of ole with blue stone in the middle surrounded by white stones which is already marked as M.O.2, one gold ring with red stone which is already marked as M.O.3. I can identify the blouse and petticoat which were found on the body of the deceased. (Now one sealed cover is shown to the learned counsel for the accused. The seals are found intact. He has no objection to open the same. The same is now opened). It contains one blouse and one petticoat. Witness identifies the same. The same are now marked as M.O.11 and 12."

51. We need not refer to the crossexamination of the PW 7, as we are of the view that the plain reading of the examinationinchief itself is sufficient to arrive at the conclusion that the extra judicial confession could not have been relied upon as an incriminating circumstance.

52. The date of the alleged crime is 23.08.2010. The so called extra judicial confession, said to have been made by Seetharam Bhat (accused No. 3) is dated 09.12.2010. We fail to understand why all of a sudden Seetharam (accused No. 3) after a period of almost four months, thought fit to make an extra judicial confession before the PW 7 H.T. Yogesh involving himself and the appellant herein in the alleged crime.

53. An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession.

Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

54. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.

55. Considering the admissibility and evidentiary value of extra judicial confession, after referring to various judgments, in **Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403,** this Court held as under:
" 15.1. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that: (SCC p. 265, para 10) "10. An extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance."

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extrajudicial confession, this Court in State of Rajasthan v. Raja Ram [(2003) 8 SCC 180 : 2003 SCC (Cri) 1965] stated the principle that: (SCC p. 192, para 19)

"19. An extrajudicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."
The Court further expressed the view that: (SCC p. 192, para 19)

"19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...."

15.6. Accepting the admissibility of the extrajudicial confession, the Court in **Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that: (SCC p. 611, paras 2930)**

"29. There is no absolute rule that an extrajudicial confession can never be the basis of a conviction, although ordinarily an extrajudicial confession should be corroborated by some other material. **[Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105 : 1970 SCC (Cri) 320] , Mulk Raj v. State of U.P.**

[AIR 1959 SC 902 : 1959 Cri LJ 1219] , Sivakumar v. State [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B.[(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]

[Emphasis supplied]

56. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another, (1992) 3 SCC 204, this Court after referring to Piara Singh and Others v. State of Punjab, (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.

57. The sum and substance of the aforesaid is that an extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The Courts generally look for an independent reliable corroboration before placing any reliance upon an extra judicial confession.

58. This Court in Kashmira Singh v. The State of Madhya Pradesh reported in AIR 1952 SC 159, had observed as under: "The confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it.

If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept. [para 8, 10]"

59. In the case on hand, the High Court committed a serious error in making the confessional statement as the basis and thereafter going in search for corroboration.

The High Court concluded that the confessional statement is corroborated in material particulars without first considering and marshalling the evidence against the appellant convict herein excluding the conviction altogether from consideration. As held in the decision, cited above, only if on such consideration on the evidence available, other than the confession a conviction can safely be based then only the confession could be used to support that belief or conclusion.

60. The trial court has assigned cogent reasons for not accepting the evidence of the PW 7, before whom the confession is alleged to have been made, and rightly so, the High Court has not given any convincing reasons as to why the PW 7 who was discarded by the trial court should be relied on.

61. The learned counsel appearing for the State, relied on Section 30 of the Evidence Act to make good his submission that, the extra judicial confession alleged to have been made by the original accused No. 3 Seetharam Bhat is admissible against the appellant convict herein. No doubt, the statement would be admissible but the question is not of mere admissibility or mere absence of bar under Section 25 of the Evidence Act, the real question relates to a proper interpretation of Section 30 of the Evidence Act.

62. Section 30 of the Evidence Act is quoted below in toto:

"30. Consideration of proved confession affecting person making it and others jointly under trial for the same offence.-

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

[Explanation:-"Offence", as used in this section includes the abatement of, or attempt to commit the offence.]"

63. It was argued that this confession of a coaccused, even if proved, cannot be the basis of a conviction and although it is evidence in the generic sense, yet it is not evidence in the specific sense and it could afford corroboration to other evidence and cannot be the supporting point or the sole basis of the conviction. In this respect, reference could be made to a decision of this Court in the case of Haricharan Kurmi & Jogia Hajam v. State of Bihar, as reported in AIR 1964 SC 1184, as also to another decision of this Court reported in Ram Chandra and Another v. State of Uttar Pradesh, AIR 1957 SC 381 wherein it was held that confession of a coaccused can only be taken into consideration but it was not in itself a substantive evidence. The Privy Council also held that a confession of a coaccused was obviously

evidence of a very weak type and it did not come within the definition of evidence contained in Section 3.

64. It is necessary to have the facts behind these decisions of the Supreme Court and the Privy Council. We may proceed chronologically.

65. In the case of Bhuboni Sahu v. The King reported in AIR 1949 PC 257, the Patna High Court had dismissed an appeal against a judgment and order of the Sessions Judge convicting the appellant for an offence of murder. The Privy Council, however, advised His Majesty that the appeal be allowed and the judgment was recorded giving the reasons for such advice. The evidence against the appellant consisted of, (a) the evidence of Kholli Behera who had taken part in the murder and had become an approver, (b) the confession of Trinath recorded under Section 164 Cr. P.C. which implicated both himself and the appellant in the murder, and (c) the recovery of a loin cloth identified as the one which the deceased was wearing when he was assaulted and an instrument for cutting grass. For the purpose of the instant case, the evidence in point (b) is relevant.

The Privy Council quoted Section 30 of the Evidence Act and held in paragraph 9 of the judgment (as reported) that Section 30 was introduced for the first time in the Indian Evidence Act of 1872 and it was the departure from the common law of England. It was observed that this Section 30 applied to confessions and not to statements which do not admit the guilt of the confessing party. It was held that statement of Trinath was a confession. Their lordships further observed that Section 30 seemed to be based on the view that an admission of an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself.

But a confession of a co-accused, their lordships continued to observe, was obviously evidence of a weaker type. It did not indeed come within the definition of 'evidence' contained in Section 3 of the Evidence Act. Such statement was not required to be given on oath nor in the presence of the accused and it could not be tested by cross-examination.

It was a much weaker type of evidence than the evidence of an approver which was not subject to any of those infirmities. Section 30, however, provided that the Court might take into consideration the confession and thereby no doubt made it evidence on which the Court could act, but the section did not say that the confession was to amount to proof. Clearly, there must be other evidence and confession was only one element in the consideration of all the facts proved in the case, which can be put into the scale and weighed with other evidence. Their lordships confirmed the view that the confession of a co-accused could be used only in support of the evidence and could not be made a foundation of a conviction.

66. The case of Ram Chandra (supra) before this Court, as reported in AIR 1957 SC 381 was also of murder. It was a case in which corpus delecti was not traceable and proof of murder solely depended on a retracted confession of an accused. The Court was of the view that although corpus delecti was not found, yet there could be a conviction if reliable evidence, direct or circumstantial, of the commission of murder was available. However, a confession of a co-accused was not in itself a substantive evidence. The courts below had relied on a confession of accused Ram Chandra against a co-accused, Ram Bharosey, for holding him guilty of the offences charged against him.

This Court held, "It is rightly urged that under Section 30, Evidence Act confession of a co-accused can only be taken into consideration but is not in itself substantive evidence." This Court, however, was satisfied that even excluding the confession as substantive evidence there was enough material against the appellant Ram Bharosey to find him guilty of offence of criminal conspiracy to commit offences charged. To come to the ratio, we find that the view was affirmed that confession of a co-accused could only be considered but could not be relied on as substantive evidence.

67. The case of Haricharan Kurmi (supra) was again from the Patna High Court. Here also a question arose as to the probative value of a confession of one accused against a co-accused. This Court dealt with the definition clause in Section 3 in the Evidence Act and Section 30 thereof, as also some earlier decisions of this Court. It was observed, in paragraph 15 of the judgment, as reported, "It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence.

It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the rending of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however, grave, must not be allowed to take the place of proof.

As we have already indicated, it has been a recognised principle of administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trial, there is no scope for applying the principle of moral conviction or grave suspicion.

In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals."

68. The case in hand is not one of a confession recorded under Section 15 of the TADA Act. On the language of subsection (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him. So, it is implicit that the same can be considered against all those, tried together. In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against the co-accused, abettor or conspirator charged and tried in the same case along with the accused. The accepted principle in law is that the confessional statement of an accused recorded under Section 15 of the TADA Act is a substantive piece of evidence against his co-accused, provided the accused concerned are tried together. This is the fine distinction between an extra judicial confession being a corroborative piece of evidence and a confession recorded under Section 15 of the TADA Act being treated as a substantive piece of evidence.

