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For

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

Year – 2023

Secret of success is to know something

nobody else knows

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NEWSLETTER

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V.S. DREAM COACHING

1. Study Material-Law

Examination of the accused under Sec. 313 Cr.P.C.

Section 313 of the Cr.P.C. gives power to the court to examine the accused. The examination of the accused under Section 313 of the Criminal Procedure Code by the trial court is popularly known as "313 examination" and the statement deriving out of it is called "313 Statement".

Purpose of examining the accused under Sec. 313

Sec. 313 Cr.P.C. itself speaks the purpose of examination. It has been specifically mentioned therein that to enable the accused personally to explain any circumstances appearing in the evidence against him.

Hon'ble Apex Court in case **Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150,** held that the purpose of empowering the court to examine the accused under section 313, Cr.P.C is to meet the requirement of the principle of natural justice audi alteram partem (that no one should be condemned unheard). This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the court must take note of such explanation. In a case of circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete.

Scope and Object of Section 313 Cr.P.C.

The scope and object of examination of the accused under Section 313, Cr.P.C. is:-

1. To establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain them as has been held by the Hon'ble Supreme Court in case **Sanatan Naskar & Another Vs. State of West Bengal AIR 2010 SC 3507**.

2. To test the veracity of the prosecution case. The examination of the accused is not a mere formality, the questions put to the accused and answers given by him, have great use. The scope of section 313 of the Cr.P.C. is wide and is not

a mere formality. The object of recording the statement of the accused under section 313, Cr.P.C. is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution as observed by the Hon'ble Apex Court in case **Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507.**

3. Hon'ble Apex Court in case **Satbir Vs. State of Haryana, decided on 28-05-2021,** expressed its concern over recording of statements under Section 313 of Code of Criminal Procedure in a very casual and cursory manner and observed that the examination of an accused under Section 313, Cr.P.C. cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness.

   Hon'ble Apex Court also ruled that it is a matter of grave concern that, often, Trial Courts record the statement of an accused under Section 313, Cr.P.C. in a very casual and cursory manner, without specifically questioning the accused as to his defense. This provision incorporates the valuable principle of natural justice "audi alteram partem", as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense.

4. Hon'ble Apex Court in case **Manoj Kumar Soni Vs. State of Andhra Pradesh, Criminal Appeal No. 1030 of 2023, decided on 11-08-2023,** cautioned the trial courts against recording statements of accused under Sec. 313 Cr.P.C. in a casual and cursory manner. Hon'ble Apex Court ruled that what holds importance is not the mere quantity of questions posed to the accused but rather the content and manner in which they are framed

Value of Statement - Not Substantive Evidence

The 313 statement is not substantive evidence and conviction cannot be made on its basis alone. But it can be considered for believing the prosecution story if it is a supportive one. The statement cannot be used in punishing the accused in the case, as per law. On the other hand, if the statement he makes in the court is convincing enough to setup his innocence, the court can acquit him. The object of questioning under Section 313 is not to build the case against the accused or to fill up the lacunae in the prosecution evidence but to enable the accused to tell the truth of the prosecution story and to acquit him if he is really innocent.

Questioning **"generally on the case",** as the provision states, does not mean asking the accused general questions regarding the offence. It means nothing but the questions must relate to the whole case and not limited to some of the aspects. Circumstances not included in the evidence cannot be put to the accused. The court cannot use any document from outside the evidence when the accused is examined under this section. When more than one accused is tried each one should separately be questioned under this section. Non-examination of the accused under this section will also be prejudicial and result in injustice to the accused.

Mode of recording the statement

The mode of recording the statement should be as provided for in Section 281 of the Code. The whole of such examination including every question put to him and every answer given by him shall be recorded in full by the judge himself. The record shall be shown and read to the accused before getting his signature. In this examination, it is not essential for the court to consult the defence counsel in regard to the nature, circumstances and type of questions to be put to the accused. The Presiding officer shall appendix a certificate on the statement of accused to the effect that:-

> **"The examination was taken in my presence and hearing and that the record contains a full and true account of the statement made by the accused."**

Methodology for recording the Statement

In **Dharnidhar Vs. State of U.P. & Others; 2010 AIR SCW 5658,** the Hon'ble Supreme Court held that the proper methodology to be adopted by the court for recording the statement of the accused under section 313, Cr.P.C., is to invite attention of the accused to the incriminating circumstances and evidence and invite his explanation. In other words, it provides an opportunity to an accused to tell to the court as to what is the truth and what is his defence.

In the case of **Dehal Singh Vs. State of Himachal Pradesh; AIR 2010 SC 3594**, the court held that the statement of the accused under Section 313, Cr.P.C. is recorded without administering oath. Therefore, it cannot be treated as evidence within the meaning of section 3 of the Evidence Act, 1872.

It is pertinent to reproduce section 313, Cr.P.C. to make further discussion.

> **" 313. Power to examine the accused**. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;
(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The court may take help of Prosecutor and defence Counsel in preparing relevant questions which are to be put to the accused and the court may permit filing of written statement by the accused as sufficient compliance of this section".

The plain reading of section 313 would clearly show that questioning under clause 1(a) is discretionary whereas the questioning under clause 1(b) is mandatory as the object is to afford an opportunity to the accused to personally explain any circumstance, appearing in evidence against him. **(State of Kerala Vs. Rajappan Nayar; 1987 Cri.L.J. 1256)**

Section 313, Cr.P.C. (1) (b) casts a duty on court to give an opportunity to the accused to explain the incriminating material against him. **(State of Maharashtra Vs. Sukhdev Singh; AIR 1992 SC 2100) (Basavaraj R. Patil Vs. State of Collector; AIR 2000 SC 3214) (Sanatan Naskar & Another Vs. State of West Bengal; AIR 2010 SC 3507).**

In every enquiry or trial:
The accused can be examined under section 313, Cr.P.C. in every enquiry or trial.

As per section 2(g) of the Cr.P.C.:-
"Inquiry means any enquiry other than a trial conducted under this Code by a Magistrate or Court"

The trial of the accused commences after framing of charge as has been held by a Constitution Bench of the Apex Court in case **Hardeep Singh Vs. State of Punjab, AIR 2014 SC 1400.**

"Accused" For the purpose of section 313, Cr.P.C. accused means the accused then under-trial and under-examination by the court, and does not include an accused over whom the court is exercising jurisdiction in another trial. **[Karamalli Gulamalli; (1938) 40 Bom. LR 1092 (1939)]**

"Personally"

The word "personally" would show that the opportunity afforded to the accused to explain his stand on the incriminating circumstances is in addition to what his Counsel would have already done by way of cross-examination. Therefore, it would be premature to examine the accused to explain personally any circumstance when he has not exhausted the opportunity to cross examine the witnesses. **[B. Chainraj v. Asstt. Collector of Central Excise; (1989) (1) Crimes 229, 231 (MAD)]**

"At any stage"

The power to question the accused under section 313 (1)(a) of the Cr.P.C., is a discretionary power which the court may exercise at any time during the trial or enquiry even before framing a charge. **(Emperor Vs. Genu Gopal; (1929) 31 Bom LR 1134)**

"Explain any circumstance…….in the evidence against him"

Hon'ble Apex Court in **Ajai Singh Vs. State of Maharashtra; AIR 2007 SC 2188** held that under section 313, Cr.P.C. (1)(b), it is mandatory for the trial Judge to put to the accused every such piece of evidence which appears incriminating against him and reply of the accused shall be sought thereto.

The accused may or may not avail the opportunity for giving his explanation. **(Subhash Chandra Vs. State of Rajasthan; (2002) 1 SCC 701)**

Attention of the accused must specifically be drawn to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Court is under legal obligation to put all incriminating circumstances before accused to solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused.

Hon'ble Apex Court in case **State of U.P. Vs. Mohd. Iqram & Anr; AIR 2011 SC 2296,** held that circumstances not put to the accused in his examination under Sec. 313, cannot be used against him.

Examination under Sec. 313, Cr.P.C. more than once

Hon'ble High Court Delhi in case **Rajan Dwivedi Vs. CBI; 2008 Cri.L.J.; 1440,** held that if examination of the accused under Sec. 313 has taken place, the court can call the accused to answer incriminating circumstances again. There is no implied prohibition on calling upon the accused to again answer questions. However, power to call the accused to answer questions more than once, after conclusion of the prosecution evidence should not be used in a routine or mechanical manner.

"Shall after the witnesses for the prosecution have been examined" etc.

The provisions of section 313, Cr.P.C. are for the benefit of the accused. Section 313 (1)(b) is mandatory in nature and in order to provide an opportunity to the accused to obtain the full benefit of the section, it is the duty of the court to examine the accused after cross-examination and reexamination, if any of the prosecution witnesses is over. **(Nathu Kasthurchand; 1924 (27) BOM LR 105)**

If fresh prosecution witnesses are examined after the examination of the accused, it is obligatory to further examine the accused under section 313, Cr.P.C. **(Emperor v. Bhau Dharma; (1928) 30 Bom LR 385)**

Proviso to section 313 (1)(b)

"Summons Case" - In a summons case where the court has dispensed with the personal attendance of the accused, it may also dispense with his examination under section 313, Cr.P.C.

"Warrant Case" - Whether examination of the accused under section 313, Cr.P.C. can be dispensed with in a warrant case?

As far as warrant cases are concerned, it appears that no discretion is given to the court in section 313 (1)(b). But in the case of **Basavaraj R. Patil Vs. State of Karnataka, AIR 2000 SC 3214,** the Apex Court has held that as a general rule, it is necessary that in all cases the accused must answer the questions put to him under section 313(1)(b) by personally remaining present in the court. However, if remaining present involves undue hardship and large expense the court can dispense such examination even in warrant cases after adopting a measure to comply with the requirements of section 313, Cr.P.C. in a substantial manner.

For this the accused must be required to file before the court an application with an affidavit sworn-in by himself with the prayer that he may be allowed to answer the questions without his physical presence in the court on account of justifiable exigencies. The application and the affidavit of the accused must also contain the narration of undue hardship and large expense etc., the assurance that no prejudice would be caused to him by dispensing with his personal presence and an undertaking that he would not take any grievance on that score at any stage of the case.

It is also observed that section 313, Cr.P.C. does not envisage the examination of the Counsel in place of the accused and reiterated the law laid down by the Apex Court by three Judges Bench in **Bibhuti Bhushan Das Gupta Vs. State of West Bengal; AIR 1969 SC 381** and later on followed in **Shivaji Sahebrao Bobade Vs. State of Maharashtra, AIR 1973 SC 2622.**

In **K. Anbazhagan Vs. Supdt. of Police; AIR 2004 SC 524, SN Variava J.** who gave a majority judgment with Justice Thomas in **Basavaraj R. Patil case (supra)** reiterated the general rule that the accused must answer the questions put to him under section 313 (1)(b), by personally remaining in the court. And only in exceptional circumstances of undue hardship and large expense etc., the general rule of personal presence can be dispensed with. In this case the court held that the accused was holding the position of Chief Minister of Tamil Nadu and there was no exceptional exigencies or circumstance such as to undertake a tedious long journey or incur a whopping expenditure to appear in the court to answer the questions under section 313, Cr.P.C. Thus, none of the facts which have weighed with the consideration of the court in **Basavaraj R. Patil case (supra),** were available in the given case

In **Inspector, Customs, Akhnorr, Jammu and Kashmir Vs. Yashpal; (2009) 4 SCC 769,** Basavaraj R. Patil case (supra) was followed in less serious warrant cases.

<u>Putting separate and simple questions about each material circumstance</u>

In **Tara Singh Vs. State of Punjab; AIR 1951 SC 441,** the Hon'ble Apex Court held that it is not sufficient compliance to string together long series of facts and ask the accused what he has to say about them. He must be questioned simply and separately about each material circumstance which is intended to be used against him. The questioning must be fair and framed in a form which an ignorant and illiterate person may be able to appreciate and understand. Even if the accused is not illiterate, his mind is apt to be perturbed when he is facing a trial of murder. Therefore, it is required that each material circumstance should

be put simply and separately in a way that an illiterate person can appreciate and understand.

In **Naval Kishore Vs. State of Bihar; (2004) 7 SCC 502,** the Hon'ble Apex Court observed that the practice of putting the entire evidence against the accused in a single question and giving an opportunity to explain the same is improper as the accused may not be in a position to give a rational and intelligent explanation. The Hon'ble Apex Court further observed that this opportunity of examination under section 313 given to the accused, is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.

Examination of accused in cases of circumstantial evidence

In **Munish Mubar Vs. State of Haryana; AIR 2013 SC 912**, the Hon'ble Apex Court held that it is obligatory on the part of the accused while being examined under section 313, Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him and the court must take note of such explanation even in a case of circumstantial evidence so as to decide whether or not the chain of circumstances is complete.

In **Munish Mubar case (supra),** the court observed that "circumstantial evidence is a close companion of actual matrix, creating a fine network through which can be no escape for the accused, primarily, because such facts when taken as a whole, do not permit us to arrive any other inference but one, indicating the guilt of accused."

In this case accused appellant and deceased both having illicit relation with co-accused, the car of appellant was found parked at Airport where the deceased was to arrive and the car was moved out of parking area after arrival of the flight, presence of the appellant at the place of occurrence proved by his telephonic records. Articles recovered on disclosure made by the appellant found to contain human blood, the appellant gave no explanation as to the parking of his car at the Airport or about the recoveries made at his instance. Circumstance clearly connect appellant with crime. And merely making the bald statement under section 313 by the accused that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established.

The Apex Court held that the accused was expected to explain the reason for which he had gone to Airport and why the car had remained parked there for several hours.

In **Madhu @ Madhurantha and Another Vs. State of Karnataka; AIR 2014 SC 394,** the Hon'ble Supreme Court held that in cases where the accused was last seen with the deceased victim (last seen – together theory) just before the incidence, it becomes the duty of accused to explain the circumstances under which the death of victim occurred and further it is obligation on the part of the accused while being examined under section 313,Cr.P.C. to furnish some explanation regarding the incriminating circumstances associated with him. And the court must take note of such explanation even in a case of circumstantial evidence to decide whether or not the chain of circumstances is complete. **(As has also been held in Mushir Khan @ Badshah Khan and Another Vs. State of Madhya Pradesh; AIR 2013 SC 762 and Dr. Sunil Clifford Daniel Vs. State of Punjab, 2012 AIR SCW 5180.**

Inconsistent Pleas

Inconsistently pleas taken by the accused in his statement under Sec. 313 Cr.P.C. cannot be accepted. In the case of **State of Madhya Pradesh Vs. Balu; AIR 2005 SC 222,** the Hon'ble Apex Court rejected the plea of non-consideration of the plea of accused recorded under section 313, Cr.P.C. to the effect that there was animosity between the family of the victim and the accused because defence of consent was taken by the accused. Thus these are two inconsistent pleas which were not found acceptable.

Hon'ble High Court Allahabad in **Kanchan Vs. State of U.P.; 1982 Cr.L.J. 1633**, held that the accused took inconsistent pleas of alibi and private defence which were not acceptable.

Important cautions while making use or application of the statement under Sec. 313, Cr.P.C.:

1. **Part statement made by accused in his statement under Sec. 313 Cr.P.C. can be relied upon by considering other evidence but not in isolation -** Hon'ble Apex Court in **Sanatan Naskar & Another Vs. State of West Bengal; AIR 2010 SC 3507** held that the courts may rely on a portion of the statement of the accused and find him guilty in consideration of other evidence against him led by the prosecution. But such statement of under section 313, Cr.P.C. should not be considered in isolation but in conjunction with the prosecution evidence.

2. **Conviction cannot be based merely on the statement of accused under section 313, Cr.P.C. -** Hon'ble Apex Court in case **Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507** held that Conviction

of the accused cannot be based merely on the statement made under section 313, Cr.P.C. as it cannot be regarded as a substantive piece of evidence.

In **Rafiq Ahmad @ Rafiq Vs. State of U.P.; AIR 2011 SC 3114,** the court observed:-
"It is true that the statement under section 313, Cr.P.C. cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of evidence……"

3. **Adverse Inference against the accused -** In the case of **Phula Singh Vs. State of Himachal Pradesh; AIR 2014 SC 1256,** the Hon'ble Apex Court held that accused has the right to maintain silence during examination or even remain in complete denial when his statement under Sec. 313, Cr.P.C. is being recorded. But in such an event adverse inference could be drawn against him.

As has been held in **Ram Naresh and Others v. State of Chhattisgarh; AIR 2012 SC 1357, Munish Mubar Vs. State of Haryana; AIR 2013 SC 912 and Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan; AIR 2013 SC 3150**, the court held that the accused has a duty to furnish an explanation in his statements under section 313, Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under section 313, Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.

The option lies that the accused to maintain silence coupled with simplicitor denial or, in the alternate to explain his version and reasons, for his alleged involvement in the commission of crime.

This is the statement which the accused makes without fear or right of the other party to cross examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. **[Sanatan Naskar & Another Vs. State of West Bengal; AIR 2010 SC 3507]**

False denial made by the accused of established facts can be used as incriminating evidence against him. **[Munna Kumar Upadhyay @ Munna Upadhyay Vs. State of Andhra Pradesh; AIR 2012 SC 2470]**

An adverse inference can be taken against the accused only and only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same. **[Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan; AIR 2013 SC 3150]**

4. **Statements in Bail Petition** - The statement of the accused made on his behalf by his Counsel in the bail application cannot be read as his admission as it was not put to the accused in his statement under section 313, Cr.P.C. **[Randhir Singh v. State; 1980 Cri.L.J. 1379 (High Court Delhi)]**

Omission to question the accused on any incriminating circumstance or evidence

In **Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra AIR 1973 SC 2622,** the Court considered the fallout of the omission to put a question to the accused on vital circumstance appearing against him and the Court has held that the appellate court can question the counsel for the accused as regards the circumstance omitted to be put to the accused and held as under:-

"…It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, Cr.P.C., the omission has not been shown to have caused prejudice to the accused"

The same view was reiterated by the Hon'ble Apex Court in **State (Delhi Administration) Vs. Dharampal AIR 2001 SC 2924** wherein the Court has

held as under:- "Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him…"

In **Gyan Chand and Others Vs. State of Haryana; (2013) 14 SCC 420,** plea to non-compliance of the provisions of section 313, Cr.P.C. was taken for the first time before the Supreme Court. But there was no material showing as to what prejudice has been caused to the accused persons, if facts of conscious possession was not put to them. Thus the court held that the trial was not vitiated for noncompliance of the provisions of section 313, Cr.P.C.