DISCOVERY OF WEAPON OF OFFENCE, CLOTHES AND DEAD BODY

69. For the purpose of proving the discovery of clothes of the appellant herein at his instance by drawing a panchnama under Section 27 of the Evidence Act, the prosecution has relied upon the evidence of the PW 5 T. Somaiah. PW 5 in his examination-in-chief has deposed as under:

"1. I know the accused persons who are present before the court. I know C.W.19. About one year back myself and C.W.19 were called by the police, at that time A1 Subramanya was also there. From there A1 led us near the house of Kamalamma. By the side of house of Kamalamma there is a house of A2. Police told me that A1 is going to give the cloths, we have to be there. By the side of house of Kamalamma from the place where the firewood has been stored A1 removed one pant and one shirt and produced before the police and thereafter the same were seized by drawing a mahazar. Now I see the said mahazar.

The same is now marked as Ex.P6. Ex.P6(a) is my signature. The said mahazar was drawn between 9.30 a.m. to 10.30 a.m. (Now two covers are shown to the learned counsel for the accused. He has no objection to open the same. The same are now opened.) They contain red colour shirt and cement colour pant. The same are now marked as M.O.7 and 8 respectively. At the time of seizing M.O.7 and 8 photograph is also taken. Now I see the same. The same is now marked as Ex.P7."

70. For the purpose of proving the discovery of the weapon of offence, the prosecution has relied upon the examination-in-chief at the instance of the appellant convict herein. The prosecution has relied upon the evidence of PW 6 Sridhar Shetty. Sridhar Shetty in his examination-in-chief has deposed as under:
"1. I know the accused persons who are present before the court. I know C.W.21. On 14.12.2010 myself and C.W.21 were called by C.W.42. At that time A1 and A3 and the president of Panchayath and many other persons were also present. A1 and A3 led us to survey No.121 Government land by the side of the estate of Dinamani and there they told that they are going to produce the club which has been used for the purpose of commission of offence and which has been kept in a bush. Thereafter A1 took out a club from the bush and produced before the police. Now I see the said club which is before the court.

The same is now marked as M.O.9. Thereafter A3 also went by the side of the bush and from there he produced a spade. Now I see the said spade. The same is now marked as M.O.10. Thereafter M.O.9 and 10 were seized by drawing a mahazar. Now I see the said mahazar. The same is now marked as Ex.P8. Ex.P8(a) is my signature. The said mahazar was drawn in between 11 a.m to 11.30 a.m. At the time of drawing the said proceedings photographs were also taken. Now the said two photographs are marked as Ex.P9 and P10."

71. For the purpose of proving the discovery of the dead body of the deceased at the instance of the appellant herein and the acquitted coaccused (A2), the prosecution has relied upon evidence of PW 7 H.T. Yogesh. PW 7 H.T. Yogesh in his examinationinchief has deposed as under:

"5. Next day when police and Assistant Commissioner came to the spot I was also called there. C.W.2 to 4 were also called. There A1 and A3 showed the place where they had buried the body of Kamalamma to us and also to the police and Assistant Commissioner. Thereafter with the help of P.W.3 the dead body of Kamalamma was exhumed. The dead body was buried in survey No.121, the Govt. land by the side of a channel at Horabylu. When the body was exhumed it was fully decomposed. Over the body one petticoat, one blouse were there. There the Assistant Commissioner draw the body exhumed mahazar. Now I see the same. The same is already marked as Ex.P3. Ex.P3(b) is my signature. At that time photographs were also taken. Now the three photos have been marked as Ex P4. Apart from me C.Ws. 2 to 4 and P.W.3 also signed.
6. On 14.12.2010 again police called me at about 2 p.m. to the Police Station. In the said police station A1 was also present. Police brought C.W.24 Meeranath and he produced a mobile. The said mobile was of the deceased Kamalamma. The same was seized in the presence of C.W.22 and 23 by drawing a mahazar. Now I see the same. The same is now marked as Ex.P12. Ex.P12(a) is my signature. At that time

photo was also taken. Now the said photo is marked as Ex.P13. I can identify the mobile if shown to me. The same is already marked as M.O.4. I do not remember the cell number of my motherin law. She has studied upto 4th standard.

7. My motherinlaw used to wear a chain with Ganapathi pendant which is already marked as M.O.1, one pair of ole with blue stone in the middle surrounded by white stones which is already marked as M.O.2, one gold ring with red stone which is already marked as M.O.3. I can identify the blouse and petticoat which were found on the body of the deceased. (Now one sealed cover is shown to the learned counsel for the accused. The seals are found intact. He has no objection to open the same. The same is now opened). It contains one blouse and one petticoat. Witness identifies the same. The same are now marked as M.O.11 and 12."

72. PW 8 H. M. Ravikanth also as one of the panchwitnesses has deposed in his examinationinchief as under:

"2. On 11.12.2010 at about 10 a.m. C.P.I. called me, C.W.2 and 3. At that time Assistant Commissioner was also present and A1 Subramanya and A3 Seetharama Bhat were also present. From Gadikallu police officials, A.C., A1 and A3 alongwith me and C.W. 2 and 3 we went to the place where the body has been buried. A1 took us to the said place where they had buried the body. After showing the place where they had buried the body of the deceased by A1 with the help of P.W.3 and A1 and A3 the body was exhumed and there we noticed that it is the dead body of Kamalamma. The said body was fully decomposed and one blouse and one petticoat were found on the dead body. For having exhumed the body a mahazar was drawn as per Ex.P3. Ex.P3(c) is my signature. There the photographs were also taken about the proceedings. The said photographs have been already marked as Ex.P4. The proceedings was also videographed. Now the said C.D. is marked as M.O.13.

3. Thereafter the inquest mahazar was also drawn over the body of the deceased. Now I see the said mahazar. The same is now marked as Ex.P14. Ex.P14(a) is my signature. At the time of drawing Ex.P14 C.W.2 and 3 were also present.

4. Thereafter A1 led us to the house of deceased Kamalamma and took us to the backside door and at a distance of 3 to 4 feet he showed the place where he has murdered the deceased Kamalamma by assaulting. Thereafter A1 took us to a cattleshed at a distance of 5 to 6 feet and from there he produced a club. Now I see the said club. The club is marked as M.O.14. Thereafter accused told that he has kept the umbrella of deceased in Theerthahalli Kuppalli bus stand above the bus shelter. Thereafter A1 led us in a police jeep to Kuppalli and there after going near the bus stop A1 asked to stop the jeep.

After alighting from the jeep A1 went and took out the umbrella kept on the roof of the shelter and produced the same. Now I see the said umbrella. The said umbrella is now marked as M.O.15. Now the spot cum seizure mahazar of club and umbrella is confronted to the witness. He admits his signature. The same is now marked as Ex.P15. Ex.P15(a) is my signature. The said mahazar has been drawn from 2 p.m. to 4 p.m. At that time A3 was also present. A1 who is present before the court is the same person who led us and produced M.O.14 and 15 and A1 and A3 showed the place where the dead body has been buried. At the time of mahazar photographs have been also taken. The said five photos are marked as Ex.P16."

73. PW 9 Somashekhara (Jeweller) in his examinationinchief has deposed as under:

"1. I know A1 when he came to my shop to sell the gold. I am having a jewellery works at Rippanpet on the road which leads to Theerthahalli. Police came alongwith A1 on 13.12.2010 at about 7 p.m. Alongwith police A1, C.W.15/Gururaj were also there. I told the police that A1 had come and sold the gold in my shop. I took the gold from A1 three and 1/2 months prior to police coming to my shop alongwith A1. A1 sold one gold chain with Ganapathi pendant, one pair of ole having blue stone in the middle surrounded by white stones and one gold ring with red stone.

A1 while selling told that the said gold articles belong to him, as he is having financial difficulties in the family and he is also constructing a house, for that reason he is selling the same. I paid Rs.27,500/to the accused for having purchased. Police asked me to return the said articles. Accordingly I returned and the same were seized by the police. C.W.15 appraised the gold articles and thereafter certified them. At the time when the gold articles were seized it was valuing Rs.47,000/. Now I see the said mahazar.

The same is already marked as Ex.P1. Ex.P1(b) is my signature. Myself, C.W.l3, C.W.15 and P.W.2 have signed Ex.P1. The said mahazar has been drawn from 7 p.m. to 8.30 p.m. I can identify the said gold articles which have been seized under Ex.P1. They have been already marked as M.Os. 1 to 3. At the time of seizing M.Os. 1 to 3 police also took photographs. The same are already marked as Ex.P2."

74. PW 10 Ravi Shetty (one of the panchwitnesses) to the recovery of mobile, in his examinationinchief has deposed as under:

"2. On 14.12.2010 myself, C.W.23 and 24 were called to the Police Station at about 1.30 p.m. P.W.7 was also present. C.W.24 produced the mobile which had been sold by A1 to him. The said mobile has been seized by drawing a mahazar as per Ex.P12. Ex.P12(b) is my signature. M.O.4 is the same mobile which was produced on that day. When the said proceedings took place photographs were also taken. Now I see the said photographs. They have been already marked as Ex.P13."

75. PW 19 T. Sanjeeva Naik is the Investigating Officer. In his examinationinchief, he has deposed as under:

"2. On 10.12.2010 at about 1.30 p.m. I received the case file and took the further investigation of this case from P.W.17 and perused the investigation done by him. Immediately I deployed P.S.I. and other staff to trace about the accused. C.W. 36, 37 brought A1 and produced before me at about 9 p.m. with a report. Now I see the said report. The same is now marked as Ex.P26. Ex.P26(a) is my signature, C.w.34 and 35 also informed that they have apprehended A2 and secured and produced before me with a report at about 9 p.m. Now I see the said report. The same is now marked as Ex.P27. Ex.P27(a) is my signature. P.W.17 and C.W.38 apprehended A3 and produced before me at about 9 p.m. on the same day with a report.

The report has been already marked as Ex.P23. Ex.P23(b) is my signature. Immediately I interrogated the accused persons and recorded their voluntary statement. A1 volunteered that he had committed the murder of deceased Kamalamma and to produce the club, mobile, spade, another club which had been used for transportation of dead body and the ornaments which were taken over from the dead body. Now the relevant portion the voluntary statement of A1 is marked as Ex.P28. Ex.P28(a) is my signature. A2 and A3 also volunteered to show the place where they had buried the dead body. The said voluntary statements have been recorded in the presence of C.W.2, 3 and P.W.8. I also sent immediately a requisition to P.w.15 to come as a SubDivisional Magistrate to exhume the body of deceased Kamalamma.

3. On 11.12.2010 P.W. 15 in the presence of panch witnesses as shown by A1 and A3 he exhumed the body of deceased in the presence of P.W.7, P.W.8, P.W.3, C.W.2 and 3. For having exhumed the body a mahazar was also drawn as per Ex.P3. Ex. P3(e) is my signature. There the photographs were taken as per Ex.P4. In the presence of above said panch witnesses I also drew the inquest mahazar as per Ex.P14. Ex.P14(b) is my signature. At the time of inquest I recorded the statement of C.W.5, 6, P.W.1, C.W.8, P.W.2, C.W.10, P.W.3 and C.W.12. Thereafter through C.W.39 I sent the body to Govt. Hospital, Koppa for postmortem with a requisition. I also requested to collect the material to send for D.N.A. test from the body.

Subsequently A1 led us and showed the place where he has committed the offence and there in the presence of C.W. 2, 3 and P.W.8 I drew the spot cum seizure mahazar as per Ex.P15. ExP15(b) is my signature. At the time of drawing Ex.P15 he also produced M.O.14. Thereafter he led us to Kuppalli bus stop and there he produced the umbrella from the shelter of the said bus stand. The umbrella is already marked as M.O.15. I seized M.O.15 under Ex.P15. I also took the photographs ofâˆ™ the proceedings. The said five photographs have been marked as Ex.P16.

Thereafter I came back alongwith accused and seized articles and subjected the seized articles to P.F.No.73/2010. I also produced A1 and A3 before the court and took them to police custody. I produced A2 before the court with remand application.

4. On 13.12.2010 I secured P.W.2, C.W.13 and C.W.15. Thereafter A1 led us to Rippanpet to the Someshwara Jewellery works shop i.e., the shop of P.W.9. A1 asked P.W.9 to produce M.Os. 1 to 3. As per the request of the accused he produced M.Os. 1 to 3 which has been pledged with him. He produced M.Os. 1 to 3 and I seized them by drawing a mahazar as per Ex.P1. Ex.P1(c) is my signature. I also took the photographs as per Ex.P2. I have also videographed the said proceedings. I came back to the Police Station with seized property and subjected the seized articles to P.F.No.74/2010. I also recorded the statement of P.W.9 and C.W.15. I also kept A1 in police custody.

5. On 14.12.2010 I secured P.W.4 and C.w.17 and thereafter A3 led us to his house at Kiranakere and there he produced the M.O. 5 and 6 and there I seized them by drawing a mahazar as per Ex.P5. Ex.P5(b) is my signature. I also took the photographs. Now I see the said two photographs. The same are now marked as Ex.P29. There I secured P.W.5 and C.W.19 and thereafter A1 led us to the house of A2 and from the firestag he produced M.O.7 and 8 and there I seized them by drawing a mahazar as per Ex.P6. Ex.P6(b) is my signature. I also took the photographs as per Ex.P7. Thereafter A1 and A3 led us to the place where they have hidden M.O.9 and 10 and they went near the side of bush at Government land Survey No.121 at Hirekodige village and by going inside the bush A1 produced M.O.9 and A3 produced M.O.10.

The same were seized by drawing a mahazar as per Ex.P8. Ex.P8(b) is my signature. There I also took the photographs as per Ex.P9 and P10. Thereafter I came back to the Police Station alongwith A1 and A3 and seized articles and subjected the seized articles to P.F.No.75/2010 to 77/2010. On the same day, as per my direction my constable C.W.36 secured P.W.16 to the Police Station. I secured P.W.10 and C.W.23 and P.W.16 produced the mobile M.O.4 which is said to have been sold by A1 to him and the same was seized by drawing a mahazar as per Ex.P12. Ex.P12(d) is my signature. PW.16 also identified A1 by saying that he is the person who sold M.O.4 to him. At the time of proceedings P.W.7 was also present. I also took the photographs as per Ex.P13. Thereafter I subjected M.O.4 to P.F.No.78/2010. I also recorded the statement of P.W.16, further statement of C.W.5, C.W.6, P.W.1, C.W.8 and C.W.25. I also produced A1 and A3 before the court with remand application."

76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

"27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." 77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself.

Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panchwitnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law.

This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panchwitnesses) would proceed to the particular place as may be led by the accused.

If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

79. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of **Murli and Another v. State of Rajasthan reported in (2009) 9 SCC 417,** held as under:

"34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box. ......"
[Emphasis supplied]

80. One another serious infirmity which has surfaced is in regard to the authorship of concealment by the person who is said to have discovered the weapon.

81. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:
(1) Discovery of fact in consequence of an information received from accused;
(2) Discovery of such fact to be deposed to;
(3) The accused must be in police custody when he gave information; and
(4) So much of information as relates distinctly to the fact thereby discovered is admissible **- Mohmed Inayatullah v. The State of Maharashtra: AIR (1976) SC 483**

Two conditions for application: -
(1) information must be such as has caused discovery of the fact; and
(2) information must relate distinctly to the fact discovered **Earabhadrappa v. State of Karnataka: AIR (1983) SC 446.**

82. We may refer to and rely upon a Constitution Bench decision of this Court in the case of **State of Uttar Pradesh v. Deoman Upadhyaya reported in AIR (1960) SC 1125,** wherein, Paragraph 71 explains the position of law as regards the Section 27 of the Evidence Act:

"71. The law has thus made a classification of accused persons into two:
(1) those who have the danger brought home to them by detention on a charge; and
(2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion, of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says:

"I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."

[Emphasis supplied]

83. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in **Pulukuri Kottaya and Others v. Emperor, AIR 1947 PC 67,** which have become locus classicus, in the following words:

"10. ....It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

84. What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, "I may get discovered the murder weapon used in the incident". This statement does not indicate or suggest that the accused appellant indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon.

He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.

85. In **Dudh Nath Pandey v. State of U.P., AIR (1981) SC 911**, this Court observed that the evidence of discovery of pistol at the instance of the appellant

cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was held that pointing out of the weapon may, at the best, prove the appellant's knowledge as to where the weapon was kept.

86. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama, the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.

87. In the aforesaid context, we may also refer to a decision of this Court in the case of **Bodhraj alias Bodha and Others v. State of Jammu and Kashmir reported in (2002) 8 SCC 45**, as under:

"18. .....It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him.

This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence.

The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or noninculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section.

Decision of the Privy Council **in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65]** is the mostquoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. **(See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .)** No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given."
[Emphasis supplied]

88. Mr. V.N. Raghupathy, the learned counsel for the State would submit that even while discarding the evidence in the form of various discovery panchnamas the conduct of the appellant herein would be relevant under Section 8 of the Evidence Act. The evidence of discovery would be admissible as conduct under Section 8 of the Evidence Act quite apart from the admissibility of the disclosure statement under Section 27 of the said Act, as this Court observed in A.N. Venkatesh and Another v. State of Karnataka, (2005) 7 SCC 714:
"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in **Prakash Chand v . State (Delhi Admn.) [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400]** . Even if we hold that the disclosure statement made by the accusedappellants (Exts. P15 and P16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8....."
[Emphasis supplied]
89. In the aforesaid context, we would like to sound a note of caution. Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we

are trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction.

MOTIVE

90. The High Court has relied upon the strong motive for the appellant convict to commit the crime as one of the incriminating circumstances.

91. In the case of **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**, decided on 02.03.2012, this Court held as under:

"29. In **N.J. Suraj v. State [(2004) 11 SCC 346 : 2004 SCC (Cri) Supp 85]** the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected the motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.