Mere defective/improper examination under section 313, Cr.P.C. is no ground for setting aside the conviction of the accused, unless it has resulted in prejudice to the accused. Unless the examination under section 313, Cr.P.C. is done in a perverse way, there cannot be any prejudice to the accused. **(Suresh Chandra Bahri Vs. State of Bihar; AIR 1994 SC 2420) (Shobhit Chamar Vs. State of Bihar; AIR 1998 SC 1693).**

Where the examination of the accused under section 313, Cr.P.C. recorded by the trial court was an empty formality, all the incriminating materials when not put to him, the acquittal of the accused husband for offence under section 302 and 304B, IPC was upheld. **(B. Venkat Swamy Vs. Vijaya Nehru; 2008 AIR SCW 5908 (Latu Mahto Vs. State of Bihar; (2008) 3 SCC (Cri) 500; (2008) 8 SCC 395) (Conviction under section 302/149, 34 – not sustained)**

In **Nar Singh Vs. State of Haryana; AIR 2015 SC 310,** the Supreme Court laid down:-
"…Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. In so far as non-compliance of mandatory provisions of S. 313, it is an error essentially committed by the Trial Court, the same has to be corrected or rectified in the appeal."

In the above case the Court observed that:-
"The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that noncompliance of S. 313 has materially prejudiced him or is likely to cause prejudice to him. Merely because of

defective questioning under S. 313 it cannot be inferred that any prejudice had been caused to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice…"

"…Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under Sec. 313 and may direct remanding the case again for re-trial of the case from that stage of recording of statement under Sec. 313 and the same cannot be said to be amounting to filling up lacuna in the prosecution case."

In **Nar Singh's case** (supra), the Supreme Court held that:-
"…Accused in the instant case is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Sec. 313 cannot ensure to the benefit of the accused. Therefore the matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording statement of the accused under Sec. 313…"

Examination of Counsel

A pleader authorised to appear on behalf of the accused does a lot of work for the accused and makes statements on his behalf like in bail petitions and other applications. The Supreme Court has held that a proposition that a Pleader authorised to appear on behalf of the accused can do all acts which the accused himself can do, is too wide. When the prosecution evidence is closed, the accused must be questioned for the incriminating evidence against him and his pleader cannot be examined in his place. **[Bibhuti Bhusan Das Gupta Vs. State of W.B.; AIR 1969 SC 381; Basavraj R. Patil Vs. State of Karnataka; AIR 2000 SC 3214; Usha K. Srinivas; AIR 1993 SC 2090 and Keya Mukherjee vs. Magma Leasing Ltd.; AIR 2008 SC 1807]**

Age of the accused

Estimation of the age given in the statement under Section 313, Cr.P.C. should be accepted as correct. **[Raisul Vs. State of U.P.; AIR 1977 SC 1822]**

B. Important Cases Full Report

IN THE SUPREME COURT OF INDIA

Moorthy
Vs.
State of Tamil Nadu

Criminal Appeal No. 975 of 2011

HEADNOTE – Extra-judicial confessions are typically considered weak pieces of evidence, they can still serve as grounds for conviction if proven to be voluntary, truthful, and free of inducement. The court must be convinced of the reliability of the confession, and this evaluation takes into account the surrounding circumstances.

JUDGMENT

Abhay S. Oka, J.

Factual Aspects

1. The appellant was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code (for short, 'IPC'). He was sentenced to undergo life imprisonment for the offence punishable under Section 302 and rigorous imprisonment for seven years for the offence punishable under Section 201, IPC. Sentences were ordered to run concurrently. The appeal preferred by the appellant has been dismissed by the High Court by the impugned judgment.

2. The deceased Shanthi was the wife of the appellant. According to the prosecution case, the appellant suspected that the deceased had illicit intimacy with one Peethambaram. On 29th May 2006 at about 9:00 p.m., the appellant took the deceased to the bank of Ponnai River and assaulted her with a stick. The said Shanthi succumbed to the injuries. He buried the dead body in the same place. PW Nos.3 and 4 are the parents of the deceased who were enquiring with the appellant about the whereabouts of the deceased. However, the appellant told them that the deceased was missing.

3. The prosecution relied upon the extrajudicial confession made by the appellant before PW1 Ganesan Perumal in the presence of PW2 Tyagarajan Kannan. Secondly, the prosecution relied upon the recovery of the dead body and the stick allegedly used as a weapon of assault at the instance of the

appellant. Thirdly, according to the prosecution, the skeleton was identified by PW nos.3 and 4 on the basis of the clothes thereon.

Submissions

4. The main submission of the learned counsel appearing for the appellant is that PW nos.1 and 2 were complete strangers to the appellant. Moreover, the alleged extrajudicial confession was made by the appellant before the said two witnesses 2 months and 11 days after the date of the incident.

The learned counsel further submitted that the conduct of PW1 who was the Village Administrative Officer, does not inspire confidence as he immediately did not report the matter to the police. The learned counsel further submitted that the identity of the body/skeleton was not established. He submitted that recourse was not taken to DNA test for identification of the skeleton.

He also submitted that there is a material discrepancy in the evidence of PW18 Investigating Officer and PW1 about the place from which the stick, which was the weapon of offence, was discovered. He pointed out that PW nos.8 to 11 who were cited as witnesses to support the theory of last seen together, did not support the prosecution.

5. Dr. Joseph Aristotle, the learned counsel appearing for the State submitted that there are no major discrepancies and contradictions in the version of PW nos.1 and 18. He submitted that though PW8 was declared as hostile, his evidence cannot be discarded in its entirety. He placed reliance on a decision of this Court in the case of **Rameshbhai Mohanbhai Koli & Ors. Vs. State of Gujarat (2011) 11 SCC 111**. He submitted that the discovery of the dead body at the instance of the appellant is a very important circumstance against the accused. He relied upon a decision of this Court in the case of **Anuj Kumar Gupta Vs. State of Bihar (2013) 12 SCC 383.**

Our View

6. Firstly, we will deal with the prosecution case about the extrajudicial confession. As regards extrajudicial confession, the law has been laid down by this Court in the case of **Pawan Kumar Chourasia v. State of Bihar 2023 SCC OnLine SC 259.** In paragraph 5 it is held thus:

> "5. As far as extrajudicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extrajudicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends

on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith.

Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extrajudicial confession is corroborated by other evidence on record, it acquires more credibility."

(emphasis added)

7. We have perused the evidence of PW1 Ganesan who was posted as the Village Administrative Officer at the time of the commission of the offence. He was not permanently posted in Village Seekkarajapuram as he stated that at the time of recording of evidence, he was transferred as Village Administrative Officer to Ranipet. PW1 admitted in the crossexamination that he did not know the appellant before he came to him and allegedly made the extrajudicial confession. The incident is of 29th May 2006 but the alleged extrajudicial confession was made on 10th August 2006.

It is impossible to understand why would the appellant meet the Village Administrative Officer, who was a total stranger to him, more than two months after the incident for making a confession. PW1 and the appellant were not known to each other till 10th of August 2006. Normally an accused will confide only with a person in whom he has implicit faith. He would not go to a stranger to make a confession of guilt. The fact that the alleged confession was made by him more than two months after the incident makes it more suspicious.

8. PW1 claims that he recorded the statement of the appellant and took a thumb impression of the appellant. There is no evidence adduced by the prosecution to prove the thumb impression. PW1 claims that after making the confession, the appellant took him to the place of the incident which is located near the railway overbridge on the bank of the river Ponnai. PW1 did not take the appellant to the police station after the alleged confession was made.

He admittedly did not inform the police immediately after recording the alleged extrajudicial confession. PW1 claims that he visited the place of incident with the appellant who showed him the scene of the alleged offence. Only thereafter he took the appellant to the police. It is also pertinent to note that in his cross examination, PW1 admitted that there were 67 huts near the place of residence of the appellant and the families residing therein belonged to the same caste as

that of the appellant. Thus, there were people around before whom the appellant could have confessed.

9. PW2 was working as an Assistant with PW1. He has deposed on the same lines as PW1. However, it is not the case of the prosecution that the appellant confided with PW2. He was present when the appellant allegedly made an extrajudicial confession and was recorded by PW1. He stated that he along with PW1 were taken by the appellant to the place where he committed murder and buried the body. He claimed in the cross examination that he knew the appellant before the incident but the appellant did not confide before him.

10. Extrajudicial confession is always a weak piece of evidence and in this case, for the reasons which we have recorded earlier, there is serious doubt about the genuineness of the prosecution case regarding the extrajudicial confession. Therefore, the prosecution case about the extra judicial confession does not deserve acceptance.

11. Now we consider the evidence of PW18 who is the Investigating Officer. He stated that the dead body was found at a depth of 2 ft. after digging. He stated in the cross examination that the stick allegedly used by the appellant as a weapon of assault was recovered from a bush at a distance of 50 feet from the place where the dead body was found. He accepted in the cross examination that none of the relatives had lodged a missing complaint.

12. As far as the alleged recovery of the dead body at the instance of the appellant is concerned, we must note that the dead body was recovered from a place which was accessible to all. A day prior to the alleged discovery at the instance of the appellant, PW nos.1 and 2 had gone to the place where the dead body was found. It is not the case of the prosecution that the place where the dead body was buried was accessible and known only to the appellant. This also raises serious doubt about the theory of the prosecution about the discovery of the body at the instance of the appellant.

13. PW nos.3 and 4 have deposed mainly on the issue of the identity of the dead body as they were present when the dead body was recovered. However, the body had decomposed and only the skeleton was exhumed. In the crossexamination, PW3 Rajagopalan, the father of the deceased, stated that the appellant came to him one month prior to the date of knowledge of the murder of his daughter. PW3 stated that at that time the appellant asked him whether he had murdered the deceased. He stated that the appellant went to the police station to lodge a complaint. PW3 accepted that he did not search for his daughter and did not file any missing complaint. This conduct of PW3 is not natural.

14. If we peruse the evidence of PW1 and PW18, the recovery of the weapon of the offence at the instance of the appellant becomes extremely doubtful. PW1 deposed that the stick was buried 1 ft deep in the river bank about 5 ft away towards the west of the place in which the body was buried. However, PW18 stated that the stick was recovered from a bush at a distance of about 50 ft. on the north of the place where the dead body was buried. This also makes the prosecution case vulnerable as far as the discovery of the stick at the instance of the appellant is concerned.

15. Though the respondent tried to rely upon the evidence of PW8 who has been declared hostile, we find that he had made a general statement that he had seen the appellant and deceased together two years back. Moreover, the other witnesses examined to prove the last seen together theory were declared hostile. Thus, the prosecution could not establish the last seen together theory.

16. There is serious doubt about the genuineness of the prosecution case regarding the recovery of a dead body at the instance of the appellant and the recovery of the alleged instrument of the offence at the instance of the appellant. Most importantly, for the reasons we have recorded earlier, it is not possible to accept the case of the prosecution which is entirely based on the extrajudicial confession made by the appellant. Thus, there was no legal evidence on record to convict the appellant. In any case, the guilt of the appellant has not been proved beyond a reasonable doubt.

17. Accordingly, the appeal is allowed. The judgment and order dated 31st March 2008 passed by the Court of Additional District and Sessions Judge in Sessions Case No.24 of 2008 as well as the impugned judgment and order dated 28th January 2009 passed by the High Court of Judicature at Madras in Criminal Appeal No.394 of 2008 are hereby set aside and the appellant is acquitted of the offences alleged against him.

18. As the appellant is on bail, his bail bonds stand cancelled.

.....J. [Abhay S. Oka]

.....J. [Sanjay Karol]

New Delhi

August 18, 2023.

IN THE SUPREME COURT OF INDIA

Prakash (Dead) By LR.
Vs.
G. Aradhya & Ors,

Civil Appeal No.706 Of 2015

HEADNOTE – Under Section 58(c) of the Transfer of Property Act,1882 no transaction shall be deemed to be a mortgage unless the condition for reconveyance is contained in the document which purports to effect the sale.

JUDGMENT

Rajesh Bindal, J.

1. The appellant has filed the present appeal before this Court impugning the judgment of the High Court of Karnataka at Bangalore by which the Appeal filed by the appellant against the judgment and decree of the trial Court was upheld.

Facts

2. The facts, as evident from the record, are that on 16.10.1963 a property measuring 30 ft. x 60 ft. was purchased by the father of the appellant, Gangaramaiah, in the name of the appellant, who was minor at that time. On 24.12.1973 the father of the appellant, Gangaramaiah sold the aforesaid property to one Rudramma for a sum of Rs. 5000/- (Rupees Five Thousand). The age of the appellant, who claimed himself to be minor at that time, was mentioned as 13 years.

On the same day, another unregistered document was executed between the parties claiming to be Reconveyance Deed in terms of which on the request of the vendor, the vendee had agreed to re-transfer the property back within five years of the Sale Deed in case the sale consideration of Rs. 5000/- (Rupees Five Thousand) is paid.

3. A notice dated 24.11.1978 was got issued by the father of the appellant to the vendee seeking execution of the Conveyance Deed back in favour of the vendor in terms of the Reconveyance Deed executed on 24.12.1973. The same was replied to by the vendee- Rudramma through her counsel on 02.12.1978 stating that the Sale Deed dated 24.12.1973 was not a mortgage by conditional sale. It was an outright sale of the property.

It was admitted that on the same date, an agreement of reconveyance was entered into. On 24.07.1978, a suit was filed by Rudramma seeking eviction of the Gangaramaiah in terms of the Lease Agreement dated 24.12.1973 as he had not been paid the rent. While reserving her rights in the aforesaid suit, Rudramma stated in the reply to the notice that she is ready and willing to get the Conveyance Deed executed on receipt of Rs. 7000/- (Rupees Seven Thousand).

4. A suit was filed by Ganagaramaiah seeking permission from the Court to mortgage the property of the minor. A public notice was issued inviting objections. Vide order dated 27.09.1978 permission was granted to execute fresh Mortgage Deed in order to discharge the earlier mortgage for a sum of Rs. 7000/- (Rupees Seven Thousand). On 26.03.1987, the legal heirs of Rudramma sold the property in-question in favour of defendant no.4 in the suit, namely, N. Shashidar. Gangaramaiah died on 30.04.1987.

5. A suit was filed by the appellant praying for various reliefs, which was dismissed by the trial Court. The judgment of the trial Court was upheld by the High Court.

Appellant's Arguments

6. In the aforesaid factual matrix, Mrs. Kiran Suri, learned senior counsel appearing for the appellant, submitted that the finding recorded by the courts below, that the suit filed by the appellant-plaintiff was time barred, is totally erroneous. The prayer in the suit was for redemption of the mortgage. On interpretation of the documents, it is clearly made out that the intention of the vendor was to mortgage the property.

On the very same date, the Reconveyance Deed was executed though separately, in terms of which the vendee had agreed to re-transfer the property on returning back the consideration money within a period of five years from the date of execution of the Sale Deed. The terms mentioned in the document need to be interpreted. It can be very well made out that, it was a mortgage and not an agreement for re-purchase of the property.

It was submitted that even if under Section 58(c) of the 1882 Act, it is provided that clauses to treat the transaction of sale as a mortgage have to be in a single document, it is not a pre-condition, as the intention of the parties can be inferred from two separate documents executed on the same date.

7. The finding recorded by the trial Court, as upheld by the High Court regarding the suit being time barred, is totally erroneous. The case of the appellant will not fall under Article 60 of the Schedule attached to the 1963 Act5. Rather, it will

fall under Article 61 thereof. It was not a simplicitor case of challenging the Sale Deed executed by the guardian of the appellant when at the relevant point of time, he was a minor. Rather it was a case of redemption of mortgage for which limitation prescribed was 30 years.

8. It was further submitted that the appellant was the absolute owner of the property for which the Sale Deed was got registered by his father when he was a minor. Considering his age at that time, it could not be established that purpose of the sale of property was for the benefit of the minor. Even otherwise, the onus to prove the same was on the alienee of the property, which he had failed to discharge. A sale of property belonging to a minor being without any legal necessity, deserved to be set aside.

9. Further, argument raised is that a suit for possession filed by the vendee in the year 1978, shows that the possession of the property always remained with the vendor. This clearly establishes that it was not an outright sale, rather it was a mortgage, which the father of the appellant could get redeemed within a period of five years.

The intention of the vendee is evident from the fact that she started demanding Rs. 7,000/- as against Rs. 5,000/- as is mentioned in the document at the time of execution of the Reconveyance Deed. It was not disputed that the property in-question is a vacant plot and the property tax thereof was not being paid by the appellant.

10. Learned Senior counsel appearing for the appellant placed reliance on the judgments of this Court in Indira Kaur (Smt.) and others v. Sheo Lal Kapoor, (1988) 2 SCC 488; Sunil Kumar and another v. Ram Parkash and others, (1988) 2 SCC 77; Ramlal and another v. Phagua and others, (2006) 1 SCC 168; and Ahilyabai and others v. Shantabai (Dead) and others, (2001) 10 SCC 583 in support of her arguments.

Respondents' Arguments

11. On the other hand, Mr. Aditya Sondhi, learned Senior counsel, appearing for the respondents, submitted that the argument raised by the learned counsel for the appellant that it is a case of mortgage, is not made out from the record. Section 58(c) of the 1882 Act clearly provides that it can be inferred from the document, in case it is a single document and the clauses are contained therein. In the case in hand, admittedly two separate documents were executed. The prayer in the suit was not to declare that the transaction between the parties was a mortgage.