30. To the same effect is the decision of this Court in **Santosh Kumar Singh v. State [(2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469] and Rukia Begum v. State of Karnataka [(2011) 4 SCC 779 : (2011) 2 SCC (Cri) 488 : AIR 2011 SC 1585]** where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in **Sunil Rai v. UT, Chandigarh [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545]** . This Court explained the legal position as follows: **(Sunil Rai case [(2011) 12 SCC 258 : (2012) 1 SCC (Cri) 543 : AIR 2011 SC 2545] , SCC p. 266, paras 3132)**

"31. ... In any event, motive alone can hardly be a ground for conviction. 32. On the materials on record, there may be some suspicion against the accused, but as is often said, suspicion, howsoever strong, cannot take the place of proof."

31. Suffice it to say although, according to the appellants the question of the appellant Velu having the motive to harm the deceased Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased Senthil. Yet even assuming that the appellant Velu had not reconciled to the idea of Usha getting married to the deceased Senthil, all that can be said was that the appellant Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts

and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt."

[Emphasis supplied]

92. Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt. The trial court rightly disbelieved motive to commit the crime as the evidence in this regard is absolutely hearsay in nature.

93. The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the weapon of offence etc. as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary.

94. Thus, in view of the aforesaid discussion, we have reached to the conclusion that the evidence of discovery of the weapon, clothes and dead body of the deceased at the instance of the appellant convict herein can hardly be treated as legal evidence, more particularly, considering the various legal infirmities in the same.

95. For all the foregoing reasons, we have reached to the conclusion that the High Court committed error in holding the appellant convict herein guilty of the offence of murder.

96. In the result, this appeal succeeds and is hereby allowed. The impugned judgment and order of conviction passed by the High Court is hereby set aside.

97. The appellant convict shall be set at liberty forthwith, if not required in any other case. 98. Pending application, if any, also stands disposed of.

...........................CJI. (UDAY UMESH LALIT)

..............................J. (J.B. PARDIWALA)

New Delhi

Date: October 13, 2022.

AIR 2022 SC 1420

IN THE SUPREME COURT OF INDIA

Sagar
Vs.
State of Uttar Pradesh and Anr.

[Criminal Appeal No(s). 397 of 2022
arising out of S.L.P. (Crl) Nos. 7373 of 2021]

HEADNOTE – Code of Criminal Procedure, 1973; Section 319 - Power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant.

JUDGMENT

Rastogi, J.

1. Leave granted.

2. The instant appeal has been filed by the appellant assailing the correctness of the order dated 28th July, 2021 passed by the High Court of Judicature at Allahabad setting aside order dated 30th January, 2018 passed by the Additional Sessions Judge, Muzaffarnagar, whereby the trial Court had rejected the application filed by the complainant under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for summoning the appellant as accused and to face trial in Case Crime No.164 of 2014 under Section 302 IPC registered at PS Fugana, District Muzaffarnagar, Uttar Pradesh.

3. The brief facts of the case culled out from the record are that on a written complaint made by one Ravinder s/o Sadhuram that on 10th September, 2014, both his sons Sachin and Nitin were called by Jagpal s/o Shital Singh and his nephew Sagar s/o Charan Singh (appellant) from his house for tying the sugarcane crop and his son Nitin was seen in the company of Jagpal and Sagar (appellant) by the complainant while he was returning back and later at about 9.00 a.m. when the complainant went to the field of Jagpal and called Nitin, Jagpal asked Sagar to disconnect the electric wire and at some distance he saw Nitin lying near the Mend in a naked position, and was burnt by electric wire around the neck. On calling

Jagpal and Sagar, they ran away from the spot. On the said written complaint Case Crime No.164 of 2014 came to be registered under Section 302 IPC.

4. After investigation, chargesheet came to be filed against Jagpal Singh s/o Shital Singh. At the same time, it was recorded in the chargesheet that from the statements of the complainant and witnesses and inspection of the place of incident, naming of the accused Sagar who was a juvenile and minor at the relevant point of time, was found to be wrong. No case was made out against him and challan was filed against Jagpal under Section 302 IPC.

5. After the statements of complainant (PW.1) and Sadhu Ram (PW.2), father of the complainant were recorded, the complainant during trial filed application under Section 319 of the Code on 17th March, 2016, stating, inter alia, that during the course of investigation when the statement of complainant and his father were recorded under Section 161 of the Code, the investigating officer had arbitrarily removed the name of the present appellant from the chargesheet, although he was also involved in committing the said crime and this fact has been recorded by PW.1 and PW.2 in their statements on oath while recording their deposition during the course of the prosecution and accordingly asked to summon the present appellant also for trial for the crime committed by him.

6. The learned trial Judge after taking into consideration the material on record and so also the statements of PW.1 and PW.2 recorded a finding that neither the complainant (PW.1) nor his father (PW.2) were eyewitness and it has only been stated about removal of the electric wire by the appellant and this fact was noticed by the investigating officer even when the chargesheet came to be filed and the investigating officer has not found the present appellant to have participated in the commission of crime and at least at the stage when Section 319 of the Code is to be invoked, there must be a strong and cogent evidence occurred against a person from the evidence led before the Court and taking into consideration the material available on record, was not satisfy to summon the present appellant under Section 319 of the Code and consequently rejected the application by an order dated 30th January, 2018. The finding recorded by the learned trial Judge in passing the order dated 30th January, 2018 is reproduced hereunder:

"In the present session trial, the Ld. Counsel for the Complainant has argued that in the captioned Session Trial, in the FIR, name of Sagar S/o Charan Singh was written and in the statements of the Complainant, name of Sagar has come and hence he should be summoned for Trial. In this regard, it is clear from the statement of PW1 that the Complainant is not the eye witness of the incident and he has got the name of accused Jagpal and Sagar written in FIR on the basis of Jagapal and Sagar having gone with his son. In the same way, the PW2, in the crossexamination has only stated about removal of the electricity wire by Sagar.

This is important to state that the Investigating Officer of the case has found the naming of Sagar as incorrect and hence he did not include his name in the chargesheet. In addition to that, it has been accepted in the Crossexamination of Sadhuram that "the investigation of the case has been done by many Inspectors. First it was done by Fugana Police thereafter my son Ravinder got the Investigation transferred to crime branch". Under Section 319, summoning cannot be done on the ground that some evidence has come against the person. The evidence should be of such nature which would satisfy the court that the said person is involved in the crime. In the opinion of the Court, from the evidence available on record, there is no sufficient ground for summoning Sagar as accused u/s 319 of the Code of Criminal Procedure. Hence the application is liable to be dismissed."

7. The respondent/complainant, father of the deceased, filed Criminal Revision Petition before the High Court of Judicature at Allahabad. The learned Single Judge, without even appreciating the evidence of PW.1 and PW.2, which was recorded during the course of trial, in a casual and cavalier manner, set aside the wellreasoned order passed by the learned trial Judge under its order impugned dated 28th July, 2021. It will be apposite to quote the manner in which the learned Single Judge has set aside a cogent reasoning recorded by the learned trial Judge under its order dated 28th July, 2021. The relevant portion of the order of the learned Single Judge dated 28th July, 2021 is reproduced hereunder:

"I have perused arguments of Ld. Counsel for Revisionist, the case file and order under question. After going by the arguments of both sides the Ld. Counsels and the perusal of the case file, summarily the order dated 30.04.2018 passed by Additional Session Judge, Court No. 1, Muzaffarnagar seems erroneous. Therefore, this Criminal Revision is hereby accepted and Session Revision No. 508 of 2015, State Versus Jagpal, passed by Additional Session Judge, Court No. 1 Muzaffarnagar vide order dated 30.01.2018 is hereby quashed it is hereby directed that without being influenced by the merits of any observation made in this order, after allowing sufficient opportunity to the parties, and after complete perusal of the case file appropriate order be passed in the matter within two months. The Office is hereby directed to ensure of sending a copy of this order and the record of the case to the Court concerned without any delay."

8. The scope and ambit of Section 319 of the Code has been well settled by the Constitution Bench of this Court in **Hardeep Singh Vs. State of Punjab and Ors. AIR 2014 SC 1400** and paras 105 and 106 which are relevant for the purpose are reproduced hereunder:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the

circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

9. The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. The learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge under its order dated 30th January, 2018.

10. Consequently, in our opinion, the appeal deserves to succeed and the same is accordingly allowed. The order passed by the High Court dated 28th July, 2021 is hereby quashed and set aside.

11. Pending application(s), if any, shall stand disposed of.

.....................................J. (AJAY RASTOGI)

....................................J. (ABHAY S. OKA)

NEW DELHI

MARCH 10, 2022.

LEGAL NEWS

Supreme Court issues guidelines on disposing cases through plea bargaining, compounding of offences and Probation of Offenders Act

The Supreme Court, in an order passed on 14-09-2022 in case In Re Policy Strategy for Grant of Bail, issued the following guidelines for disposal of criminal cases by resorting to the triple method of plea bargaining, compounding of offences and under the Probation of Offenders Act, 1958.

1. As a pilot case, one Court each of Ld. Judicial Magistrate 1st Class, Ld. ACJM or CJM, and Court of Sessions in each district may be selected.
2. The said courts may identify cases pending at pre-trial stage, or evidence stage and where the accused is charge sheeted / charged with offence(s) with a maximum sentence of 7 years' imprisonment. The Ld. Court would exclude cases mentioned in Section 265A Cr.P.C., namely offences notified by the Central Government vide notification dated 11.07.2006 or offences committed against women or child/ children less than 14 years.'
3. The identified cases can thereafter be posted on a working Saturday or any other day which is suitable to the court with notice to the Public Prosecutor, complainant and the accused. The said notice would indicate that the court proposes to consider disposing of those cases under Chapter XXIA of Cr.P.C. plea bargaining, Probation of Offenders Act, 1958 or compounding i.e. Section 320 Cr.P.C. The notice will also indicate that the accused/complainant would be entitled to avail legal aid and details of the District Legal Services Authority would be made available in the said notice. It would also be made clear that the accused has to remain present with his/ her advocate and the complainant may also remain present with his/her advocate.
4. The Public Prosecutor would be required to ascertain the criminal antecedents of the accused. Only cases of first time offenders would be taken up.
5. On the date fixed, the court can inform the accused of the provisions of plea bargaining. The Court can also persuade the parties to compound the offence (if the offences are compoundable). The Court can also inform the accused of the benefits of Probation of Offenders Act, 1958. The services of panel lawyers from District Legal Services Authority would also be made available to the accused/ Complainant.
6. The Court may give time to the accused/complainant to think over the matter and give another date.
7. In cases where the under trial is in judicial custody, the trial court may explain to the accused and the learned counsel appearing for the accused to explore the possibility of plea bargaining or compounding or benefit of Probation of

Offenders Act. The accused can be given time to consider the matter. The services of panel lawyers of District Legal Services Authority can also be made available. For this purpose, a list of such accused can be furnished to the Secretary, DLSA to depute the panel lawyers of sufficient seniority to explain the provisions to the accused, who are in custody.

8. It is suggested that a brief training session may also be organised for the Ld. Judicial Officers in the Judicial Academies.
9. A timeline of 4 months may be fixed to carry out this exercise namely:- i) Training of Judicial Officers & Identification of cases - 1 month ii) Notice to the parties - 1 month iii) Consideration of the matter - 2 months

The above are part of the detailed and comprehensive suggestions submitted to court by by the three Amici Curiae viz. Advocates Gaurav Agrawal, Liz Mathew and Devansh A. Mohta, after discussion with ASG K. M. Nataraj.

The bench of Justices Sanjay Kishan Kaul and Abhay S. Oka observed that High Courts may depute a Nodal Officer of the rank of the Registrar in each of the Courts to carry out the monitoring of the above. It also added the following two caveats:
(a) Instead of prescribing only one Court in each District, as specified in clause 3.1 above, we leave it to the administrative side of the High Court to prescribe such number of Courts as may be considered practical by each of the High Court.
(b) In matters where time bound schedule has been laid down by the High Courts or Supreme Court of India, that schedule should not be disturbed so as to avoid delay in those cases.

Suggestions where the convicts are undergoing fixed terms sentences and are in jail

The court also accepted the suggestions made by the Amicus Curiae:

1. The following mechanism can be adopted as one-time measure to convicts who have been convicted for sentence of imprisonment for 10 years' or less and have no other criminal antecedent.
2. The High Court along with the High Court Legal Services Authority can make a list of cases with the following details: i) Offences for which a convict has been sentenced and sentence imposed; ii) Sentence undergone by the convict;
3. If the convict is in jail and has undergone 40% of the sentence, his case can be taken up by the District Legal Services Authority. The District Legal Services Authority, through a lawyer of sufficient seniority, can counsel the accused that if he is willing to accept his guilt, request can be made to the High Court to reduce the sentence or for releasing the convict on probation of good conduct for the remainder of the sentence. It should be clearly disclosed that the said acceptance of guilt is only for the purposes of closing the matter and

in case the High Court is not inclined to accept the plea, then the matter would be considered by the High Court on its own merits and his plea would not come in the way of hearing of the appeal on merits. 6.4 The District Legal Services Authority would also facilitate the interaction of the convict with his lawyer so that an informed decision is taken by the convict.

4. If the accused is willing to accept the plea and make an application to the High Court, then the list of such accused should be forwarded to the Director General of Police to ascertain the criminal antecedent of the convict.
5. Such plea bargaining at post-conviction level would not be available to such offences which are notified by the Central Government/ State Government. The said plea bargaining will not be available where the law provides for a minimum sentence to be undergone by the accused, for example under the NDPS Act or UAPA Act similar such Acts (State Law/ Central Law)]"

"Learned counsel having taken us through the suggestions, we give our imprimatur to the same and direct the State Governments and Legal Services Authorities to act in tandem to implement these suggestions and give a report to this Court a week before the next date to the Amicus Curiae who would thereafter submit the summarised version of the report", the court said.

6.Study Material-G.K.

ORGANS OF THE STATE AND SCOPE OF THEIR POWE

Traditionally, the structure of a country's government is divided into three in situational components;

(1) Legislature to make laws;

(2) Executive to implement and execute laws; and

(3) Judiciary to interpret the laws and administer justice.

Thus, the Constitution deals with such questions as:

How is the Legislature structured, composed and organised?

What are its powers and functions?

Similar questions are to be asked about each of the other two organs as well.

Some other questions which the Constitution has to answer are:

What is the mutual relationship between the Legislature and the Executive? Or, between the Executive and the Judiciary? Or, between the Legislature and the Judiciary?

What is the relationship between these organs and the people? Does the Constitution guarantee any rights for the people? While these three organs are basic in any country, and the Constitution does invariably deal with them, the Constitution may also create any other organ which it may regard as significant and fit for inscription in the Constitution.

In ***Chander Hass*** case reported in (2008) 1 SCC 683 two judge Bench of the Supreme Court citing *Montesquieus* has unqualifiedly stated the *Montesquieus* view of separation of powers and the dangers involved in deviating from his view was an apt warning for the Indian Judiciary which has been "rightly criticized for 'overreach' and encroachment in the domain of the other two organs" i.e., the Parliament and the Executive.

The Bench seems to have spoken in the face of intensely adverse criticism launched principally against the Supreme Court's 'activist' role by the legislators as well as the Executive. All the observations of the Court relating to separation of powers was not in issue, for since the real question in controversy was whether the Punjab and Haryana High Court could direct creation of posts to accommodate daily wage earners who, according to the High Court, ought to have been regularized. This issue had been answered in the negative by a long line of cases and, therefore, the law was well settled on the issue.

In fact the adverse remark on the Judiciary by the Judiciary finds place in the judgment after the Court, having considered the merits of the case before it.:

The Constitution of a country may be federal or unitary in nature. In a federal Constitution there is a Central Government having certain powers which it exer cises over the entire country. Then there are regional governments and each of such governments has jurisdiction within a region. All kinds of relations arise between the Central Government and the Regional Governments. India is an ex ample of a federal Constitution. Some other federal Constitutions are: U.S.A., Canada, Australia, Malaysia, Germany, etc.

A federal Constitution is a much more complicated and legalistic document than a unitary Constitution which has one Central Government in which all powers of government are concentrated and which can delegate such of its powers to such of its agencies as it likes. A federal Constitution must settle many details (like

distribution of powers between the Central Government and the regional governments) which a unitary Constitution is not concerned with. Britain, Sri Lanka, Singapore have unitary Constitutions

7.Study Material-Language

Common Mistakes

A). Common Errors in Use of Nouns

Incorrect	Correct
1. **Mathematic** is an interesting subject	1. **Mathematic** is an interesting subject
2. I have ten **rupees** note.	2. I have ten **rupee** note.
3. He sold five **dozens** apples.	3. He sold five **dozen** apples.
4. Eight **mile** is a long distance.	4. Eight **miles** is a long distance.
5. Many **soldiers** have run away.	5. Many **a soldier** has run away.
6. Everyone of the **boy** was rude.	6. Everyone of the **boys** was rude.
7. The **sceneries** of Kashmir are most attractive.	7. The **scenery** of Kashmir is most attractive.
8. A **five judges** Bench is known as the Constitution Bench.	8. A **five judge** Bench is known as the Constitution Bench.

B). Common Errors in use of Pronoun

Incorrect	Correct
1. It is **me** who did this	1. It is **I** who did this.
2. Hari is fatter than **me**.	2. Hari is fatter than **I** (am)
3. I love you more than **him**.	3. I love you more than **he**.
4. You are as bad as **them**.	4. You are as bad as **they**
5. One must do **his** duty well.	5. One must do **one's** duty well
6. Each must do **one's** best.	6. Each must do **his** best.
7. His answer was such **which I** expected.	7. His answer was such **as** I expected
8. The two men hate **one another**.	8. The two men hate **each other.**
9. These children abuse **each other**.	9. These children abuse **one another**
10. Eat anything **which** you like.	10. Each anything **that** you like.