In the absence thereof, no relief for redemption could be claimed directly. The suit filed by the appellant is clearly barred by limitation. Though exact date of birth of the appellant has not come on the record, however, his mother while appearing as PW-1, in her crossexamination stated that he was born in December 1962. Meaning thereby that he had attained the age of majority in the year 1980. The suit having been filed in the year 1987 challenging the Sale Deed of 1973, was thus, clearly time-barred.

It was further submitted that the appellant or his father who was the guardian had failed to avail of any appropriate remedy in case, the vendee had refused to get the Sale Deed registered back in terms of the Reconveyance Deed. Nothing hinges on the permission taken by the father of the appellant for remortgaging the property in-question as it is not disputed that at the time of sale of the property, permission was not taken.

12. A suit was filed by the vendee seeking possession from the father of the appellant and also payment of rent in terms of the Lease Deed dated 24.12.1973. The same was decreed in favour of the vendee. Though it transpired at the time of the hearing that, further proceeding was taken by the father of the appellant against the judgment in the aforesaid suit, however, none of the parties was aware of the status thereof.

The possession of the property was delivered to the vendee at the time of execution of the Sale Deed, as is even mentioned therein. The house tax was also being paid by the vendee. The judgments relied upon by the appellant are distinguishable. Reliance was placed upon the judgment of this Court in Bishwanath Prasad Singh v. Rajendra Prasad and another, (2006) 4 SCC 432 wherein earlier judgment of this Court in Ramlal's (Supra), was distinguished.

13. We have heard learned counsel for the parties and perused the material available on record and referred to at the time of hearing.

Discussions

14. At the very outset, before we deal with the arguments raised by the parties, it may not be out of place if not mentioned here that some of the relevant documents were not produced by the parties in evidence. Primarily, onus thereof certainly falls on the appellant, who was the plaintiff as he had to stand on his own legs.

Some of these documents are, the Sale Deed dated 16.10.1963 by which the property in-question was purchased by his father in his name; the notice got issued by the father of the appellant on 24.11.1978 to the vendee qua execution of the Sale Deed in terms of the Reconveyance Deed and the Lease Deed which

was allegedly executed by the vendee in favour of the father of the appellant on 24.12.1973 regarding the property in-question.

15. Insofar as the age of the appellant is concerned, though certain dispute was raised by the appellant claiming that he was 3 years of age when the Sale Deed was got registered by his father in favour of Rudramma on 24.12.1973, however, the fact is otherwise. It came in the cross-examination of the mother of the appellant who appeared as PW- 1, that the appellant was born in December 1962. That means that he attained the age of majority in the year 1980. This fact is further corroborated from the suit filed by the appellant in the year 1987 wherein he claimed himself to be 24 years of age.

16. In the civil suit, though N. Shashidar was impleaded as defendant no.4, however, the Sale Deed executed by Rudramma in his favour was not challenged. The following prayers were made in the suit:

"Wherefore the plaintiff prays for judgment and decree against the defendants:

a) declaring that the document dated 24-12-73 styled as a sale deed executed by late Gangaramaiah in favour of late Rudramma conveying the schedule property in her favour and registered as No.3266/73-74 at pages 172 to 174 in volume No.400 of Book-l in the office of the Sub- Registrar, Sreerampuram-Bangalore, is null and void and not binding on the plaintiff and does not convey any right, title or interest in respect of the schedule property to the defendants herein claiming through late Smt. Rudramma;

b) alternatively, declaring that the plaintiff is entitled to redeem the Mortgage of the schedule property under the above-mentioned sale deed coupled with the agreement of Reconveyance on payment of Rs.5,000/- to the defendants; on receipt of this sum, the defendants shall execute the deed of redemption and return all the documents of title of the schedule property in their custody.

c) a decree for permanent injunction restraining the defendants, or any other person or persons claiming through them from interfering in any manner with the peaceful possession and enjoyment of the schedule property by the plaintiff; and

d) a decree for costs of this suit and grant other relief/relief's as this Hon'ble Court deems fit to grant in the circumstances of the case, in the interests of justice and equity."

17. A perusal of the prayers made in the suit shows that the same was filed by the appellant against the legal heirs of late Rudramma (vendee) and N. Shashidar in whose favour legal heirs of Rudramma executed the Sale Deed in-question on

26.03.1987. The first prayer was for declaring the document dated 24.12.1973, styled as a Sale Deed executed by late Gangaramaiah in favour of late Rudramma being null and void and not binding on the appellant.

In the alternative, prayer was made for declaring that the appellant is entitled to redeem the mortgage of the scheduled property in terms of the Sale Deed and the agreement of reconveyance on payment of ₹5,000/-. Further prayer was made for protecting the possession of the appellant-plaintiff. The trial Court initially framed the following issues:

"1. Does Plaintiff prove his title to the suit property?

2. Does plaintiff further prove that his father Sri Gangaramaiah was not competent to execute the Sale Deed dt.24.12.73 in favour of Smt.Rudramma?

3. Does plaintiff further prove that there was no legal necessity for Gangaramaiah to sell the suit property in favour of Smt.Rudramma?

4. Does plaintiff prove that the transaction as per the Sale Deed dt.24.12.73 was in the nature of mortgage?

5. Does plaintiff prove his lawful possession of the suit property?

6. Is plaintiff entitled for declaration of declaring of Sale Deed dt. 24.12.73 executed by Gangaramaiah in favour of Smt. Rudramma as null and void and not binding on the plaintiff?

7. Is plaintiff entitled to redeem the mortgage of the suit property?

8. Is plaintiff entitled for permanent injunction sought for?

9. What order or decree?"

17.1. Following additional issue was framed by the trial Court on 27.11.1993:

"Whether the suit is barred by limitation?"

17.2. Thereafter, following additional issues were framed by the trial Court on 16.08.1994:

"1. Do the defendants prove that the defence in regard to the benami nature of the transaction between late Gangaramaiah and late Smt. Rudramma is not hit by Section 4 of the Benami Transaction (Prohibition) Act, 1988?

2. Do the defendants prove that the transaction between late Gangaramiah and late Smt. Rudramma is an absolute sale and is valid according to Sec.8 of the Hindu Minority & Guardianship Act, 1956?"

18. The findings on the above issues recorded by the trial Court, as mentioned in para 20 of the judgment, are as under:

"20. By findings on the above issues are

Issue No. 1	-	Negative
Issue No. 1	-	Negative
Issue No. 1	-	Negative
Issue No. 1	-	Negative
Issue No. 1	-	Negative
Issue No. 1	-	Negative
Issue No. 1	-	Negative
Addl. Issue dt. 27.11.93	-	Affirmative
Addl. Issue No.1 dt. 16.08.94	-	Doesn't arise
Addl. Issue No.2 dt. 16.8.94	-	Affirmative"

19. In the appeal filed by the appellant against the judgment and decree of the trial Court, following two questions were framed by the High Court:

"1. Whether the trial Court was justified in holding the document dated 20.12.1973 [registered on 24.12.1973] as sale deed and consequently rejecting the claim of the plaintiff that the said sale deed if read along with the agreement of buy back dated 24.12.1973 would not constitute mortgage of suit schedule property in favour of Smt. Rudramma?.

2. Whether the trial Court was justified in dismissing the suit holding that the documents dated 20.12.1973 [registered on 24.12.1973] as absolute sale deed and consequently rejecting the prayer of the plaintiff for redemption of mortgage?"

20. Both the aforesaid questions were decided against the appellant by the High Court.

21. A perusal of the aforesaid questions framed by the High Court shows that, these are co-related. The core issue was as to whether the transaction between the parties was an absolute sale of the property or it was a mortgage. The issue of limitation, with reference to the challenge to the Sale Deed having been decided against the appellant by the trial Court, was not raised before the High

Court, as is evident from the questions framed. Hence, this aspect could not be addressed before this Court.

22. The argument raised by Mrs. Kiran Suri, learned Senior counsel for the appellants, on the aforesaid issue was that on a perusal of the documents the Court can always opine as to whether the intention of the party was to get an absolute Sale Deed registered or it was a mortgage.

The submission was that, both the documents were executed on the same day. Reconveyance of the property in favour of the vendor, father of the appellant, on the payment of the same amount of consideration within five years, would clearly lead to an inference that the said transaction was a Mortgage Deed. Coupled with the fact that possession of the property had always remained with the appellant, otherwise the same would have been delivered to the vendee.

23. Before we appreciate the arguments raised at the Bar, we may refer to Section 58 of the 1882 Act4 wherein the terms: "mortgage", "mortgagor" and "mortgagee" etc. have been defined. Sub-section (c) which deals with "mortgage by conditional sale" relevant for the point in issue, are extracted below:

"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) Mortgage by conditional sale.- Where, the mortgagor ostensibly sells the mortgaged property-

On condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

On condition that on such payment being made the sale shall become void, or

On condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale."

24. A perusal of the aforesaid proviso to sub-section (c) of Section 58 of the 1882 Act provides that no transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale. It is the undisputed case in hand that it was not a single document, the conditions contained wherein have to be considered by this Court to opine that the transaction was not a sale, but a mortgage. Admittedly, there are two separate documents.

25. Similar argument, where two separate documents were executed, came up for consideration before this Court in Bishwanath Prasad Singh's case (supra). One was the Sale Deed and the second was the agreement for sale. Both were executed on the same date. It was opined therein that to appreciate a document its contents are to be read in entirety and the intention of the parties is to be gathered from the language used therein. Para 16 of the aforesaid judgment is referred to for ready reference:

"16. A deed as is well known must be construed having regard to the language used therein. We have noticed hereinbefore that by reason of the said deed of sale, the right, title and interest of the respondents herein was conveyed absolutely in favour of the appellant. The sale deed does not recite any other transaction of advance of any sum by the appellant to the respondents which was entered into by and between the parties. In fact, the recitals made in the sale deed categorically show that the respondents expressed their intention to convey the property to the appellant herein as they had incurred debts by taking loans from various other creditors."

25.1. Further, in the aforesaid judgment, this Court while interpreting the terms of the agreement executed along with the Sale Deed and opined that the same cannot be treated to be a mortgage as the expression used therein were 'vendor', 'vendee', 'sold' and 'consideration'. Fixed period was granted for execution of the Sale Deed.

25.2. The scope of Section 58(c) of the 1882 Act4 was considered in detail in paras 27 to 33 thereof which are extracted below:

"27. A bare perusal of the said provision clearly shows that a mortgage by conditional sale must be evidenced by one document whereas a sale with a condition of retransfer may be evidenced by more than one document. A sale with a condition of retransfer, is not mortgage. It is not a partial transfer. By reason of such a transfer all rights have been transferred reserving only a personal right to the purchaser (sic seller), and such a personal right would be lost, unless the same is exercised within the stipulated time.

28. In Pandit Chunchun Jha v. Sk. Ebadat Ali [(1955) 1 SCR 174 : AIR 1954 SC 345] this Court clearly held: (SCR p. 177)

"We think that is a fruitless task because two documents are seldom expressed in identical terms and when it is necessary to consider the attendant circumstances the imponderable variables which that brings in its train make it impossible to compare one case with another. Each must be decided on its own facts."

29. Yet again in Mushir Mohd. Khan v. Sajeda Bano [(2000) 3 SCC 536] this Court upon construing Section 58(c) of the Transfer of Property Act opined: (SCC pp. 541-42, para 9)

"9. The proviso to this clause was added by Act 20 of 1929 so as to set at rest the conflict of decisions on the question whether the conditions, specially the condition relating to reconveyance contained in a separate document could be taken into consideration in finding out whether a mortgage was intended to be created by the principal deed. The legislature enacted that a transaction shall not be deemed to be a mortgage unless the condition for reconveyance is contained in the document which purports to effect the sale."

30. Referring to Chunchun Jha [(1955) 1 SCR 174: AIR 1954 SC 345] it was held: (SCC p. 544, para 14)

> "14. Applying the principles laid down above, the two documents read together would not constitute a 'mortgage' as the condition of repurchase is not contained in the same documents by which the property was sold. The proviso to clause (c) of Section 58 would operate in the instant case also and the transaction between the parties cannot be held to be a 'mortgage by conditional sale'."

31. In Umabai v. Nilkanth Dhondiba Chavan [(2005) 6 SCC 243] wherein one of us was a party, this Court held: (SCC p. 254, para 21)

> "21. There exists a distinction between mortgage by conditional sale and a sale with a condition of repurchase. In a mortgage, the debt subsists and a right to redeem remains with the debtor; but a sale with a condition of repurchase is not a lending and borrowing arrangement. There does not exist any debt and no right to redeem is reserved thereby. An agreement to sell confers merely a personal right which can be enforced strictly according to the terms of the deed and at the time agreed upon.

Proviso appended to Section 58(c), however, states that if the condition for retransfer is not embodied in the document which effects or purports to effect a sale, the transaction will not be regarded as a mortgage. (See: Pandit Chunchun

Jha v. Sk. Ebadat Ali [(1955) 1 SCR 174 : AIR 1954 SC 345] , Bhaskar Waman Joshi v. Narayan Rambilas Agarwal [(1960) 2 SCR 117 : AIR 1960 SC 301] , K. Simrathmull v. S. Nanjalingiah Gowder [1962 Supp (3) SCR 476 : AIR 1963 SC 1182] , Mushir Mohd. Khan [(2000) 3 SCC 536] and Tamboli Ramanlal Motilal [Tamboli Ramanlal Motilal v. Ghanchi Chimanlal Keshavlal, 1993 Supp (1) SCC 295] .)"

32. The High Court relied upon Indira Kaur v. Sheo Lal Kapoor [(1988) 2 SCC 488 : AIR 1988 SC 1074]. Therein the Court took into consideration the factors adumbrated therein, particularly, a long stipulated period of 10 years for conveying the property and the vendee was prohibited from selling and parting with his right, title and interest for 10 years. The vendor was allowed to occupy the property as a tenant on payment of Rs 80 per month. No order of mutation was passed in his favour. It was held:

> "6. In the present case having regard to the facts and circumstances highlighted in the course of the discussion pertaining to the question as to whether or not the transaction was a transaction of mortgage having regard to the real intention of the parties it would be difficult to hold that the agreement to sell executed by the defendant in favour of the plaintiff was by way of a 'concession'. It was a transaction entered into by the defendant who was a hard-headed businessman and the documents in question have been carefully framed in legal terminology taking into account the relevant provisions of law.
>
> The transaction also discloses the awareness of the defendant about Section 58(c) of the Transfer of Property Act as is evident from the fact that the reconveyance clause is not embodied in the sale deed itself. In the agreement to sell, no reference has been made to the transaction of sale though it has been executed contemporaneously. The defendant who has permitted the plaintiff to continue in possession on payment of rent equivalent to about 13Â½ per cent interest and was evidently aware of all the dimensions of the matter would not have granted any concession or executed the agreement by way of a concession.
>
> The agreement was executed evidently because the plaintiff would not have executed the sale deed unless an agreement to sell by a contemporaneous document was also executed to enable the plaintiff to enforce specific performance within ten years. It was therefore a transaction entered into with open eyes by the defendant and there was no question of granting any concession."

33. In the instant case, as noticed hereinbefore, the transfer is complete and not partial, no stipulation has been made that the appellant cannot transfer the property. Not only that, the appellant was put in possession of the land, his name was also mutated."

25.3. A perusal of the aforesaid paras of the judgment shows that the proviso was added in Section 58(c) of the Act4 vide Act No.20 of 1929, so as to put at rest the conflicting decisions on the issue. A deeming fiction was added in the negative that a transaction shall not be deemed to be a mortgage unless the condition for reconveyance is contained in the document which purports to effect the sale.

25.4. The judgment of this Court in Umabai v. Nilkanth Dhondiba Chavan, (2005) 6 SCC 243, has also been referred to, which defines the distinction between mortgage by conditional sale and a sale with a condition of repurchase. In a mortgage, the debt subsists and a right to redeem remains with the debtor; but a sale with condition of repurchase is not a lending and borrowing arrangement.

Proviso to Section 58(c) of the 1882 Act4 was referred to in the aforesaid judgment to hold that if the condition for re-transfer is not embodied in the document which effects or purports to effect a sale, the transaction will not be regarded as a mortgage. The judgment of this Court in Ramlal's case (supra), relied upon by learned Senior counsel for the appellant, was specifically dealt with and distinguished in paras 34 and 35 thereof in Bishwanath Prasad Case (supra) and the same are extracted below:

"34. In Ramlal v. Phagua this Court having regard to the peculiar fact situation obtaining therein opined: (SCC p. 173, para 18)

> "18. In our opinion, agreement to reconvey the property will not ipso facto lead to the conclusion that the sale is nominal and in view of the stand of Defendant 8, as also of the fact that the property worth Rs 700 has been purportedly sold for Rs 400, we are of the considered opinion that the sale deed dated 1-12-1965 did not convey any title to Defendant 8. It is well settled by a catena of decisions that the vendor cannot convey to the vendee better title than she herself has."

35. As of fact, it was held therein that the sale deed in question was not a real sale deed but was by way of a surety. In that case, furthermore, the defendant categorically admitted that the plaintiff had taken loan. It is in that situation, the transaction was held to be a mortgage. Apart from it, there were other

circumstances which led the court to arrive at the said conclusion. The said decision, therefore, cannot have any application in the instant case."