C). Common Errors in use of Adjectives

Incorrect	Correct
1. The flower smell **sweetly.**	1. The flowers smell **sweet.**
2. He looked **angirily.**	2. He looked **angry.**
3. Which is the **best** of the two?	3. Which is the **better** of the two.
4. He is senior **than I.**	4. He is senior **to** me.
5. Hari is my **older** brother.	5. Hari is my **elder** brother
6. You are **elder** than Sita.	6. You are **older** than Sita

7. She is **latter** than I expected.	7. She is **later** than I expected
8. This book is more **cheaper** than that.	8. This book is more **cheap** than that.

D). Common Error in use of Article

Incorrect	Correct
1. Here is **a** orange for you.	1. Here is **an** orange for you.
2. I am studying at **an** university.	2. I am studying at **a** university
3. This is **an** useful thing.	3. This is **a** useful thing
4. I shall give you **an** one rupee note	4. I shall give you **a** one rupee note
5. Sita is **a** honest girl.	5. Sita is **an** honest girl
6. I take my food in **a** hotel	6. I take my food in **an** hotel (vktdy a hotel Hkh 'kq) ekuk tkrk gS)
7. Have you ever read **a** historical novel?	7. Have you ever read **an** historical novel?
8. He is **a** best boy of his class	8. He is **the best** boy of his class
9. Kalidas is **a** Shakespear of India.	9. Kalidas is **the** Shakespear of India.
10. Earth moves round **the** sun.	10. **The** earth moves round the sun.
11. My brother is **a** M.A.	11. My brother is **an** M.A.
12. **The** honesty is best policy.	12. Honesty is the best policy

E). Common Errors in the use of Verbs

Incorrect	Correct
1. Not only he but also his servant **were** wise	1. Not only he but also his servant **was** wise
2. This prize is hard to be **won.**	2. The prize is hard to **win.**
3. Shyam looks as if he **suspects** something.	3. Shyam looked as if he **suspected** something.
4. She acts as though nothing **depends** upon her.	4. She acts as though nothing **depended** on her.
5. The rain **has ceased** yesterday.	5. The rain **ceased** yesterday.
6. The great scholar and poet **are dead.**	6. The great scholar and poet **is** dead.
7. Either Hari or Ram **are** to be promoted	7. Either Hari or Ram **is** to be promoted.
8. Neither the man nor his friend **have done** the Work	8. Neither the man nor his friend **has done** the .work.
9. The Horse as well as the rider **were** sick.	9. The Horse as well as the rider **was** sick.
10. Mother with her sons **are** weeping in the room.	10. Mother with her sons **is** weeping in the room.
11. Each of my students **have** made a good progress	11. Each of my students **has** made a good progress
12. I, who **is** your teacher, will teach you.	12. I, who **am** your teacher. Will teach you.
13. Five students have failed and one **passed.**	13. Five students have failed and one **has** passed.
14. Ten years passed since my mother **has died**.	14. Ten years passed since my mother **died**
15. They found that he **is** dishonest	15. They found that he **was** dishonest

16. She was afraid lest she **may** fail.	16. She was afraid lest she **should** fail.
17. He as well as I **are** guilty.	17. He as well I **is** guilty

F). Common Errors in use of Adverbs

Incorrect	**Correct**
1. He **explained clearly** his words.	1. He **explained** his words **clearly.**
2. I forbade him not to sleep.	2. I forbade him **to sleep**.
3. The air is **very hotter** today than yesterday.	3. The air is **much hotter** today than yesterday.
4. He is too weak **that he cannot walk**	4. He is too weak **to walk.**
5. I am **too** tired.	5. I am **very** tired.
6. Rama is **rather** a lazy boy.	6. Ram is a **rather lazy** boy.

G). Common Errors in use of Propositions

Incorrect	**Correct**
1. Ram beats him **by** a stick	1. Ram beats him **with** a stick.
2. The river is **in** the north of our village.	2. The river is **to** the north of our village.
3. You should reach the college **within** 10 a.m.	3. You should reach the college **before** 10 a.m.
4. Our examinations will begin **from** Friday.	4. Our examinations will begin **on** Friday.
5. He has been ill **from** Sunday last.	5. He has been ill **since** Sunday last.
6. He has been reading **from** three hours.	6. He has been reading **for** three hours.
7. Distribute this mango **among** A and B.	7. Distribute this mango **between** A and B.
8. Distribute the sweets **between** these four boys.	8. Distribute the sweet **among** these four boys.
9. He went there **on** train and came by foot.	9. He went there **by** train and came **on** foot.
10. **Beside** cows he keeps horses.	10. **Besides** cows he keeps horses.
11. See me **behind** this period	11. See me **after** this period
12. He is ill **from** fever.	12. He is ill **with** fever
13. It is two **in** my watch.	13. It is two **by** my watch.
14. Send the books **on** my address	14. Send the book **to** my address
15. **Go on** your business.	15. **Go about** your business.
16. I shall be thankful **of** you.	16. I shall be thankful **to** you.
17. The table is made **by** wood.	17. The table is made **of** wood.
18. She was married **with** Mohan.	18. She was married **to** Mohan.
19. Put the pen **in** your pocket.	19. Put the pen **into** your pocket.
20. Death is preferable **than** dishonour	20. Death is preferable **to** dishonour.
21. He is known **with** me.	21. He is known **to** me.
22. He **knocked** to the door.	22. He **knocked** at the door.
23. He agreed **to** me.	23. He agreed **with** me.
24. He is confident **to win.**	24. He is confident **of winning.**
25. You must **abide with** the rules.	25. You must **abide by** the rules.
26. I cannot **accede with** his request.	26. I cannot **accede to** his request.
27. He is **afraid from a** snake.	27. He is **afraid of** a snake
28. Rama is **accustomed with** hard work	28. Rama is **accustomed to** hard work.
29. He felt **anxiety of** his safety.	29. He felt **anxiety for** his safety.
30. He has an **apology of** his fault.	30. He has an **apology for** his fault.

31. He has a special aptitude **with** English. | 31. He has a special aptitude **for** English.

32. A **charge for** murder was laid against him. | 32. A **charge of** murder was laid against him.
33. He takes **delight for** hunting. | 33. He takes **delight in** hunting
34. It is a **key for** his success. | 34. It is **key to** his success.
35. There is a **limit of** his ability. | 35. There is a **limit to** his ability.
36. He enjoyed **popularity in** his employees. | 36. He enjoyed **popularity with** his employees.
37. He likes to **quarrel of** his friends. | 37. He likes to **quarrel with** his friends.
38. He has no **regard to** his feelings. | 38. He has no **regard for** his feelings.
39. His **request of** leave was granted. | 39. His **request for** leave was granted.
40. He has no **sympathy of** his friends. | 40. He has no **sympathy for** his friends.
41. We have no **use of** this thing. | 41. We have no **use for** this thing.
42. I was **witness with** that event. | 42. I was **witness of** that event.
43. He was **angry of** me. | 43. He was **angry with** me.
44. He was not **aware with** my intentions. | 44. He was not **aware of** my intentions.
45. He was **born with** rich parents. | 45. He was **born of** rich parents.
46. He was **certain in his** success. | 46. He was **certain of** his success.
47. He was **confident to** his success. | 47. He was **confident of** his success.
48. He went **contrary of** his wishes. | 48. He went **contrary to** his wishes.
49. I am **deprived with** all powers. | 49. I am **deprived of** all powers.
50. His failure was **due of** his illness. | 50. His failure was **due to** his illness.
51. Shyam is eligible **of** this post. | 51. Shyam is eligible **for** this post.
52. He is not equal of the occasion. | 52. He is not **equal to** the occasion.
53. This place is **infected of** small pox. | 53. This place is **infected with** small pox.
54. He is jealous **with** my fame. | 54. He is jealous **of** my fame.
55. He died **from** Cholera. | 55. He died **of** Cholera.
56. I am not moved **with** his request. | 56. I am not moved **by** his request.
57. He is slow **in** accounts. | 57. He is slow **at** accounts.
58. He is well versed **with** English. | 58. He is well versed **in** English.
59. I am short **in** money. | 59. I am short **of** money.
60. Ram is tired **in** doing this. | 60. Ram is tired **of** doing this.

8. Current Affairs

CURRENT AFFAIRS – MCQS
OCTOBER 2022

1. Prime Minister Narendra Modi has launched Yuva 2.0 to mentor?
a) Young Authors
b) Young Entrepreneurs
c) Young Scientists
d) Young Tech-developers

2. What is the name of the Indian-American who has been honoured with the Lifetime Achievement Award by the United States?
a) Kash Patel

b) Parag Agarwal
c) Vivek Lall
d) Laxman Narasimhan

3. World Habitat Day 2022 is being celebrated on?
a) October 4
b) October 1
c) October 2
d) October 3

4. What is the name of the first Made-in-India Light Combat Helicopters (LCH) inducted in IAF?
a) Dhruv
b) Prachanda
c) Mangusta
d) Apache

5. Which of the following country has signed a partnership agreement with Pacific Island Nations?
a) United States
b) United Kingdom
c) Australia
d) Russia

6. When is World Architecture Day celebrated?
a) October 1
b) October 4
c) October 3
d) October 5

7. Who has been made the National Icon of Election Commission of India?
a) Neeraj Chopra
b) Pankaj Tripathi
c) Amitabh Bachchan
d) PV Sindhu

8. World Animal Day is celebrated every year on?
a) October 2
b) October 5
c) October 1
d) October 4

9. India has handed over Made-in-India motorbikes to which country as bilateral trade?
a) Lebanon
b) Saudi Arabia
c) Qatar
d) Morocco

10. Indian Navy has signed a pact on White Shipping Information Exchange with which country?
a) Australia
b) Japan
c) New Zealand
d) United States

11. 'herSTART'- a start up platform has been created by which University?
a) Delhi University
b) Mumbai University
c) Rajasthan University
d) Gujarat University

12. Which state has come first in Swachh Survekshan Grameen 2022 award under the large states category?
a) Telangana
b) Uttar Pradesh
c) Haryana
d) Tamil Nadu

13. Who has won Nobel Prize in Medicine or Physiology 2022?
a) Uffe Ravnskov
b) Mikael Nordfords
c) Svante Paabo
d) Arne Meurman

14. Carolyn Bertozzi, Morten Meldel, and K.Barry Sharpless have jointly won Nobel Prize 2022 in which category?
a) Chemistry
b) Literature
c) Physics
d) Medicine

15. Which country has emerged as the largest producer of sugar in the world?
a) China
b) Thailand

c) Brazil
d) India

16. Who has become the first Native American woman to travel to space?
a) Kayla Barron
b) Anne McClain
c) Nicole Mann
d) Christina Koch

17. 'Vishaal Kisan Sammelan' workshop by National Mission for Clean Ganga and Sahakar Bharati was held in which state?
a) Haryana
b) Uttar Pradesh
c) Madhya Pradesh
d) Punjab

18. Anton Zeilinger, one of the winners of the Nobel Prize 2022 in Physics, is from which country?
a) France
b) United States
c) Sweden
d) Austria

19. Which country has decided to scrap the proposal to cut taxes for the wealthy?
a) France
b) United Kingdom
c) Australia
d) New Zealand

20. Who has won Nobel Prize 2022 in Literature?
a) Annie Ernaux
b) Yasmina Reza
c) Michel Houellebecq
d) Leila Slimani

21. Who has won the 2022 UNHCR Nansen Refugee Award?
a) Justin Trudeau
b) Emmanuel Macron
c) Joe Biden
d) Angela Merkel

22. Who has been appointed as the Presiding officer of the UAPA Tribunal by the Government of India?
a) Pankaj Bhatia
b) Dinesh Kumar Sharma
c) Vivek Varma
d) Rajeev Mishra

23. A new advanced supervisory monitory system- Daksh has been launched by?
a) Reserve Bank of India
b) State Bank of India
c) Central Bank of India
d) Union Bank of India

24. Which state has launched Anti-Dust Campaign to control Air Pollution?
a) Uttar Pradesh
b) Haryana
c) Delhi
d) Punjab

25. Which company has received India's first Micro Category Drone Certification?
a) Shivayu Aerospace
b) Throttle Aerospace Systems Pvt. Ltd.
c) Aadyah Aerospace Pvt. Ltd.
d) Asteria Aerospace Ltd.

26. When is World Mental Health Day observed?
a) October 12
b) October 14
c) October 10
d) October 15

27. Which village has been declared as India's first 24x7 solar-powered village?
a) Modhera
b) Madhapur
c) Khavda
d) Ajrakhpur

28. Which country has launched the Kafau-I satellite to unravel the secrets of the sun?

a) South Korea
b) China
c) Japan
d) North Korea

29. Made-in-India drone 'Droni' has been manufactured by which company?
a) Hawking Industries Pvt. Ltd.
b) ARCH Drones
c) Garuda Aerospace
d) Trusted Aerospace Engineering Pvt. Ltd

30. Nobel Prize 2022 in Economics has been awarded to Ben S. Bernanke, Douglas W. Diamond, and Philip H. Dybvig for?
a) Contributions to Labour Economics
b) Research on Banks and Financial Crises
c) Experimental approach to alleviating global poverty
d) Improvements to auction theory and inventions to new auction formats

31. When is the International Day of the Girl Child 2022 observed?
a) October 10
b) October 11
c) October 15
d) October 20

32. Who has become the first Indian woman cricketer to win ICC Player of the Month?
a) Pooja Vastrakar
b) Sneh Rana
c) Smriti Mandhana
d) Harmanpreet Kaur

33. 'Education 4.0 India Report' has been launched by which institution?
a) World Bank
b) International Monetary Fund
c) World Economic Forum
d) Bill & Melinda Gates Foundation

34. The 2nd UN World Geospatial Information Congress is being held in which city of India?
a) Chennai
b) Hyderabad
c) Bangalore
d) Mumbai

35. In FIFA U-17 Women's World Cup 2022, India will play its inaugural match against which country?
a) Morocco
b) Brazil
c) USA
d) China

36. What is the name of the leading academician who has won the top UAE Award for Alternative Medicine?
a) A.K.M Ghouse
b) K.S. Gill
c) Venu Govindaraju
d) Wazahat Husain

37. When is World Arthritis Day observed?
a) October 12
b) October 9
c) October 10
d) October 14

38. Who has won SASTRA Ramanujan Prize 2022?
a) Peter Sarnak
b) Ian Stewart
c) Yunqing Tang
d) Terence Tao

39. IMF has cut down India's GDP growth forecast to what percent in 2022?
a) 5.8
b) 6.8
c) 7.8
d) 4.8

40. Justice Pankaj Mittal has been appointed as the Chief Justice of which High Court?
a) Karnataka High Court
b) J&K & Ladakh High Court
c) Allahabad High Court
d) Rajasthan High Court

41. Tele-Manas initiative is associated with which health service?
a) Mental Health
b) Child Health

c) Communicable disease
d) Women Health

42. Which state has announced India's first 'Kadavur Slender Loris Sanctuary'?
a) Madhya Pradesh
b) Himachal Pradesh
c) Tamil Nadu
d) Uttarakhand

43. Who has been appointed as the next Ambassador of India to Guinea?
a) V.M. Kwatra
b) Avtar Singh
c) Rajkumar Ranjan Singh
d) Shilpak Ambule

44. When is the International Day for Disaster Reduction observed?
a) October 10
b) October 13
c) October 15
d) October 20

45. What is the name of the website launched to enable citizens to contribute for the armed forces battle casualties welfare fund?
a) Bharat Maa ke Sapoot
b) Maa Bharati ke bahadur sapoot
c) Dharti Maa ke sapoot
d) Maa Bharati ke Sapoot

46. Which country has recently imposed visa restrictions on members of the Taliban responsible for the repression of women and girls in Afghanistan?
a) United States of America
b) New Zealand
c) Australia
d) France

47. Vande-Bharat-based freight service is going to be introduced on which route?
a) Gandhinagar-Mumbai
b) Delhi-Varanasi
c) Delhi-Mumbai
d) Delhi-Katra (Jammu)

48. PM Narendra Modi has laid the foundation stone of two hydropower projects in which district of Himachal Pradesh?
a) Kangra
b) Chamba
c) Mandi
d) Bilaspur

49. India has extended the Vaccine Action Programme joint statement till 2027 with which country?
a) France
b) Germany
c) United States
d) Russia

50. President Draupadi Murmu has launched 'PARAM KAMRUPA' Supercomputer facility in which IIT?
a) IIT Bombay
b) IIT BHU
c) IIT Delhi
d) IIT Guwahati

51. Who has been elected as the new President of Iraq?
a) Abdul Latif Rashid
b) Ali Allawi
c) Juma Inad
d) Fuad Hussein

52. Prime Minister Narendra Modi laid the foundation stone of Bulk Drug Park in which state?
a) Uttarakhand
b) Gujarat
c) Himachal Pradesh
d) Tripura

53. The 6th summit of the Conference on Interaction and Confidence Building Measures in Asia (CICA) was held in which country?
a) Egypt
b) Kazakhstan
c) Iran
d) Iraq

54. Scientists have found a new ecosystem 'The Trapping Zone' in which country?

a) Australia
b) Japan
c) Thailand
d) Maldives

55. India has defeated which country to win Bronze in the ongoing ISSF World Championship 2022?
a) Egypt
b) Germany
c) China
d) Indonesia

56. When is the International Day for the Eradication of Poverty observed?
a) October 15
b) October 12
c) October 17
d) October 22