26. Before we proceed to consider the legal effect thereof, we find it appropriate to extract the contents of the two documents. The contents of the Sale Deed are extracted below:

"On this 24th day of December, 1973 I, Gangaramaiah, S/o. late Kambaiah, residing at No.62, Hosaguddadahalli, Mysore Road, Bangalore City on behalf of minor son Prakashaiah, aged about 13 years as his guardian and father is executing this Absolute Sale Deed in favour of Smt. Rudramma, W/o. Sri Gangappa, aged about 48 years, residing at No. 68, Nehru Road, Hosaguddadahalli, Mysore Road, Bangalore City as follows:-

The schedule property mentioned below was acquired by us from Smt. Sharadamma, S/o P.V. Raghavendra Naidu and her children under a registered sale dated 16-10-1963 registered as Document No. 5676 of Book-l in Volume No. 2332 at pages 238-241 registered at the office of the Sub-Registrar, Bangalore North Taluk and ever since the possession of the property is with us.

In order to meet domestic expenses and to meet the education of the minor son and also to discharge some of the petty debts the schedule property is sold for a sale consideration of Rs.5,000/-. I have received a sum of Rs.3,000/- in the presence of the witnesses and also agreed to receive the remaining sale consideration of Rs.2,000/- at the time of the registration of this sale deed in the presence of the Sub- Registrar.

Thus, total sale consideration of Rs.5,000/- is paid to me. Therefore, on this day of the registration the possession of the schedule property is delivered to you. Here afterwards you can change Katha in respect of the schedule site in your name and you are at liberty to enjoy all such resources available/standing over the schedule site by paying tax, cess etc., and you shall enjoy the schedule site as the absolute owner thereof from generation to generation.

There are no other claimants, legal heirs and there is no charge such as the payment of maintenance, Shreedhan rights, minor disputes, court decrees, attachment etc. In the event of any dispute, I will undertake to resolve them at my cost. I have handed over the sale deed dated 16-10-1963 and the Survey Endorsement, Tax paid receipts, Katha Endorsements."

27. The contents of the reconveyance/agreement of buy back deed dated 24.12.1973 are extracted below:

"On this 24th day of December, 1973 I, Smt. Rudramma, W/o. Sri Gangappa residing at No. 68, Nehru Road, Hosaguddadahalli, Mysore Road, Bangalore City is executing this Reconveyance Agreement in favour of Sri. Gangaramaiah, S/o. late Kambaiah, residing at No.62, Hosaguddadahalli, Mysore Road, Bangalore City as follows:-

You are aware that the property mentioned under the schedule given below was sold and registered by you in my name for a sum of Rs.5,000/- at the office of the Sub- Registrar, Srirampuram, Bangalore City on 24-12-1973 which is registered as Document No. 3265, in Book-l.

Since you requested me to resell the schedule property but I permitted you to repurchase the schedule property within a given time, I am granting you 5 years of time for you to repurchase the same. In the event, you pay me the sale consideration of Rs.5,000/-, I will reconvey the schedule property in your favour. This agreement shall cease on the next day of the expiry of 5 years. At the time of repurchase you must bear the registration charges."

28. In the case in hand, the specific term used in the document is "reconveyance agreement" executed by Rudramma in favour of Gangaramaiah. It is clearly mentioned therein that the property inquestion had already been sold and registered in the name of Rudramma. On a request made by Gangaramaiah, the right to purchase the property was given within a period of five years on payment of sale consideration of ₹5,000/- (Rupees Five Thousand). The agreement states that it shall cease to have effect on expiry of a period of five years.

29. A perusal of the contents of the Sale Deed shows that it is clearly mentioned therein that the same was an absolute sale for a total sale consideration of ₹5,000/- (Rupees Five Thousand) required by the vendor to meet domestic expenses and to meet education expenses of his minor son and to discharge some debts.

Total sale consideration was ₹5,000/- (Rupees Five Thousand). Out of this amount, a sum of ₹3,000/- (Rupees Three Thousand) was received earlier and ₹2,000/- (Rupees Two Thousand) was to be received in the presence of the Sub-Registrar at the time of the registration of the Sale Deed. Possession of the property was to be delivered on registration of the Sale Deed.

The vendee was entitled to get the mutation entered in her name and enjoy the property by paying the taxes, if any. She would become an absolute owner thereof from generation to generation. There were no encumbrances attached to the property.

30. The agreement of buy back dated 24.12.1973 mentioned, that after registration of the Sale Deed, the vendor had requested the vendee to resell the property within the time given. The vendee granted him five years' time to repurchase the property in case sale consideration of ₹5000/- (Rupees Five Thousand) is paid.

It was agreed that the agreement shall cease immediately after expiry of 5 years. It further mentions that at the time of repurchase, registration expenses are to be borne by the father of the appellant, who had to get the Sale Deed registered back.

31. In terms of the Sale Deed and the Reconveyance Deed, reconsidered in the light of the enunciation of law, as referred to above, in our opinion, the same cannot be held to be a transaction of mortgage of property. Sale of property initially, was absolute. By way of execution of Reconveyance Deed, namely, on the same day, the only right given to the appellants was to repurchase the property.

32. For the aforementioned reasons, we do not find any error in the judgment and order of the High Court. The appeal is accordingly dismissed. There shall be no order as to costs.

.....J. (Hima Kohli)

.....J. (Rajesh Bindal)

New Delhi

August 18, 2023.

IN THE SUPREME COURT OF INDIA

Mukesh Singh
Vs.
State (NCT of Delhi)

Criminal Appeal No. 1554 of 2015

HEADNOTE – The conduct of the Test Identification Parade is not violative of Article 20(3) of the Constitution.

JUDGMENT

J.B. Pardiwala, J.

1. This appeal, by special leave, is at the instance of a convict accused and is directed against the judgment and order dated 28.02.2014 passed by the High Court of Delhi in Criminal Appeal No. 1246 of 2011 by which the High Court dismissed the appeal and thereby affirmed the judgment and order of conviction dated 08.04.2011 and the order on sentence of life imprisonment dated 27.04.2011 resply passed by the Additional Sessions Judge-II (North West), Rohini, Delhi in the Sessions Case No. 998 of 2009 holding the appellant convict herein guilty for the offences punishable under Sections 302, 392, 394 and 397 resply read with Section 34 of the Indian Penal Code (for short, 'IPC').

CASE OF THE PROSECUTION

2. The appellant convict along with three other coaccused was put to trial in the Court of the Additional Sessions Judge-II (North West), Rohini, Delhi for the offences punishable under Sections 392, 394, 397, 307, 302, 411 read with Section 34 of the IPC. On 16.08.2008 at about 3.30 in the early morning the PW-1, namely, Sushil Kumar (original first informant and injured eye witness) along with his friend Pappu (deceased) and his brother Pradeep Kumar, PW-4 were at the Azadpur Subzimandi.

They were at the Azadpur Subzimandi for the purpose of purchasing vegetables. After purchasing vegetables from the D Block corner of the Azadpur Subzimandi, they proceeded towards the main gate. When the PW 1 and his friend Pappu reached near the STD PCO at the D Block corner, they were cornered by the four accused persons who were put to trial. These four accused persons, according to the case of the prosecution, included the appellant herein also.

Two of the accused persons snatched away Rs. 14,800/- from the pocket of the PW 1. The two accused persons who snatched away the money from the pocket of the PW 1 were Sharwan Kumar and Pawan Kumar respectively. When the PW 1 resisted, the other two accused persons armed with ice picks attacked him and his friend Pappu. The appellant convict and co-accused Vijay alias Kalia are alleged to have caused injuries with their respective ice picks on the body of the PW 1 as well as his friend Pappu (deceased).

After robbing and in the process of causing injuries, all the four accused ran away from the place of occurrence. When the traffic of trucks at the market got eased, the PW-1 saw Pappu (deceased) lying in an injured condition. Both received help from the PCR officials and were taken to the BJRM hospital. Pappu ultimately succumbed to the injuries he suffered and died at the hospital. The PW 1 was also admitted in the hospital.

3. The PW 1 lodged the First Information Report (FIR) No. 186 of 2008 on 16.08.2008 in connection with the incident as narrated above. The FIR No. 186 of 2008 dated 16.08.2008 reads thus:-

"F.I.R. N0.186/2008, DATED 16.08.08

Statement of Sushil Kumar S/o Shri Ram Das R/o H. No.190, Mukesh Nagar, Shahadara Gali No.3, near Badi Ramleela Ground, Delhi aged 42 years. Stated that I reside at the above mentioned address with family and I am a retail vegetable seller at nearby place of Metro Station. Today, on 16/8/08, I arrived for purchasing vrgetables at Azadpur Sabzimandi along with my friend Pappu S/o Shri Shokaran Singh R/o H.No.199, Bholanath Nagar, Near Railway Line, Sabzimandi Shahdara, Delhi.

We purchased some vegetables from D Block and we both were going towards main gate from D Block Azadpur Mandi. Then, at around 3-30 a.m., when, we both reached at D Block Corner main road Azadpur Mandi, then, four boys, surrounded us and out of them, two boys, took out amount of Rs.14,800/- placed in my pocket. I and my friend Pappu opposed it.

The four boys began to fight with us and out of them, two boys, by taking out some sharp weapon, attacked on the chest of Pappu and on my left hand and on my chest and on our screaming, the four boys, snatched the amount from us and ran away from the spot. The police personnel of PCR Van admitted us in BJRM Hospital.

The four boys, having common intention, have looted the amount from me and on raising objection by us, with intention to kill us, while attacking by sharp object, have injured us. I will identify if four boys may come in front of me. You

have recorded my statement as per my saying. Read over and affirmed to be correct. Hence, it is requested that legal action may kindly be taken against them."

[Emphasis supplied]

4. Upon the FIR being registered as referred to above, the investigation started. On 17.08.2008 pursuant to the secret information, the three co-accused, namely, Vijay alias Kalia, Pawan Kumar and Sharwan Kumar were arrested from the DDA park, South Azadpur, Delhi. The appellant convict herein came to be arrested on 20.08.2008.

5. In the course of the investigation, the investigating officer decided to hold the Test Identification Parade (TIP) of the accused persons. However, it is the case of the prosecution that the appellant convict herein declined to participate in the TIP on the ground that he was already shown to the witnesses in the police station.

6. It is also the case of the prosecution that after the arrest of the appellant convict, he made a statement that he would be in a position to show the weapon of offence i.e. the ice pick which he had placed in one corner of his house. The investigating officer is said to have discovered the weapon of offence i.e. the ice pick at the instance of the appellant convict herein.

7. Upon conclusion of the investigation, the charge sheet was filed for the offences enumerated above. The case was committed to the Court of Sessions as the offences were exclusively triable by the Court of Sessions. The appellant convict herein and the co-accused pleaded not guilty to the charge framed by the trial court and claimed to be tried.

8. In the course of trial, the prosecution led the following oral evidence:-

Sr. No.	**Name of the witness**	**Details of deposition**
PUBLIC WITNESSES/EYE WITNESSES		
1.	Sushil Kumar (PW1)	He is the eye witness to the incident and had also received injuries during the incident. He has deposed on the following aspects: 1. That on 16.08.2008 he along with his friend namely Pappu came to Azadpur Subzi Mandi to purchase vegetables.

		2. That they had purchased some vegetable from the D Block of Azadpur Subzi Mandi and were going towards the IN Gate/ Main gate and at about 3.30 AM when they were near the STD PCO on the D Block corner, they were encircled by four persons. 3. That two of the accused persons snatched Rs.14,800/- from his pocket. He has identified the accused Sharwan Kumar and Pawan to be the persons who had snatched money from him. 4. That when he resisted, two of the other accused persons who were armed with Ice pricks started attacking him and Pappu. He has identified the accused Vijay @ Kalia to be the person, who stabbed him and has also identified accused Mukesh as the person who was armed with ice prick. 5. That the accused persons Vijay and Mukesh caused injuries with the aid of ice picks on the person of Pappu and also to him on the left side of chest and abdomen in three places and also on his right hand. 6. That after snatching money the accused persons ran away. 7. That he had been gheroed by the accused persons, when he entrapped in the traffic of trucks and when he moved out of the traffic he saw that his companion Pappu was also lying in an injured condition on the road on which he called up PCR from his mobile phone bearing number 9210415252 and requested the public to take them to hospital. 8. That they were taken to a private nursing home but the guard at the Nursing Home did not let them enter the same on the pretext of police case and in the meantime, PCR officials reached there and took them to BJRM Hospital. 9. He has proved having given his statement to the police in BJRM Hospital which is Ex.PW1/A. 10.That the denomination of currency note was Ten

		currency notes of Rs.1000/-, Nine currency notes of Rs.500/- and Three currency notes of Rs.100/- each. 11. That he had identified the accused persons on 15.09.2008 in the Rohini court Complex when the accused persons had produced in the some court. 12. That his blood stained clothes were seized at the hospital which he identified in the court i.e. a white shirt with cuts on the left chest side which is Ex.P1 and a vest bearing a cut corresponding to the cut in the shirt which is Ex.P2. 13. That within a month of the occurrence he was again called at the hospital when his blood sample was taken by the doctor.
2.	Pradeep Kumar (PW4)	He is the brother of deceased Pappu and also the alleged eye witness to the incident. He has deposed on the following lines: 1. That on 16.08.2008 he along with his brother Pappu and one Sushil came to Azadpur Subzi Mandi for purchasing vegetable at around 3.00 a.m. and Pappu and Sushil went towards D Block for purchasing vegetables whereas he went towards onion shed. 2. That at around 3.30 AM he saw that four boys had surrounded his brother Pappu and friend Sushil and one of them had taken out the purse of his brother from his pocket and when his brother objected then the accused Mukesh and Vijay (whom the witness has correctly identified in the court by pointing out towards them but not by name), gave ice prick blow on various parts of his body and the other two accused who had surrounded his brother and Sushil had taken out the money. 3. He has identified the accused Pawan and Sarwan correctly by pointing out towards them in the court. 4. That accused gave ice prick blow to Sushil and Pappu on which he raised alarm and thereafter all the four accused ran away towards D Block on which somebody informed the police on No.100 and police came there and

		took his brother and Sushil to BJRM Hospital. 5. That he went to his house to inform about the incident and later on he came back at the spot when he came to know that his brother has already expired. 6. That deceased Pappu was having black colour purse and used to keep one small diary and some telephone diary, voter I card etc. 7. That after postmortem examination dead body of his brother was received vide receipt which is Ex.PW4/A. 8. That later on he identified the accused Pawan and Vijay in the judicial test Identification Parade in Rohini jail. He has proved his statement recorded during the Test identification Parade of accused Pawan and Vijay which are Ex.PW4/B and Ex.PW4/C respectively. 9. That subsequently he was again called in Tihar jail for the test Identification Parade of other two accused but they refused to participate in the same and thereafter he had not identified them anywhere before the police. 10. Some leading questions were put to the witness Pradeep by the Ld. Addl. PP for the State wherein he has admitted that on 15.09.2008 he had come to court complex Rohini and outside the court of Ld. MM Shri Prashant Kumar he had identified accused Sharvan and Mukesh also besides accused Pawan and Vijay to the investigating officer being the said four persons who were involved in the incident. 11. That in the incident accused Sharvan had blocked the way of his brother and Sushil and Mukesh had attacked them with ice prick.
MEDICAL EVIDENCE/WITNESSES		
3.	Dr. Gopal (PW3)	This witness has proved that on 16.08.2008 one patient Sushil S/o Ramdass aged 42 years, male was brought to the BJRM hospital with the alleged history of physical assault and was examined by Dr. Nadeem Sr. Resident under his supervision. He has proved the MLC of injured Sushil which is Ex.PW3/A.

		He has also proved that on the same day one patient Pappu S/o Sobran Singh, aged 45 years male was also brought to hospital with the alleged history of physical assault and was also examined by Dr. Nadeem under his supervision vide MLC which is Ex.PW3/C.
4.	Dr. R.P. Singh (PW12)	This witness has proved having conducted the postmortem examination on the dead body of deceased Pappu on 16.8.2008 which report is Ex.PW12/A. He has also proved that the cause of death in this case was shock due to cardiac temponade as a result of injuries to great vessels produced by pointed stabbing object and the Injury no.2 is ante-mortem and sufficient to cause death in ordinary course of nature and time since death is about eight hours. He has also proved that on 22.10.2008 on an application moved before him by Inspector Ram Chander, he gave his opinion that the injuries mentioned in the postmortem report no. 822/08 dated 16.8.2008 on the body of Pappu S/o Shobha Ram are possible by the weapons produced before him or by similar such type of weapons, which opinion is Ex.PW12/B. He has proved that the sketch prepared by him which are Ex.PW12/C & PW12/D. He has correctly identified the ice pricks examined by him which are Ex.P-4 and Ex.P-5.
5.	Dr. Rohit Kumar (PW15)	This witness has proved the death certificate of Pappu issued by BJRM hospital which is Ex.PW15/A and Death Summary which is Ex.PW15/B
POLICE/OFFICIAL WITNESSES (Proving Investigations)		
6.	HC Raghubir Singh (PW2)	He is a formal witness being the Duty Officer who has proved having received the rukka on the intervening night of 15/16.08.2008 at around 6 AM which was brought by ASI Surender and sent by SI Arvind Pratap Singh, on the basis of which rukka he got an FIR no.186/08, under Section 394/ 397/307/34 IPC registered by dictating it to the computer operator, print out of which FIR is Ex.PW2/A. He has also proved having made an endorsement on the rukka which is Ex.PW2/B and having recorded the DD No.31A copy of which is Ex.PW2/C.
7.	HC Mahender	He is also a formal witness being the photographer who has proved having taken seven photographs of the place of

<table>
<tr><td></td><td>(PW5)</td><td>incident on the direction of the investigating officer the negatives of which are Ex.PW5/A (1 to 7) and the corresponding positive photographs are Ex.PW5/B (1 to 7).</td></tr>
<tr><td>8.</td><td>SI Satpal Singh (PW6)</td><td>This witness is the Crime Team Incharge who has proved having inspected the spot of incident on 16.08.2008 and having prepared his report which is Ex.PW16/A which he handed over to the Investigating Officer.</td></tr>
<tr><td>9.</td><td>HC Prahlad Singh (PW7)</td><td>He is the formal witness being the MHCM who has proved having received the various case properties from the Investigating Officer and later on sent same to FSL. He has placed on record the photocopies of the various entries in Register No. 19 and the RC which are Ex.PW7/A to Ex.PW7/J. He has proved that the sealed pullanda remained intact during his custody and he did not interfere with the same nor allowed anyone to interfere with it.</td></tr>
<tr><td>10.</td><td>SI Manohar Lal (PW8)</td><td>He is the Draftsman who has proved having prepared the scaled site plan of the spot of incident which site plan is Ex.PW8/A.</td></tr>
<tr><td>11.</td><td>Ct. Rakesh (PW9)</td><td>He is a formal witness who has proved that on 27.10.2008 he took six sealed pullandas and four sample seals along with FSL Form for depositing in FSL Rohini vide RC No.83/21/08. He has proved that the sealed pullanda remained intact during his custody and he did not interfere with the same nor allowed anyone to interfere with it.</td></tr>
<tr><td>12.</td><td>SI Arvind Pratap Singh (PW10)</td><td>He is the initial investigating officer who has proved the following documents:
<table>
<tr><td>Ex.PW10/A</td><td>DD No. 29A</td></tr>
<tr><td>Ex.PW10/B</td><td>Rukka prepared by him</td></tr>
<tr><td>Ex.PW10/C</td><td>Seizure of pullanda containing the clothes of injured Sushil.</td></tr>
<tr><td>Ex.PW10/D</td><td>Arrest memo of accused Vijay @ Kalia</td></tr>
<tr><td>Ex.PW10/E</td><td>Arrest memo of accused Pawan</td></tr>
<tr><td>Ex.PW10/F</td><td>Arrest memo of accused Sharwan</td></tr>
<tr><td>Ex.PW10/G</td><td>Personal search memo of accused Vijay</td></tr>
<tr><td>Ex.PW10/H</td><td>Personal search memo of accused Pawan</td></tr>
<tr><td>Ex.PW10/J</td><td>Personal search memo of accused Sharwan</td></tr>
<tr><td>Ex.PW10/K</td><td>Disclosure statement of accused Vijay</td></tr>
<tr><td>Ex.PW10/L</td><td>Disclosure statement of accused Pawan</td></tr>
<tr><td>Ex.PW10/M</td><td>Disclosure statement of accused Sharwan</td></tr>
<tr><td>Ex.PW10/N</td><td>Pointing out memo</td></tr>
</table></td></tr>
</table>

<table>
<tr><td></td><td></td><td>
<table>
<tr><td>Ex.PW10/O</td><td>Seizure of Purse along with its belonging got recovered by the accused Vijay @ Kalia</td></tr>
<tr><td>Ex.PW10/P</td><td>Sketch of the ice prick got recovered by the accused Vijay @ Kalia</td></tr>
<tr><td>Ex.PW10/Q</td><td>Seizure of the ice prick</td></tr>
<tr><td>Ex.PW10/R</td><td>Arrest memo of accused Mukesh</td></tr>
<tr><td>Ex.PW10/S</td><td>Personal search memo of accused Mukesh</td></tr>
<tr><td>Ex.PW10/T</td><td>Disclosure statement of accused Mukesh</td></tr>
<tr><td>Ex.PW10/U</td><td>Pointing out memo</td></tr>
<tr><td>Ex.PW10/V</td><td>Seizure of currency notes recovered by the accused Mukesh</td></tr>
<tr><td>Ex.PW10/W</td><td>Sketch of the ice prick got recovered by the accused Mukesh</td></tr>
<tr><td>Ex.PW10/X</td><td>Seizure of ice prick got recovered by the accused Mukesh</td></tr>
</table>
</td></tr>
<tr><td>13.</td><td>SI Kishan Lal (PW11)</td><td>This witness has proved having got conducted the Test Identification Parade of the accused persons during which they have refused to participate. He has also proved having got the witness Sushil Kumar medically examined in BJRM Hospital and the seizure of blood samples of the accused vide memo Ex.PW11/A.</td></tr>
<tr><td>14.</td><td>Inspector R.C. Sangwan (PW13)</td><td>He is the subsequent investigating officer who has proved the various investigation proceedings conducted by him. Apart from the document proved by SI Arvind Pratap he has proved the following documents:
<table>
<tr><td>Ex.PW13/A-1 to A-7</td><td>Photographs of the spot</td></tr>
<tr><td>Ex.PW13/B</td><td>Site plan</td></tr>
<tr><td>Ex.PW13/C</td><td>Brief Facts</td></tr>
<tr><td>Ex.PW13/D</td><td>Form 25.35</td></tr>
<tr><td>Ex.PW13/E & Ex.PW13/F</td><td>Dead body identification statement of Pradeep and Bhagwati</td></tr>
<tr><td>Ex.PW13/G</td><td>Request for postmortem</td></tr>
<tr><td>Ex.PW13/H</td><td>Seizure of pullanda containing clothes of the deceased</td></tr>
<tr><td>Ex.PW13/J</td><td>Application for seeking subsequent opinion</td></tr>
<tr><td>Ex.PX FSL</td><td>result (not disputed by the Ld. counsels for the accused persons)</td></tr>
</table>
</td></tr>
<tr><td>15.</td><td>HC Kanwarpal</td><td>He was the PCR van Incharge and has deposed that:</td></tr>
</table>

<table>
<tr><td></td><td>(PW14)</td><td>1. In the intervening night of 15/16.8.2008 at about 3:50 am they received the information that two persons have been stabbed at gate no.2 Azadpur Mandi.

2. Thereafter he along with staff reached gate no.2 Azadpur Mandi from where he came to know that the incident had taken place at DBlock Corner near STD booth and thereafter, they reached there and found two persons namely Sushil Kumar and Pappu in injured conditions.

3. They took the injured to BJRM Hospital and got them admitted there for treatment.</td></tr>
<tr><td>16.</td><td>Sh. Rajesh Kumar Goel, Ld. ACMM</td><td>This witness has proved having conducted the Test, Ld. ACMM Identification Parade proceedings of accused persons namely Sharwan Kumar, Vijay @ Kalia and Pawan Kumar and Mukesh. He has proved the following documents:
<table>
<tr><td>Ex.PW13/A-1 to A-7</td><td>Photographs of the spot</td></tr>
<tr><td>Ex.PW13/B</td><td>Site plan</td></tr>
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</table></td></tr>
</table>

9. Upon conclusion of the recording of evidence, the further statement of the appellant convict under Section 313 of the Code of Criminal Procedure, 1973 (CrPC) was recorded in which the appellant convict stated that he had refused for the TIP as he was already shown to the witnesses by the police. He further stated that he was innocent and had been falsely implicated in the case. He was picked up from the house of his in-laws and was detained in the police station for three days. He stated that he had no idea about the case.

10. Upon appreciation of the oral as well as documentary evidence on record, the Trial Court came to the conclusion that the appellant convict herein and the co-accused, namely, Vijay alias Kalia were guilty of the offences punishable under

Sections 302, 392, 394 and 397 resply read with Section 34 of the IPC, whereas the other two co-accused, namely, Pawan Kumar and Sharwan Kumar were held guilty of the offence punishable under Section 392 read with Section 34 of the IPC.

11. The order of sentence as awarded to the appellant convict herein by the Trial Court is reproduced as under:-

"The convict Mukesh Singh is sentenced to Rigorous Imprisonment for life and fine for a sum of Rs.25,000/- for the offence under Section 397 read with 302 Indian Penal Code. In default of payment of fine the convict shall further undergo Simple Imprisonment for a period of three months. The total fine of Rs.25,000/-, if recovered, shall be given to the family of the deceased Pappu as compensation under Section 357 Cr.P.C. Further the convict is sentenced to Rigorous Imprisonment for a period of Five years and fine of Rs. 2,000/- for the offence under Section 392 read with Section 394 Indian Penal Code. In default of payment of fine the convict shall further undergo Simple Imprisonment for a period of one week."

12. The appellant convict being aggrieved by the judgment of conviction and order on sentence passed by the Trial Court went in appeal before the High Court of Delhi. The High Court upon re-appreciation of the entire evidence on record, dismissed the appeal and thereby affirmed the judgment of conviction and order on sentence passed by the Trial Court.

13. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. Mr. Jayesh Gaurav, the learned counsel appearing for the appellant convict vehemently submitted that the Courts below committed a serious error in holding that the prosecution was successful in establishing its case against the appellant convict beyond reasonable doubt. He submitted that the conviction of the appellant convict is essentially based on the evidence of the PW 1 - Sushil Kumar. According to the learned counsel, there is no other evidence on record to connect the appellant convict with the alleged crime.

15. The learned counsel laid much stress on the fact that the case of the prosecution is one of robbery and murder. The time of the alleged incident is early in the morning at 3.30. He argued that although the incident occurred at a vegetable market, yet there were no sufficient lights in that area to enable the assailants to easily identify or to put it in other words, the PW 1 as an injured

eye witness must not have had the occasion to even have a bare glimpse of the appellant.

16. It was argued that the investigating officer had arranged a TIP but the appellant convict had declined to participate in the same as he had already been shown to the witnesses in the police station. He further submitted that the PW 4, namely, Pradeep Kumar also claims to be an eye witness to the incident. However, both the Trial Court and the High Court disbelieved his oral evidence as his presence at the place of occurrence was found to be doubtful.

Therefore, according to the learned counsel, the entire case hinges on the evidence of a solitary eye witness i.e. PW 1 Sushil Kumar. He argued that PW 1 Sushil Kumar identified the appellant convict herein and other three co-accused for the first time before the Trial Court. This identification for the first time before the Trial Court could not have been relied upon being a weak piece of evidence to hold the appellant convict guilty of the offences charged with.

17. The learned counsel vehemently submitted that the Courts below ought not to have drawn any adverse inference against the appellant convict for not having participated in the TIP. According to the learned counsel, the TIP is a part of the police investigation and the accused cannot be compelled to submit himself to the TIP, more particularly if the case of the accused is that he was already shown to the witness before the TIP could be undertaken. In other words, the submission of the learned counsel is that if the identification of the appellant convict for the first time before the Trial Court is eschewed from consideration, then there is no other evidence to connect him with the alleged act. The learned counsel submitted that the prosecution seeks to rely upon the discovery of the weapon of offence i.e. the ice pick and an amount of Rs. 7,000/- of the denomination of one thousand from the house of the appellant convict, but it is not a discovery in the eye of law as the same is not in conformity with Section 27 of the Evidence Act, 1872 (for short, 'the Evidence Act'). 18. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the appellant convict be acquitted of all the charges.

SUBMISSIONS ON BEHALF OF THE STATE (NCT OF DELHI)

19. On the other hand, this appeal was vehemently opposed by Mr. K.M. Nataraj, the learned Additional Solicitor General appearing for the State (NCT of Delhi). He submitted that no error, not to speak of any error of law, could be said to have been committed by the Courts below in holding the appellant convict guilty of the offences he was charged with.

The learned ASG submitted that the Courts below were justified in drawing adverse inference against the appellant convict for having declined to participate in the TIP. It was argued that once having declined to participate in the TIP, the accused thereafter cannot object or say anything against as regards the evidentiary value of the identification by the eye witnesses of the accused persons before the Trial Court.

He further argued that the identification of the accused by the eye witnesses before the Trial Court constitutes substantive evidence and, if TIP is carried out in the course of the investigation, then the proceedings of such TIP would corroborate the substantive evidence of identification before the Court. The learned ASG submitted that the Courts below have believed and found the identification of the accused appellant for the first time before the Trial Court, absolutely reliable and trustworthy. This being a question of fact, the same may not be disturbed by this Court in exercise of its jurisdiction under Article 136 of the Constitution.

20. The learned ASG further submitted that over and above the evidence of identification, there is evidence of discovery of the currency notes of Rs. 7,000/- of the denomination of one thousand as well as the weapon of offence i.e. the ice pick from the house of the appellant convict. This, according to the learned Additional Solicitor General, is one additional incriminating circumstance against the appellant convict pointing towards his guilt.

21. In such circumstances referred to above, the learned ASG prayed that there being no merit in this appeal, the same may be dismissed.

ANALYSIS

22. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:-

(i) Whether the High Court committed any error in dismissing the appeal filed by the appellant convict and thereby affirming the judgment and order of conviction and sentence passed by the Trial Court for the alleged offences?

(ii) Whether an accused can decline to participate in the TIP on the ground that he was already shown to the eye witnesses prior to the conduct of the TIP and in such circumstances, the TIP would be nothing short of creating evidence against him?

(iii) Can an accused decline to participate in the TIP that the investigating officer may propose to hold in the course of investigation on the ground that no person

accused of any offence shall be compelled to be a witness against himself? To put it in other words, can an accused decline to subject himself to the TIP on the ground that the same violates his fundamental right under Article 20(3) of the Constitution?

(iv) To what extent the Court can draw an adverse inference against the accused for having refused to participate in the TIP? Whether by virtue of drawing such adverse inference, is it open for the Court to accept the substantive evidence of identification before the Trial Court without any corroboration to such identification?

(v) What is the true purport of Section 54A of the CrPC?

(vi) Whether the Courts below were justified in placing reliance on the discovery of weapon of offence and the currency notes from the residence of the appellant convict as one of the incriminating circumstances against the appellant convict?

Whether TIP violates the fundamental right of an accused under Article 20(3) of the Constitution

23. Article 20(3) of the Constitution reads thus:-

"Article 20(3):- No person accused of any offence shall be compelled to be a witness against himself."

24. The true purport of clause (3) of Article 20 of the Constitution referred to above was laid down by this Court in the case of M.P. Sharma v. Satish Chandra, AIR 1954 SC 300. Jagannadhadas J., delivering the judgment of the Court, observed:-

"Indeed, every positive volitional act, which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part."

25. We are conscious of the fact that M.P. Sharma (supra) referred to above came to be overruled in K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, to the extent that it had observed that privacy is not a right guaranteed by the Indian Constitution. It was held in M.P. Sharma (supra) that in absence of a provision like the Fourth Amendment to the U.S. Constitution, a right to privacy could not be read into the Indian Constitution. In the case on hand, we are not concerned with the right of privacy of an accused when it comes to putting him to TIP. What has been ruled in K.S. Puttaswamy (supra) in context of Article 21, is that

an invasion of privacy must be fulfilled on the basis of a law which stipulates a procedure which is fair, just and reasonable.

26. What is prohibited by Article 20(3) of the Constitution is procuring by compulsion of the positive volitional evidentiary acts of an accused. It is true that an accused may be said to be compelled to attend a test identification parade, but this compulsion does not involve any positive volitional evidentiary act. His mere attendance or the exhibition of his body at a test identification parade even though compelled, does not result in any evidentiary act until he is identified by some other agency.

The identification of him by a witness is not his act, even though his body is exhibited for the purpose. His compelled attendance at a test identification parade is comparatively remote to the final evidence and cannot be said by itself to furnish any positive volitional evidentiary act. [See : Peare Lal Show v. The State, AIR 1961 Cal 531]

27. In Peare Lal Show (supra), Mitter, J. of the Calcutta High Court in his separate judgment observed thus:-

"5. True, we are to construe Article 20(3), but the language of Article 20(3) is as to the material part tolidem verbis the 5th Amendment of the American Constitution. Dealing with the point, Holmes, J. in Holt v. United States, (1910) 218 US 245, observed:

"A question arose as to whether a blouse belonged to the prisoner. A witness testified that the prisoner put it on and it fitted him. It is objected that he did this under the same duress that made his statements inadmissible, and that it should be excluded for the same reasons. But the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material.

The objection in principle would forbid a jury to look at a prisoner and compare his features with a photograph in proof. Moreover, we need not consider how far a court would go in compelling a man to exhibit himself. For when he is exhibited, whether voluntarily or by order, and even if the order goes too far, the evidence, if material, is competent".

6. In the same strain are to be found comments in Wigmore on Evidence, Volume VIII (3rd Edition), Section 2263 at page 363. The emphasis is upon the testimonial status of the accused and not upon any compulsion which might be a step in obtaining the final evidence against the man. Dealing with, this topic, Wigmore observed:

"Such, finally, is the practical requirement that follows from the necessity of recognizing other unquestioned methods of procuring evidence: for if the privilege extended beyond these limits, and protected an accused otherwise than in his strictly testimonial status, - if, in other words, it created inviolability not only for his physical control of his own vocal utterances, but also for his physical control in whatever form exercised then it would be possible for a guilty person to shut himself up in his house, with all the tools and indicia of his crime, and defy the authority of the law to employ in evidence anything that might be obtained by forcibly overthrowing his possession and compelling the surrender of the evidential articles, a clear "reductio ad absurdum"."

7. The foregoing principles were embodied in the judgement of the Supreme Court in M.P. Sharma v. Satish Chandra, AIR 1954 SC 300, and the statement of the law set out earlier in this judgment furnishes, to my mind, the real test for determining whether any particular accused is compelled to be a witness against himself. As I have pointed out, the identification of an accused at a test identification parade by someone is not the accused's own act. His mere attendance or the exhibition of his body cannot be regarded as furnishing any positive volitional evidentiary act. That being the position, the impugned order cannot be regarded as violative of Article 20(3) of the Constitution."

[Emphasis supplied]

28. Bhattacharya, J. by his separate but concurring judgment observed thus:-

"10. In M.P. Sharma v. Satish Chandra, AIR 1954 SC 300, it is pointed out that the guarantee under Article 20(3) of the Constitution is available to the person against whom a first information report has been recorded. As was observed in Collector of Customs v. Calcutta Motor and Cycle Co., AIR 1958 Cal 682, no formal complaint is necessary and even if a person has been named as one who committed an offence, particularly by officers who are competent to launch a prosecution against him, he has been accused of an offence within the meaning of Article 20(3) and he can claim protection under that provision of law and, therefore, the extortion of any evidentiary material even at the stage of investigation, as in the present case, which may aid in the making out of a case against him may be within the meaning of condemnation of the Article. After the decision of the Supreme Court in Sharma's case, referred to above, it cannot be said that the guarantee in Article 20(3) is confined to the oral evidence of the accused. Their Lordships pointedly observed:

"We can see no reason to confine the contents of the constitutional guarantee to this barely literal import. So to limit it would be to rob guarantee of its substantial purpose and to miss the substance for the sum as stated in certain

decisions. A person can be a witness not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness or the like. To be a witness is nothing more than to furnish evidence and such evidence can be furnished through the lips or by production of a thing or of a document or any other means".