57. Which Indian city has won World Green City Award 2022?
a) Hyderabad
b) Indore
c) Bhopal
d) Pune

58. The 5th Assembly of International Solar Alliance (ISA) is being held under the Presidentship of which country?
a) Netherlands
b) France
c) Japan
d) India

59. Government of India has launched MBBS Course books in which language for the very first time?
a) Tamil
b) Hindi
c) Bhojpuri
d) Punjabi

60. Which company has developed India's first aluminum freight train rake?
a) NALCO
b) Vedanta Limited
c) Jindal Aluminum
d) Hindalco

61. Which country is set to host the 90th Interpol General Assembly?
a) Turkey
b) India
c) China
d) Vietnam

62. What is India's rank in the Global Hunger Index 2022?
a) 110
b) 103
c) 107
d) 102

63. Who has won Booker Prize 2022?
a) Claire Keegam
b) NoViolet Bulawayo
c) Shehan Karunatilaka
d) Elizabeth Strout

64. Who has been appointed as the BCCI President?
a) Roger Binny
b) Mohinder Amarnath
c) Madan Lal
d) Sunil Gavaskar

65. Who has become the first Indian woman hurdler to break 13 seconds barrier?
a) Reeth Abraham
b) Anuradha Biswal
c) Debashree Mazumdar
d) Jyothi Yarraji

66. Who is the winner of Men's Ballon d'Or award 2022?
a) Robert Lewandowski
b) Cristiano Ronaldo
c) Karim Benzema
d) Mohamed Salah

67. Living Planet Report 2022 has been released by which Institution?
a) UNEP
b) World Wide Fund
c) FAO
d) UNESCO

68. Women's Indian Premier League (IPL) is set to take place in which year?
a) 2022
b) 2023
c) 2026
d) 2024

69. Who has been elected as the President and co-president of the International Solar Alliance?
a) India and France
b) UAE and The Netherlands
c) Sweden and Germany
d) Italy and Norway

70. Who has been elected as the Prime Minister of Sweden?
a) Jimmie Akesson
b) Ebba Busch
c) Ulf Kristersson
d) Johan Pehrson

71. Who has been appointed as the new Controller General of Accounts?
a) Sonali Singh
b) Bharati Das
c) Shakuntla Devi
d) P.L. Sahu

72. National Maritime Heritage Complex is being built in which state?
a) Maharashtra
b) Tamil Nadu
c) Gujarat
d) Goa

73. Who has won India's first Greco-Roman medal in U-23 Wrestling World Championship?
a) Sajan Bhanwala
b) Antim Panghal
c) Aman Sehrawat
d) Sagar Jaglan

74. What is the name of the Integrated Pensioners Portal launched for Central Government pensioners?

a) Kalyan
b) SANKALP
c) Jeevan
d) Bhavishya

75. When is World Statistics Day observed?
a) October 19
b) October 15
c) October 22
d) October 20

76. Who has been elected as the President of the Indian National Congress?
a) Mallikarjun Kharge
b) Sonia Gandhi
c) Shashi Tharoor
d) Priyanka Gandhi

77. Prime Minister Modi has launched 'Mission LiFE' in which state?
a) Uttar Pradesh
b) Himachal Pradesh
c) Gujarat
d) Madhya Pradesh

78. Asia's Largest Compressed Biogas Plant has been inaugurated in which state?
a) Gujarat
b) Punjab
c) Haryana
d) Madhya Pradesh

79. Who has been named as the new Defence Secretary by the Government of India?
a) Aramane Giridhar
b) Amarendra Tiwari
c) Ajay Bhatt
d) Radha Sridharan

80. The draft of the National Credit Framework "Framework for Public Consultation" has been launched under which ministry?
a) Ministry of Housing and Urban Affairs
b) Ministry of Electronics and Information Technology
c) Ministry of Finance
d) Ministry of Education

81. ISRO is planning to launch 'Chandrayaan-3' in which year?
a) 2022
b) 2024
c) 2023
d) 2025

82. Fifth Khelo India Youth Games- 2022 will be held in which state?
a) Uttar Pradesh
b) Madhya Pradesh
c) Gujarat
d) Maharashtra

83. Which of the following state has increased quota for Scheduled Castes, Scheduled Tribes?
a) Karnataka
b) Kerala
c) Tamil Nadu
d) Telangana

84. As per Global Multidimensional Poverty Index 2022, the largest number of poor people in the world in 2020 lived in which country?
a) Congo
b) Bangladesh
c) Sri Lanka
d) India

85. Which city in the United States has announced Public School Holiday on Diwali from 2023?
a) Los Angeles
b) Chicago
c) New York
d) Boston

86. Which state has launched a website that lists the most polluting industrial units?
a) Uttar Pradesh
b) Chhattisgarh
c) Madhya Pradesh
d) Jharkhand

87. When is the Police Commemoration Day observed in India?

a) October 20
b) October 24
c) October 21
d) October 30

88. Who has been elected as the Prime Minister of Sweden?
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b) Ebba Busch
c) Ulf Kristersson
d) Johan Pehrson

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d) Madhya Pradesh

91. Which state has launched a website that lists the most polluting industrial units?
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b) Chhattisgarh
c) Madhya Pradesh
d) Jharkhand

92. Who has become the first Indian-origin Prime Minister of UK?
a) Rishi Sunak
b) Krupesh Hirani
c) Shami Chakrabarti
d) Seema Malhotra

93. Which country has been recently added by FATF to the list of high-risk countries?
a) DR Congo

b) France
c) Myanmar
d) Singapore

94. Who has become the first Indian Wrestler to win Gold Medal at U-23 World Wrestling Championships?
a) Sajan Bhanwala
b) Aman Sehrawat
c) Nitesh
d) Vikas

95. Which country has been included in 12 top chess-playing nations for Men's 2022 World Team Chess Championship?
a) Russia
b) Japan
c) South Korea
d) India

96. ISROs' heaviest rocket LVM3 M2 has placed how many satellites in orbit?
a) 35
b) 36
c) 31
d) 32

97. Who has been appointed as the new US Ambassador to India?
a) Elizabeth Jones
b) Atul Keshap
c) Patricia A. Lacina
d) Kenneth Juster

98. Which state has won the first position in Pradhan Mantri Awas Yojana-Urban (PMAY-U) Awards 2021?
a) Tamil Nadu
b) Madhya Pradesh
c) Uttar Pradesh
d) Gujarat

99. Who has been awarded the 2022 Sakharov Prize for Freedom of Thought?
a) Alexei Navalny
b) Malala Yousafzai
c) Dalai lama
d) Ukrainian People

100. Which state has been recently declared as 100% Har Ghar Jal State?
a) Madhya Pradesh
b) Uttar Pradesh
c) Gujarat
d) Rajasthan

101. Which country has passed the 'Plain Language Act'?
a) New Zealand
b) United States
c) France
d) Australia

102. Minicoy Thundi Beach and Kadmat Beach have recently received Blue Flag Certification. Both the beaches are situated in which Indian state or UT?
a) Andaman & Nicobar
b) Lakshadweep
c) Goa
d) Puducherry

103. COP27, the 27th annual UN meeting on climate will be held in which country?
a) Spain
b) Poland
c) Egypt
d) Peru

104. Who has been named the Captain of the Indian Hockey Team for FIH Pro League 2022-2023?
a) Harmanpreet Singh
b) Manpreet Singh
c) Mandeep Singh
d) Gurjant Singh

105. Orbital Rail Corridor has been launched in which state of India?
a) Uttar Pradesh
b) Haryana
c) Gujarat
d) Madhya Pradesh

106. Which airport in India has been ranked the world's 10th busiest?
a) Chhatrapati Shivaji Maharaj International Airport, Mumbai
b) Netaji Subhash Chandra Bose International Airport, Kolkata

c) Chennai International Airport, Chennai
d) Indira Gandhi International Airport, Delhi

107. Tesla Chief Elon Musk has taken over which social medial platform?
a) Twitter
b) Snapchat
c) Instagram
d) Facebook

108. The Storm Coaster, which has been declared as the World's fastest vertical-launch roller coaster by the Guinness World Records, is situated in which country?
a) UAE
b) Singapore
c) Dubai
d) Japan

109. Fungal Priority Pathogens List has been released by which institution?
a) FAO
b) WHO
c) UNICEF
d) UNHCR

110. Which country has become the first in the Pacific to host World Hindi Conference?
a) Fiji
b) New Zealand
c) Kiribati
d) The Marshall Islands

111. SAMRIDDHI, a one-time property tax amnesty scheme has been released by which state or UT?
a) Gujarat
b) Jammu & Kashmir
c) Delhi
d) Telangana

Notes Preparation Scheme

V.S. DREAM COACHING
FOR

HJS, PCS (J.) AND CLAT

Notes Prepration Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair.S

ubjects;-

1.General Knowledge	**2.Law**
1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance 8. India and the World 9. Indian Economy 10.International Affairs and Institutions 11.Development in the field of: (a) Science and Technology (b) Communications and Space	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973,
3.CLAT 1. General Knowledge 2. A Guide for CLAT	