11. The Magistrate has directed the production of the petitioner in a test identification parade. The petitioner has objected to this procedure. Consequently, there is an element of coercion and therefore no question of acquiescence arises. This kind of objection may be raised, in my opinion, by an accused person not only at the time of passing of such an order by a Magistrate orally or in writing, personally or through his lawyer, but also at the time of actual collection of his evidence which, according to the accused, may be self-incriminatory in character. The objection of the petitioner is in time. There is, therefore, no technical bar.

14. Apart from the question of coercion as opposed to acquiescence the fundamental idea stressed is 'positive volitional evidentiary act'. This is distinct from 'negative attitude of silence or submission'. It is clear that the Supreme Court did not lay down only the negative principle of silence or acquiescence. What stands out prominently in the judgment is 'a positive volitional evidentiary act'.

If coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the Constitutional guarantee will step in to protect him. This was the view of this Court in the case of Farid Ahmed v. The State, AIR 1960 Cal 32, in connection with a case in which the Magistrate allowed an investigating officer to take specimen writing and signatures of the accused.

But if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have no application. In so far as the above ratio decidendi laid down by the Supreme Court was not kept in view fully in Bhaluka Behara v. The State, AIR 1957 Orissa 172; Brij Bhusan v. The State, AIR 1957 Madh Pra 106; Nazir Singh v. The State, AIR 1959 Madh Pra 411, or Sailendra Nath v. The State, AIR 1955 Cal 247, or Ram Swarup v. The State, AIR 1958 Cal 119, we would with due deference dissent from the views in these decisions.

In Bhaluka Behara v. The State, the Orissa High Court seems to have been of the opinion that any direction asking the accused to give his thumb impression would amount to asking him to furnish evidence which is prohibited under Article 20(3). In this case, however, there was no element of coercion or

compulsion and no objection had been raised by the accused persons at the time of taking the thumb impression. In Brij Bhusan v.

The State, the Madhya Pradesh High Court held that Section 5 of the Madhya Bharat Identification of Prisoners Act, in so far as it conferred powers on the Magistrate to direct an accused person to give his thumb impression, specimen writing and signature for comparison to be used against him in a trial, was repugnant to Article 20(3) of the Constitution and was, therefore, void. In Sailendra Nath v. The State and Ram Swarup v. The State it was pointed out that taking specimen writing did not offend Article 20(3) of the Constitution, - a view that was dissented from in Farid Ahmed v. The State.

18. It will appear from People v. Swallow, 165 New York Supp. 915, that the rule against selfincrimination is not violated when the accused is compelled to exhibit himself or part of his body to the court or to allow a record of his finger prints to be taken. In State v. Ah Chuey, (1879) 33 Am Re 530, the Court held that an order directing the accused to exhibit certain tattoo marks On his person would not amount to an infringement of the rule against selfincrimination.

19. Negativing the contention that taking of finger prints is a violation of the privilege against selfincrimination, Willis in Constitutional Law of the United States (1936 Edition, page 522) observed inter alia:

"The accused does not exercise a volition or give oral testimony. He is passive. He is not giving testimony about his body, but is giving his body". Speaking of inspection of bodily features by the Tribunal or by witnesses, Wigmore in Evidence, Vol. VIII, page 375, Section 2265 comments that what is obtained from the accused by such action is not testimony about his body but his body itself. This aspect, I cannot help repeating, was also stressed by Holmes, J. in the case of (1910) 218 US 245 by observing:

"But the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material".

20. If, as we find, taking of thumb impression is not violative of Article 20(3), with greater force the reasons set out above mutatis mutandis will be applicable to a case directing the production of the accused in a test identification parade, apart from such consideration as interposition of a magisterial order. It is not the accused who is called upon to testify against himself but somebody else on seeing him and others now in the parade may have something to say later on.

The accused does not produce any evidence or perform any evidentiary act. It may be a positive act and even a volitional act, but only to a limited extent, when he walks to the place where the test identification parade is to be held, as has been urged by Mr. Dutt, but certainly it is not his evidentiary act. The view that we take in the instant case is in full accord with the test of positive volitional evidentiary act laid down by the Supreme Court in the case of M.P. Sharma v. Satish Chandra, AIR 1954 SC 300."

[Emphasis supplied]

SECTION 54A OF THE CODE OF CRIMINAL PROCEDURE, 1973

29. In the aforesaid context, we shall now look into Section 54A of the CrPC. Section 54A reads thus:-

"Section 54A. Identification of person arrested.-

Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with: Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

30. The newly inserted Section 54A provides for the identification of the arrested person where it is considered necessary for the purpose of investigation by the officer-incharge of a police station. The said Section empowers the court, on the request of the officer-in-charge of a police station, to direct for placing the accused at test identification parade for identification by any person or persons in such manner as the court may deem fit. It is provided in the "objects and reasons":-

"This clause seeks to insert a new section 54A to empower the Court to direct specifically the holding of the identification of the arrested person at the request of the prosecution."

31. **First Proviso: Identifier mentally or physically disabled.-**

When the person identifying the suspect is mentally or physically disabled, the process of identification must be under the supervision of a Judicial Magistrate. This mandatory requirement of law has been incorporated in the statute by the amending Act 13 of 2013 w.e.f. 03.02.2013. It is the duty of the Magistrate supervising TIP to take appropriate steps to ensure that such identifier identifies the suspect using methods to which he was comfortable with. The Magistrate cannot discharge his duty lightly or in a slip-shod manner.

32. **Second Proviso: Identification when suspect is mentally or physically disabled. -**

The second proviso to Section 54A has been inserted in the statute by the amending Act 13 of 2013 w.e.f. 03.02.2013. It relates to identification of a suspect who is mentally or physically disabled. It appears that the requirements specified in the first proviso are not attracted for the second proviso. But it is obligatory that the process of identification of the person arrested shall have to be videographed. Unless this requirement is complied with, the identification shall fall to the ground and no reliance can be placed on it at any stage of the trial.

33. This Section is restricted to identification of persons only. So this Section has no application where the question of identification of articles arises. TIP is part of investigation and the investigation of a case is to be conducted by the investigating agency and it is their statutory prerogatives. There was no statutory provision authorizing the accused to pray for placing him in the test parade. Some High Courts approved this right, while some other High Courts took a contrary view.

In State of Uttar Pradesh v. Rajju, AIR 1971 SC 708, this Court observed, "If the accused felt that the witnesses would not be able to identify them-they should have requested for an identification parade." This observation indirectly approves the right to ask for test parade by the accused. In another case, the accused voluntarily accepted the risk of being identified in a parade but he was denied that opportunity. This Court observed that this was an important point in his favour - Shri Ram v. State of U.P., (1975) 3 SCC 495.

34. This provision for giving directions by the Court as to the manner in which test parade is to be conducted may be viewed as treating the Court as part of the investigating agency. Without having any provision like Section 54A there has been so long no difficulty in holding test identification parades. There are plenty

of judicial pronouncements to show the safeguards to be followed while holding identification parade.

35. Thus we are of the view that after the introduction of Section 54A in the CrPC referred to above, an accused is under an obligation to stand for identification parade. An accused cannot resist subjecting himself to the TIP on the ground that he cannot be forced or coerced for the same. If the coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the constitutional guarantee as enshrined under Article 20(3) of the Constitution will step in to protect him.

However, if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have no application. The accused while subjecting himself to the TIP does not produce any evidence or perform any evidentiary act. As explained very succinctly by the learned Judges of the Calcutta High Court as above, it may be a positive act and even a volitional act, but only to a limited extent, when the accused is brought to the place where the TIP is to be held. It is certainly not his evidentiary act.

The accused concerned may have a legitimate ground to resist facing the TIP saying that the witnesses had a chance to see him either at the police station or in the Court, as the case may be, however, on such ground alone he cannot refuse to face the TIP. It is always open for the accused to raise any legal ground available to him relating to the legitimacy of the TIP or the evidentiary value of the same in the course of the trial. However, the accused cannot decline or refuse to join the TIP.

36. Thus, our aforesaid discussion answers two of the six questions framed by us i.e. (i) whether an accused can decline to submit himself to the TIP on the ground that the same is violative of Article 20(3) of the Constitution and (ii) the true purport of any order that the Magistrate may pass in exercise of powers under Section 54A of the CrPC directing any person to subject himself or herself to the TIP.

IMPORTANCE AND EVIDENTIARY VALUE OF TIP

37. Facts which establish the identity of any person or thing whose identity is relevant are, by virtue of Section 9 of the Evidence Act, always relevant. The term 'identification' means proving that a person, subject or article before the Court is the very same that he or it is alleged, charged or reputed to be. Identification is almost always a matter of opinion or belief. 38. The

identification has by itself no independent value. As stated by Viscount Haldane L. C. in Rex v. Christie, (1914) A. C. 545 (551) (E):-

"its relevancy is to show that the witness "was able to identify at the time and to exclude the idea that the identification of the prisoner in the dock was an afterthought or a mistake."

39. Lord Moulton (with whom Viscount Haldane L. J. agreed) said at page 558 :

"Identification is an act of the mind, and the primary evidence of what was passing in the mind of a man is his own testimony, where it can be obtained."

40. During the investigation of a crime committed by persons unknown to the witnesses, the persons arrested on suspicion of their complicity in the crime have got to be confronted by the investigating authority with the witnesses so that they can find out whether they are the persons who committed the crime or not. Before the investigating authorities send up a case to Court, they must be satisfied that the persons arrested by them are the persons accused of having committed the crime.

41. If they were known to the witnesses, the witnesses would have given their names and that would have established their identity, but when they were not known, their identity could be established only if the witnesses on seeing them say that they are the offenders. Since it would be very easy for a witness who has little regard for truth, to say that the person arrested on suspicion was the offender, he is confronted with the suspect mixed with innocent men. If he picks him out, that would add to the credibility of his statement that he was the offender. This is the primary object of identification proceeding.

42. Phipson writes in his Law of Evidence, Edn. 8, p. 392:-

"In criminal cases it is improper to identify the accused only when in the dock; the police should place him, beforehand, with others, and ask the witness to pick him out."

43. A three-Judge Bench of this Court in the case of Rajesh v. State of Haryana, (2021) 1 SCC 118, had the occasion to consider (i) the purpose of conducting a TIP, (ii) the source of the authority of the investigator to do so, (iii) the manner in which these proceedings should be conducted, (iv) the weight to be ascribed to identification in the course of a TIP, and (v) the circumstances in which an adverse inference can be drawn against the accused who refuses to undergo the process. After due consideration of the aforesaid, this Court summarised the principles as follows:-

"43.1 The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime.

43.2 There is no specific provision either in CrPC or the Evidence Act, 1872 ("the Evidence Act") which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP.

43.3 Identification parades are governed in that context by the provision of Section 162 CrPC.

43.4 A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held.

43.5 The identification of the accused in court constitutes substantive evidence.

43.6 Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act.

43.7 A TIP may lend corroboration to the identification of the witness in court, if so required.

43.8 As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration.

43.9 Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible.

43.10 The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case.

43.11 Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence.

43.12 The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused."

44. In the very same judgment referred to above, this Court observed as under:-

"46. In this backdrop, the contention of the appellants that the refusal to undergo a TIP is borne out by the fact that Sandeep and Rajesh were known to each other prior to the occurrence and that PW 4, who is a prime eyewitness, had seen Rajesh when he would attend the court during the course of the hearings, cannot be brushed aside. Consequently, in a case, such as the present, the Court would be circumspect about drawing an adverse inference from the facts, as they have emerged.

In any event, as we have noticed, the identification in the course of a TIP is intended to lend assurance to the identity of the accused. The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade. In the present case, we have already indicated that the presence of the alleged eyewitnesses PW 4 and PW 5 at the scene of the occurrence is seriously in doubt.

The ballistics evidence connecting the empty cartridges and the bullets recovered from the body of the deceased with an alleged weapon of offence is contradictory and suffers from serious infirmities. Hence, in this backdrop, a refusal to undergo a TIP assumes secondary importance, if at all, and cannot survive independently in the absence of it being a substantive piece of evidence."

[Emphasis supplied]

45. In Munshi Singh Gautam (D) & Ors. v. State of M.P., reported in (2005) 9 SCC 631, this Court observed as under:-

"16. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity.

In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings

are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act.

It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court.

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings.

This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade.

They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

46. In Ramanbhai Naranbhai Patel v. State of Gujarat, (2000) 1 SCC 358, after considering the earlier decisions this, Court observed:- (SCC p. 369, para 20)

"20. It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances wherein the police is said to have given the names of the accused to the witnesses. Under these circumstances, identification of such a named accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied upon an earlier decision of this Court in the case of State (Delhi Admn.) v. V.C. Shukla [(1980) 2 SCC 665 : 1980 SCC (Cri) 561 : AIR 1980 SC 1382] wherein also Fazal Ali, J., speaking for a three-Judge Bench made similar observations in this regard.

In that case the evidence of the witness in the Court and his identifying the accused only in the Court without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the evidence deposed to by the said eyewitnesses. It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case.

It is, of course, true as submitted by learned counsel for the appellants that the later decisions of this Court in the case of Rajesh Govind Jagesha v. State of Maharashtra [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452 : AIR 2000 SC 160] and State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916] had not considered the aforesaid three-Judge Bench decisions of this Court. However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier three-Judge Bench judgments on the facts and circumstances examined by the Court while rendering these decisions.

But even assuming as submitted by learned counsel for the appellants that the evidence of these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight. They could not be said to be interested in roping in innocent persons by shielding the real accused who had assaulted them."

[Emphasis supplied]

47. In Malkhansingh v. State of M.P., (2003) 5 SCC 746, a three-Judge Bench of this Court considered the evidentiary value of the identification of the appellant in that case by the prosecutrix in the Court without holding a TIP in the course of the investigation. It was argued before the Court that the identification in Court not preceded by a TIP is of no evidentiary value. On the other hand, it was argued on behalf of the prosecution that the substantive evidence is the evidence of identification in Court and, therefore, the value to be attached to such identification depends on facts and circumstances of each case. The Court ultimately answered as under:-

"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character.

The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings.

This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade.

They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

[Emphasis supplied]

48. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to

the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine.

49. In Prem Singh v. State of Haryana, (2011) 9 SCC 689, a two-Judge Bench of this Court expressed conflicting opinion, H.S. Bedi, J. observed in para 19 as under:-

"19. It must be borne in mind that it is impossible for an accused to prove by positive evidence that he had been shown to a witness prior to the identification parade but if suspicion can be raised by the defence that this could have happened, no adverse inference can be drawn against the accused in such a case."

50. Gyan Sudha Misra, J. while disagreeing with H.S. Bedi, J. took the view that it is not open to accused to refuse to participate in the TIP. The learned Judge observed in para 27 as under:-

"27. In my considered view, it was not open to the accused to refuse to participate in the TI parade nor was it a correct legal approach for the prosecution to accept refusal of the accused to participate in the test identification parade.

If the appellant-accused had reason to do so, specially on the plea that he had been shown to the eyewitnesses in advance, the value and admissibility of the evidence of TI parade could have been assailed by the defence at the stage of trial in order to demolish the value of the test identification parade. But merely on account of the objection of the accused, he could not have been permitted to decline from participating in the test identification parade from which adverse inference can surely be drawn against him at least in order to corroborate the prosecution case."

[Emphasis supplied]

51. Ultimately, the matter was heard by a three-Judge Bench in the case titled Prem Singh v. State of Haryana, (2013) 14 SCC 88, and the appeal filed by the convict was allowed. However, we do not find any discussion in the said judgment as regards the issue whether the accused can refuse to participate in the TIP. This Court on its own looked into the entire evidence and ultimately acquitted the appellant accused.

52. In Munna v. State (NCT of Delhi), (2003) 10 SCC 599, this Court took the view that if an accused himself refused to participate in the TIP, then it is not

open to him to contend that the statement of the witnesses made for the first time should not be relied upon. The Court held as under:-

"10. In a case where an accused himself refuses to participate in a test identification parade, it is not open to him to contend that the statement of the eyewitnesses made for the first time in court, wherein they specifically point towards him as a person who had taken part in the commission of the crime, should not be relied upon.

This plea is available provided the prosecution is itself responsible for not holding a test identification parade. However, in a case where the accused himself declines to participate in a test identification parade, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in court during the course of the trial of the case."

[Emphasis supplied]

It is relevant to note that in the aforesaid decision, the accused in his statement under Section 313 CrPC had not stated that he had been shown to the witnesses at the police station. In the case on hand, it is the case of the appellant convict that he along with other co-accused was shown to the witnesses not only prior to the conduct of the TIP but even before the identification in the Court.

53. In Ravindra Laxman Mahadik v. State of Maharashtra, 1997 CriLJ 3833, in a case involving Section 395 of the CrPC, it was opined:-

"10. I find merit in Mr. Mooman's submission that it would not be safe to accept the identification evidence of Manda Sahani. Manda Sahani in her examinationin- chief stated that on the place of the incident, there was no light. In her cross-examination (para 6) she stated that it was dark at the place of the incident but, slight light was emanating from the building situate on the shore. The distance between the building and the place where Manda Sahani and her husband were looted has not been unfolded in the evidence.

The learned trial Judge has observed that the evidence of Vinod Sahani is that the incident took place at a distance of about 100 ft from the Gandhi statue, where the meeting was held. What he wanted to convey was that hence there must have been light at the place of incident. In my view, on the face of the definite statement of Manda that it was dark as there was only slight light, and bearing in mind that the incident took place at 9.30 p.m. in the month of February, 1992, it would not be safe to conclude that there was sufficient light on the place of the incident enabling Manda Sahani to identify the appellant."

54. In Kanan & Ors. v. State of Kerala, AIR 1979 SC 1127, this Court held:- "It is well settled that where a witness Identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T. I. parade to test his powers of observations. The Idea of holding T. I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T. I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court."

[Emphasis supplied]

55. In Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1, this Court noticed the importance of TIP and logic behind it. It is the practice not borne out of procedure but out of prudence. In this case, this Court has exhaustively examined the entire case law on the subject. It was observed:-

"254. Even a TIP before a Magistrate is otherwise hit by Section 162 of the Code. Therefore to say that a photo identification is hit by Section 162 is wrong. It is not a substantive piece of evidence. It is only by virtue of Section 9 of the Evidence Act that the same i.e. the act of identification becomes admissible in court.

The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation."

56. This Court has further referred to its earlier decisions which state:-

"256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 631 : 2005 SCC (Cri) 1269] : (SCC pp. 642-45, paras 16-17 & 19)

"16. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as

corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828])

The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity.

In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act.

It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character.

The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration.

The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers

a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court.

The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn. [AIR 1958 SC 350:1958 Cri LJ 698], Vaikuntam Chandrappa v. State of A.P. [AIR 1960 SC 1340:1960 Cri LJ 1681], Budhsen v. State of U.P. [(1970) 2 SCC 128:1970 SCC (Cri) 343] and Rameshwar Singh v. State of J&K [(1971) 2 SCC 715 : 1971 Cri LJ 638])

19. In Harbajan Singh v. State of J&K [(1975) 4 SCC 480 : 1975 SCC (Cri) 545] , though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held : (SCC p. 481, para 4)

'4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh v. State of U.P. [(1970) 3 SCC 518 : 1971 SCC (Cri) 124] absence of test identification is not necessarily fatal.

The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant.' "

57. Applying the aforesaid principles of law as discernable from the various decisions referred to above, we may now proceed to look into the evidence on

record so as to consider whether the conviction of the appellant convict for the alleged offence is sustainable or not.

EVALUATION OF EVIDENCE OF IDENTITY OF THE APPELLANT CONVICT

58. On 18.08.2008, an application was moved for conducting test-identification parade of the co-accused persons, Vijay alias Kalia, Pawan Kumar, and Sharwan Kumar, to be identified by PW 4, before the MM, Shri Prashant Kumar who adjourned it for 20.08.08 and marked the same to MM, Shri Rajesh Kumar Goel i.e., PW 16 herein.

59. On 20.08.2008, the PW 16 conducted the TIP in respect of co-accused Vijay and Pawan Kumar, who were identified by PW 4.

60. On 30.08.2008, upon instructions of the IO, the PW 11 SI Kishan Lal, moved an application before the MM, Shri Prashant Kumar for fixing the TIP of the appellant convict along with co-accused Vijay, Pawan Kumar and Sharwan Kumar. The same was adjourned to 01.09.2008 and marked to PW 16.

61. On 01.09.2008, the TIP of the appellant convict along with co-accused Vijay and Pawan Kumar was fixed for 02.09.2008, whereas TIP of Sharwan Kumar was fixed for 03.09.2008.

62. On 02.09.2008 the MM/PW-16 conducted the TIP proceedings where co-accused Vijay and Pawan Kumar were to be identified by PW 1 and the appellant convict was to be identified by PW 4. In the said TIP, all the accused persons refused to participate.

63. On 03.09.2008, PW 16 conducted TIP of co-accused Sharwan Kumar, to be identified by PW 1 and PW 4 resply wherein, the co-accused Sharwan Kumar refused to participate.

CHART OF THE TIPs CONDUCTED

S. No.	Date	TIP Conducted for	To be Identified by	Particulars
1.	20.08.08	(i) Vijay @ Kalia (ii) Pawan Kumar	PW4	TIP conducted and PW4 identified the accused. (Ex.PW4/B) & (Ex.PW4/C)
2.	02.09.08	(i) Vijay @ Kalia	PW1	Both Refused TIP. (Ex.PW8/B - Vijay @ Kalia)

		(ii) Pawan Kumar		(Ex.PW8/C - Pawan)
3.	02.09.08	(iii) Mukesh Singh (Appellant)	PW4	Refused TIP (Ex.PW8/A - Mukesh) (Appellant)
4.	03.09.08	(iv) Sharwan Kumar	PW1 & PW4	Refused TIP (Ex.PW8/E - Sharwan)

64. Remarkably, while the co-accused; Vijay and Pawan Kumar initially participated in the TIP on 20.08.2008, but thereafter all the accused persons including the appellant convict herein refused to participate in the TIP. In their further statements recorded under Section 313 of the CrPC, all of them gave the explanation that they refused to participate as they had already been shown to the witnesses in the police station. Moreover, it is the specific case of the appellant convict herein, that he refused the TIP as he was to be identified by PW4 who was a got up witness.

65. Later, on 15.09.2008, the PW 1 and PW 4 who had gone to meet the police officials at the Rohini Court complex, identified all the accused persons, who were produced before the Metropolitan Magistrate in connection with the present case.

66. The PW 1 Sushil Kumar in his examination in chief has stated thus:-

"I had identified the accused persons on 15.9.2008 in the Rohini Court Complex, when the accused persons were produced in the same Court."

67. The PW 11 SI Kishan Lal who at the relevant time was posted as Sub-Inspector in the Adarsh Nagar Police Station in his examination in chief as stated thus:-

"On 15.9.2008 I alongwith SHO Ram Chander came to the court and there we met PWs Sushil and Pradeep and they had identified all the four accused who were produced in the court for taking the judicial custody. PWs pointed out towards the accused Pawan and Sharwan that they had surrounded Sushil and Pappu and they pointed out towards accused Mukesh and Vijay and told that Mukesh had taken out the money from the pocket of Sushil and Vijay had taken out money from Pappu and they had attacked on them with ice picks on 16.8.2008. IO recorded their statements."

68. Thus, from the oral evidence of the PW 1 and the PW 11, it is evident that the PW 1 (injured eye witness) had the opportunity to see the accused persons when they were present at the Rohini Court Complex. When the PW 11 says that

the witnesses were able to identify all the four accused at the time when they were produced in the court for taking them into judicial custody, the same should be understood as conveying that as an investigating officer, he took a chance to get the accused persons identified through the witnesses. Indisputably, it was not a regular identification in accordance with law.

69. The appellant convict argues that the only substantive evidence against him is in the form of his identification by the PW 1 before the Trial Court. He says that there is no question of drawing any adverse inference against him for refusing to participate in the TIP because from day one, he had been saying that the witnesses had seen the accused persons. He further says that the PW 1 was in a position to identify him for the first time before the Trial Court only because he had the opportunity to see him on 15.09.2008.

In such circumstances, it is argued on behalf of the appellant convict that there is no evidence worth the name to hold him guilty for the alleged crime. On the other hand, the State says that although the witnesses had a chance to see the accused persons on 15.09.2008 when they were present at the Rohini Court Complex, but that, by itself, is not a sufficient or a good ground to discard the substantive evidence of identification before the Trial Court.

The State wants us to draw adverse inference against the appellant convict as he had refused to participate in the TIP and at the same time also wants us to accept the identification of the appellant by the PW 1 before the Trial Court. The State further says that the PW 1 being an injured eye witness had an opportunity of having more than a fair glimpse of the four accused persons including the appellant convict and, therefore, irrespective of the fact that the PW 1 had an opportunity to see the appellant convict on 15.09.2008 at the Rohini Court Complex, the identification before the Trial Court should be accepted.

70. The evidence of PW 1 Sushil Kumar regarding the occurrence that took place on 16.08.2008 early in the morning at 3.30 is fully supported by the medical evidence on record. The PW 1 along with the deceased was immediately taken for medical attention. The deceased was found to have suffered multiple injuries in the form of punctured wounds caused by a sharp pointed weapon. The PW 1 was also found to have suffered two injuries and one of those was in the form of a punctured wound in the chest caused by a sharp pointed weapon.

Considering the nature of injuries suffered by the PW 1 and the deceased and the fact that the PW 1 and the deceased were cornered by the accused persons and further that they were robbed of their money, the entire incident could certainly have afforded sufficient time and opportunity to the PW 1 to recall and identify the assailants including the appellant convict herein. It is a long settled law that

if a witness is trustworthy and reliable, the mere fact that no identification parade could be conducted and the appellant convict was identified for the first time before the Trial Court, would not be a reason to discard the evidence of the witness.

As held by this Court in the case of Munna (supra), that in a case where an accused himself refused to participate in the TIP, it is not open to him to contend that the statement of the eye witnesses made for the first time in Court, wherein they specifically point towards him as a person who had taken part in the commission of the crime, should not be relied upon.

Such a plea is available provided the prosecution is itself responsible for not holding a TIP. However, in a case where the accused himself declines to participate in a TIP, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in Court during the course of the trial of the case.

It will be too much for us to say that the PW 1 was able to identify the accused convict for the first time before the Trial Court only because the PW 1 had an opportunity to have a look at him on 15.09.2008 at the Rohini Court Complex. As observed above, the PW 1 could be said to have had more than a fair glimpse of the assailants at the time of the incident and on the strength of the same, the PW 1 identified the appellant convict as one of the assailants.

71. We deem it appropriate to refer to the factors which are to be considered for in-Court identification and were relied by the American Supreme Court in John R. MANSON, Commissioner of Correction of Connecticut v. Nowell A. BRATHWAITE reported in 432 U.S. 98 (1977), where while referring to its earlier decision in William S. NEIL, Warden v. Archie Nathaniel BIGGERS, reported in 409 U.S. 188 (1972), it held that reliability is the linchpin in determining the admissibility of identification testimony and the factors to be considered are: the opportunity of the witness to view the criminal at the time of the crime; the witness' degree of attention; the accuracy of his prior description of the criminal; the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.

72. In the aforesaid context, we should also look at the line of reasoning assigned by the High Court. In para 37 of the impugned judgment, the High Court took into consideration the site plan Ex. PW-8/A. The site plan was looked into to ascertain whether there was sufficient light at the place of the occurrence or not. In this regard, the High Court held as under:-

"37. One of the contentions raised by counsel for the appellant Vijay was that there were no sufficient lights at the place of incident and this is apparent from the fact that in the site plan proved on record as Ex. PW8/A, existence of any such lights have not been shown. Contention of learned counsel for the appellant was that in the absence of any light being there PW-1 could not have seen any of the assailants, and later recognised them as being the actual perpetrators of the crime.

This contention raised by counsel for the appellant Vijay Kumar is devoid of any merit as PW-1 in his testimony categorically stated that there was sufficient street light with yellow colour lamps being lit around to see the faces of the assailants. PW-1 also deposed that the accused persons had not covered their faces at the time of occurrence. In his cross-examination he denied the suggestion that it was pitch dark at the spot of occurrence or that he could not have seen any of the assailants.

With such clear stand taken by PW- 1 that there was sufficient street light to see the faces of the assailants, we find no merit in the said contention raised by counsel for the appellant Vijay. Even otherwise in the scaled site plan proved on record as Exhibit PW-8/A at point C, D and E the position of lights as were existing at the site have been duly shown."

[Emphasis supplied]

73. In para 41 of the impugned judgment, the High Court has discussed about the identity of the accused persons. Para 41 reads thus:-

"41. Learned counsel for the appellant laid much emphasis on the contention that the prosecution has utterly failed to prove the involvement of these appellants in the commission of the said crime through any cogent and clinching evidence. As per the counsel for appellant, PW-1 failed to give description of these assailants to the police in his first statement and he could recognise the assailants only at the time of his deposition in court after these assailants were shown to him by the police. Counsel also justified the refusal of the appellants to participate in the Test Identification Parade conducted on 02.09.08 because of they being already shown to PW-1 by the police.

This contention raised by counsel for the appellant lacks any merit. There can be no dispute that one of the important task of the investigation is to apprehend the real and actual culprit of the crime. The Investigation which is carried out by the Investigating Officer and his team should be judicious, fair, independent, transparent, totally uninfluenced by any extraneous factors. There should not be

undue and undesirable delay in the investigation of any crime as any slackness in the investigation can always prove fatal.

The entire pursuit of any criminal trial is to see that no innocent man is punished and no guilty man goes scot free. PW-1, in his very first statement categorically stated that he can recognise all the four assailants if brought before him. While giving his statement in court, he could easily identify all these four assailants who were present in the court. He specifically pointed out to the two accused persons who had snatched money from his pocket and the other two who were armed with ice pricks and started attacking him and the deceased Pappu.

In his cross-examination, he also stated that the person who stabbed him was dark in complexion and had a cut mark on his face. It would be therefore seen that right from the first statement, the stand of PW-1 had been that he can identify the assailants and in fact he had identified them when they were also present at the time of his deposition in court. The refusal of these assailants to participate in the test identification parade proceedings thus goes against them.

The trial court is correct in taking a view that the onus shifted on the accused persons to prove on record that their photographs were shown to PW-1 prior to the holding of the said test identification parade. PW-1 is quite candid in stating in his court deposition that he had seen these assailants on 15th September 2008 when they were produced in a court at Rohini Courts Complex. In this background, it is difficult to accept the argument of counsel for the appellant that the prosecution had failed to establish the identity of these assailants who committed the said crime."

[Emphasis supplied]

74. In para 42, the High Court elaborated further the issue of identification. Para 42 reads thus:-

"42. Learned counsel for the appellant - Mukesh was quite emphatic in his contention that PW-1 in his cross examination admitted the fact that he had clearly seen the face of one assailant, who stabbed him and this deposition of PW-1 clearly meant that he was stabbed by the assailant to whom he described as person with dark complexion having a cut mark on his face and therefore, Mukesh had no role in the commission of the said crime.

The court has to take an overall view of the entire testimony of a witness, which includes his examination in chief as well as his cross examination. PW-1 while giving his evidence in examination in chief, had clearly identified all the four accused persons being the assailants who were involved in the said incident and

in cross examination he merely said that he had clearly seen the face of only one assailant who stabbed him.

The said statement of PW-1 in his cross examination can lead to only one inference that so far as the face of one assailant was concerned, he could see him with more clarity, but that would not mean that he did not see the faces of the other assailants or he was not in a position to identify the other assailants, may be with the help of their other descriptions including their height, gait and manner of walking, etc. We also cannot subscribe to the said contention raised by counsel for these appellants as we find no reason for PW-1 to implicate these persons to save the actual culprits of the said crime. We thus find no force in the above contention raised by counsel for the appellant."

[Emphasis supplied]

75. Although the appellant convict in his further statement recorded under Section 313 CrPC stated that he had refused to participate in the TIP as the eye witnesses had already seen him, yet except a bald assertion, no other foundation has been laid for offering such an explanation. It is true that the explanation that the accused may offer when the Court confronts him with the incriminating materials in his further statement has to be tested on preponderance of probability and not on proof beyond reasonable doubt. However, even while testing the answer on preponderance of probability some foundation has to be laid for such explanation to be accepted. A mere bald assertion is not sufficient.

76. The matter does not rest over here. There is something more against the appellant convict. It appears that the appellant was arrested on 20.08.2008. At the time of his arrest, he is said to have made a disclosure statement recorded in Ex. PW10/A. The statement was one relating to the weapon of offence i.e. ice pick which was ultimately discovered from his house.

The proceedings recorded in regard to the actual discovery of the ice pick is in the form of Ex. PW10/V. The statement is said to have been made by the appellant convict before the PW 10 SI Arvind Pratap Singh which led to the discovery of the fact i.e. the discovery of the ice pick. The PW 10 in his examination in chief has deposed as under:-

"On 20-8-2008 in the evening I along with Inspt. Ram Chander and Ct. Baljit proceeded for investigation and when we reached at Out Gate, Azadpur Mandi then informer met us there and he told that the fourth accused wanted in this case is present behind the onion shed near Mall Godown, if raided he can be apprehended. On this information IO asked 4-5 public persons to join the

investigation but none agreed and went away without telling their names and addresses.

Thereafter, we along with secret informer reached behind the inion shed near Railway Track, Mall Godown and from there at the pointing out the secret informer we apprehended accused Mukesh Singh, whose name came to know after inquiry and who is present in the court today. He was interrogated and arrested vide memo Ex. PW10/R and his personal search was conducted vide Ex. PW10/S both bearing my signatures at point A and he made disclosure statement Ex. PW10/T bearing my signatures at point A. The accused was kept in muffled face.

Thereafter accused took us at the spot i.e. D block corner Azadpur Mandi, Opposite STD PCO Shop and pointed out the place of occurrence vide pointing out memo Ex. PW10/U bearing my signatures at point A. Thereafter accused took us at his house i.e. H.No. 101, Ravi Dass Colony, Sarai Peepal Thala & he took us in a room at the ground floor and taken out Rs. 7,000/- from an iron box and one ice pick (SUA) and handed over to Inspt. Ram Chander and told that this sum of Rs. 7,000/- is remaining amount out of looted amount of Rs. 14,800/.

He also informed that the ice pick was the same with which he had inflicted injury to the victim. Rs. 7,000/- consists of seven currency notes of Rs.1000 denomination. The same were put into an envelope and sealed with the seal of RCS and seized vide memo Ex. PW10/V bearing my signatures at point A. IO prepared the sketch of the 'Sua' and measured the same. It was found to be having length of 22.5 cm, the length of the prick was 12 cm and the length of the handle was 10.5 cm.

The sketch is Ex. PW10/W bearing my signatures at point A. The same was put into pullanda and sealed with the seal of RCS and seized vide memo Ex.PW10/X bearing my signatures at point A. Seal after use was handed over to Ct. Baljit and after completing the investigation accused was brought to PS and accused were sent to lockup and case property was deposited in the malkhana."

[Emphasis supplied]

77. Thus the aforesaid is one additional circumstance pointing towards the guilt of the appellant and at the same time lending credence to the substantive evidence of his identification by PW 1 before the Trial Court.

78. Even if we have to discard the evidence of discovery on the ground that no independent witnesses were present at the time of discovery, still the fact that the appellant herein led the police party to his house and handed over the ice pick used at the time of the assault, would be reflective of his conduct. By virtue of

Section 8 of the Evidence Act, the conduct of an accused is relevant, if such conduct influences or 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 he had concealed the weapon of offence i.e. ice pick, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the appellant convict contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act or not. Even if we hold that the discovery statement made by the appellant convict referred to above is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8 of the Evidence Act.

79. In the overall view of the matter, we have reached to the conclusion that it is difficult for us to say that the prosecution has not been able to establish its case against the appellant convict beyond a reasonable doubt. We are convinced with the line of reasoning adopted by the Trial Court as well as by the High Court in holding the appellant convict guilty of the alleged crime.

80. In the result, this appeal fails and is hereby dismissed. 81. In the course of the hearing of this appeal, it was brought to the notice of this Court that the appellant hails from a very poor family and is undergoing sentence past more than sixteen years. In other words, he has been in jail for the past sixteen years. We grant liberty to the appellant herein to file a representation addressed to the competent authority of the State (NCT of Delhi) for premature release.

If any such representation is preferred by the appellant herein, then the competent authority shall at the earliest process the same and take an appropriate decision in accordance with law, more particularly in accordance with the policy prevailing at the time of commission of the offence as regards remission within a period of two months from the date of receipt of such representation and further communicate the same to the appellant in writing without fail.

.....J. (M.M. Sundresh)

.....J. (J.B. Pardiwala)

New Delhi;

August 24, 2023

IN THE SUPREME COURT OF INDIA

Central Council for Research in Ayurvedic Sciences
Vs.
Bikartan Das

Civil Appeal No. 3339 of 2023

HEADNOTE – Summarise the principles for issuing writ of certiorari under Article 226

JUDGMENT

J.B. Pardiwala, J.

1. This appeal by special leave is at the instance of the Central Council for Research in Ayurvedic Sciences (CCRAS), Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Government of India (appellant No. 1) and its Director General (appellant No. 2). The two appellants before us were the original respondents before the High Court of Orissa.

This appeal is directed against the judgment and order dated 17.12.2020 passed by the High Court of Orissa, Cuttack in W.P. (C) No. 30620 of 2020 by which the High Court allowed the writ application filed by the original petitioner (respondent No. 1) before us, setting aside the order passed by the Central Administrative Tribunal (CAT), Cuttack Bench, Cuttack and thereby holding that the respondent No. 1 herein, namely, Dr. Bikartan Das is entitled to the benefit of enhancement of retirement age from 60 to 65 years as applicable to the AYUSH doctors working under the Ministry of AYUSH.

Factual Matrix

2. The respondent No. 1 herein was appointed by the Council as a Research Assistant w.e.f. 07.10.1985. The Office Order No. 183 of 1985 dated 11.10.1985 reads thus:

"No. P.1-67/86-CRIA/DDSR/Estt./748(5) OFFICE ORDER No. 183/85	Dt 11.10.85

Dr. Bikartan Das is appointed as a Research Assistant (AY) with effect from the forenoon of the 7th October, 1985 until further orders in the Central Research Institute (AY), Unit, Bhubaneshwar-9. He will be on probation for a period of two years from this date. He will draw a basic pay of Rs. 425/- per month in the

scale of Rs. 425-15-500 PB-15-560-20-700 with usual allowance admissible under the rules.

(Dr. PREM KISHORE)
ASSISTANT DIRECTOR (AY) I/C"

3. The Government of India in its Ministry of Health and Family Welfare vide letter dated 01.12.1998 addressed to the Council, approved the decision of the Council to enhance the benefit of extension in age of retirement from 58 years to 60 years in respect of employees of the Council w.e.f. 31.05.1998 in accordance with the guidelines issued by the Department of Personnel and Training (DoPT) vide O.M. No. 25012/8/98-Estt. (A) dated 13.05.1998.

4. On 27.09.2017, the Union Cabinet took a decision to enhance the age of superannuation up to 65 years for the AYUSH doctors working under the Ministry of AYUSH (respondent No. 2 herein) and in the Central Government Health Scheme (for short, 'the CGHS') Hospitals.

5. By way of letter dated 31.10.2017, the Ministry of AYUSH clarified that the effect of the Cabinet decision referred to above would be applicable only to the AYUSH doctors directly working under the Ministry of AYUSH and in the CGHS Hospitals.

It was clarified that the decision to enhance the age of superannuation up to 65 years would not be applicable to the autonomous bodies functioning under the Ministry of AYUSH. The letter dated 31.10.2017 addressed by the Ministry of AYUSH to the Director General, CCRAS and CCRUM, reads thus:

"FTS No. 32797/2017

Ministry of Ayurvedic, Yoga & Naturopathy, Unani, Siddha & Homoeopathy (AYUSH)
(Research Desk)
'B' - Block, GPO Complex,
AYUSH Bhawan, Behind the INA Market,
New Delhi – 110023
Dated: 31st October, 2017

To
The Director General,
CCRAS and CCRUM
61-65, Institutional Area,
Opposite "D" Block,
Janakpuri, New Delhi - 110058.

Subject: Enhancement of superannuation age to 65 years -reg.

Sir,

I am directed to say that the Ministry has been receiving a number of representations from various officials of the Councils regarding enhancement of superannuation age to 65 years. It is stated that as per Press Information Bureau the Union Cabinet has taken the following decision:-

"The superannuation age has been enhanced to 65 years in respect of doctors under the administrative control of the respective Ministry/Department [M/o AYUSH (AYUSH Doctors), Department of Defence (civilian doctors under Directorate General of Armed Forces Medical Service), Department of Defence Production (Indian Ordnance Factories Health Service Medical Officers), Dental Doctors under D/o Health & Family Welfare, Dental doctors under Ministry of Railways and of doctors working in Higher Education and Technical Institutions under Department of Higher Education]".

2. The decision of the Cabinet is applicable to the AYUSH doctors directly working under the administrative control of Ministry of AYUSH i.e. AYUSH doctors working under CGHS. The decision of the Union Cabinet is not applicable to autonomous bodies functioning under Ministry of AYUSH i.e. Research Councils/National Institutes.

3. All such representations are therefore being sent to the respective Councils. It is requested that the Councils may inform them accordingly.

Yours faithfully,

N. K. Lakhanpal

Senior Consultant"

6. By order dated 24.11.2017, the Ministry of AYUSH enhanced the age of superannuation to 65 years for the AYUSH doctors working in the Ministry of AYUSH and in CGHS Hospitals w.e.f. 27.09.2017. The order dated 24.11.2017 reads thus:

"F.NO. D.14019/4/2016-E-I(AYUSH)

Government of India
Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy
AYUSH Bhawan,
'B' Block, GPO Complex,

INA, New Delhi – 110023
Dated, the 24th November, 2017.

ORDER

The President is pleased to enhance the age of superannuation of the AYUSH doctors under the Ministry of AYUSH and working in CGHS Dispensaries/Hospitals to 65 years with effect from 27.09.2017, i.e. the date of the approval of the Union Cabinet.

2. The doctors shall hold the administrative posts only till the date of attaining the age of 62 years and thereafter their services shall be placed in non-administrative positions.

(ROSHAN JAGGI)

Joint Secretary to the Government of India

Tel.24651953"

7. By notification dated 05.01.2018, the Ministry of Personnel, Public Grievances and Pensions, DoPT notified the Fundamental (Amendment) Rules, 2018 whereby Rule 56(bb) in the Fundamental Rules, 1922 (FRs) was substituted and the age of superannuation of AYUSH doctors was enhanced to 65 years. The notification reads thus:

"MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

NOTIFICATION

New Delhi, the 5th January, 2018

G.S.R. 27(E).-In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Fundamental Rules, 1922, namely:-

(1) These rules may be called the Fundamental (Amendment) Rules, 2018. (2) In the Fundamental Rules, 1922, in rule 56, for clause (bb), the following shall be substituted, namely:-

"(bb) The age of superannuation in respect of General Duty Medical Officers and Specialists included in Teaching, Non- Teaching and Public Health sub-

cadres of Central Health Service, AYUSH doctors, Civilian doctors under Directorate General of Armed Forces Medical Services, Medical officers of Indian Ordnance Factories Health Services, dental doctors working under Ministry of Health and Family Welfare, doctors of Indian Railways Medical Service and dental doctors under Ministry of Railways, doctors of General Duty Medical Officers sub-cadre of Central Armed Police Forces and Assam Rifles and Specialist Medical officers of Central Armed Police Forces and Assam Rifles shall be sixty-five years:

Provided that notwithstanding anything contained in any other rules, above doctors except in Central Armed Police Forces and Assam Rifles shall hold the administrative posts till the date of attaining the age of sixty-two years and thereafter their services shall be placed in Non-Administrative positions."

[F.No.25012/4/2016-Estt.(A-IV)]
GYANENDRA DEV TRIPATHI, Jt. Secy."

8. By letter dated 25.01.2018, the appellant Council circulated the clarification letter issued by the Ministry of AYUSH dated 31.10.2017 referred to in para 5 as above. The letter reads thus:

"F 3-8/2017-CCRAS/Vig/3094 Dated: 25 JAN 2018

To

All the Heads of Institutes/Centres/Units functioning under this Council.

Sub: - Enhancement of superannuation age of 65 years.

Sir/Madam

The undersigned is directed to circulate herewith the clarification on the subject mentioned above received from Ministry of AYUSH vide letter FTS No.32797/2017 dated 31.10.2017 for information. The contents of Ministry's letter may be circulated among all officers working under your control.

Yours faithfully

(SB MISRA)

Administrative Officer (Vigilance)

For Director General"

It is pertinent to note that the letter issued by the appellant Council dated 25.01.2018 referred to above was never made a subject matter of challenge.

9. The respondent No. 1 herein preferred a representation dated 22.03.2018 addressed to the appellant No. 2 herein with an appeal to enhance his age of superannuation up to 65 years i.e., up to 30.04.2023 instead of 30.04.2018. I

t appears from the materials on record that the representation preferred by the respondent No. 1 herein before the above was rejected and a notification dated 04.04.2018 was issued by the Council stating that the respondent No. 1 herein would retire w.e.f. 30.04.2018 upon attaining the superannuation age of 60 years. The notification dated 04.04.2018 reads thus:

"F. No. 26-3 / 2018-C.C.R.A.S. / Est. 17

Date: 04.04.2018

Notification

It is hereby notified that Dr. Bikartan Das, Assistant Director (AYUSH), Central Ayurvedic Research Institute for Hepatobiliary Disorder, Bhubaneswar is retiring from Council service on attaining the age of superannuation at 60 years on 30.04.2018 (pm). His date of birth is 04.04.1958.

Accordingly, his name will be removed from the list of C.C.R.A.S.

Signature in English Illegible

R.K. Ahluwalia

Dated 27.03.2018

Dy. Director (Administration)

Through Director General"

10. The respondent No. 1 being dissatisfied with the aforesaid went before the CAT, Cuttack Bench, Cuttack by way of Original Application No. 210 of 2018 and prayed for the following reliefs:

"The Hon'ble Tribunal may be graciously pleased to admit the Original Application, call for the records and issue notice to the Respondents and upon hearing the parties declare the impugned letter of clarification of Ministry of AYUSH dtd. 31.10.2017 as under Annexure-4 Series and the letter dtd.

04.04.2018 under Annexure 3 directing the Applicant to retire on 30.04.2018 on attaining age of 60 years, to be illegal, arbitrary unreasonable and discriminatory and quash the same and direct the Respondent to allow the Applicant to continue in the service upto 65 years as per amended rules.

Pending finalization of the Original Application, the Applicant prays to stay the order under Annexure-3 and allow the Applicant to continue in the service."

11. By order dated 17.04.2018 the CAT issued notice, however, declined to grant any interim relief as prayed for by the respondent No. 1 herein. As CAT declined to grant any interim relief and the respondent No. 1 was to retire on 30.04.2018, he went before the High Court of Orissa, Cuttack by filing W. P. (C) No. 6663 of 2018 questioning the order passed by the CAT declining to grant any interim relief. The High Court passed the following order dated 25.04.2018:

"SI. No. of Order- 03

Date of Order- 25.04.2018

Heard Mr. B. Senapati, learned counsel for the petitioner and Mr. Bose, learned Asst. Solicitor General.

This Writ Petition has been filed by the petitioner challenging the order dated 17.04.2018 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/210/2018 wherein the Tribunal while issuing notice directed the opposite parties to file their reply on the interim prayers and regular counter.

As it appears that the Central Government has taken a decision under the Ministry of AYUSH to enhance the age of retirement of the Doctors up to 65 years. However, so far as the petitioner is concerned, since the notice of superannuation was issued to him, he has approached the Tribunal.

Since the Original Application is pending before the Tribunal, without expressing any opinion on the merits of the case, we dispose of this Writ Petition with an observation that since the Doctors who are similarly after continuing the age of 65 years after attaining the age of 60 years, let the Petitioner continue in the service and let the notice of superannuation under Annexure-3 shall remain stayed till disposal of the Original Application.

Mr. Bose, learned Assistant Solicitor General submitted that the central government will file their counter within a period of two weeks from today before the Tribunal, in such event the Tribunal may dispose of the Original Application at the earliest, preferably by end of June, 2018. Accordingly, we

request the Tribunal may dispose of the Original Application at the earliest/as per its schedule. However, the petitioner shall not claim any equity.

Sd.- S. Panda, J.

Sd.-K.R. Mohapatra"

12. Thus, from the aforesaid, it appears that the High Court protected the respondent No. 1 till the disposal of the original application by the CAT. By virtue of the aforesaid order, the respondent No. 1 continued in service beyond 30.04.2018.

13. CAT ultimately adjudicated the original application filed by the respondent No. 1 herein and vide its order dated 02.11.2020 rejected the same holding that the respondent no. 1 is not entitled to seek parity with AYUSH doctors in regard to the age of superannuation.

14. The sum and substance of the findings recorded by the CAT may be summarised as under:

(i) The Fundamental Rules notified under Article 309 of the Constitution of India are applicable to the employees working directly under the Government of India. Its applicability to the employees of the Council is on account of Clauses 34 and 35 respectively of the Bye-Laws. This issue was considered by the Hyderabad Bench of the CAT vide order dated 04.09.2020, wherein it was observed that-

"Clause 34 of the bye-law makes it crystal clear that the Governing Body has to take a decision in regard to the enhancement of the retirement age. The Governing body has no necessity to take a decision in the context of the Ministry of AYUSH, Govt. of India having made it clear that enhancement of retirement age is not applicable to an autonomous body like CCRAS. Therefore, the G.O.I. rule of not extending the enhancement of retirement age to CCRAS compliments the clauses 35 & 47 of the byelaws. We do not find any error in the decision taken by the respondents in terms of the bye laws."

(Emphasis supplied)

(ii) CAT did not accept the respondent No. 1's argument of Clause 35 and application of the Fundamental Rules mutatis mutandis to the employees of the Council saying that the clause relates to the general applicability of FRs, Supplementary Rule (SRs) and General Financial Rules (GFRs) to the Council employees; the same is subject to the provision specific to Clause 34 governing superannuation of the employees of the Council. There is nothing in Clause 35

of the Bye-Laws to have an overriding effect on Clause 34 regarding retirement age.

(iii) Clause 47 of the Bye-Laws makes it clear that for the matters not specifically provided in the Bye-Laws, the rules applicable to the government employees would apply. But since there is a specific provision regarding superannuation in Clause 34, the rules governing government servants in respect of superannuation will not be applicable to the employees of the Council unless it is in accordance with Clause 34 of the Bye-Laws.

(iv) There is nothing in the Cabinet resolution in question and in the amended FR-56(bb) to show that these decisions are applicable to the employees of the autonomous institutions. The assumption of the respondent No. 1 that the FR-56, as amended from time to time, is automatically applicable to the Council employees is not correct since it is subject to the provisions of Clauses 34 & 35 respectively of the Bye-Laws.

(v) There is nothing wrong with the clarification letter dated 31.10.2017. It cannot be stated to be overriding the Cabinet decision in question, and the objection to the letter on that ground is not sustainable. The clarification letter was circulated by the Council by a subsequent letter dated 25.01.2018 among its officers, after issuance of the first amendment to FR-56. This implies that the Council, which is the employer of the respondent No.1, had consciously accepted the clarification of the Ministry. The respondent No. 1 had not challenged the Council's letter dated 25.01.2018 but had only challenged the AYUSH Ministry's letter dated. 31.10.2017.

(vi) There is nothing in the pleadings of the respondent No.1 to show that the amended FR-56(bb) is applicable to the employees of the Council, except for citing the provisions of the Bye-Laws. As per Clause 34 of the Bye-Laws, the rules governing the retirement of the government employees will be applicable to the employees of the Council as adopted by the Governing Body. This means that the unless the Governing Body adopts the changes in rules for the retirement of government servants, such changes are not automatically applicable to the employees of the Council.

(vii) The CAT placed reliance on the decision of this Court in DDA v. Joint Action Committee, Allottee of SFS Flats, reported in (2008) 2 SCC 672 to hold that there are certain specific grounds on which a policy decision can be subjected to judicial review, and in this situation there was no valid ground to challenge the policy decision of the AYUSH Ministry as per the clarification letter dated 31.10.2017.

(viii) In the last, the CAT considered that even if the respondent No.1's contention that he had treated patients was to be accepted, such acceptance could not have negated the decision taken by the Ministry of AYUSH in its clarification letter dated 31.01.2017, which was further accepted by the Council in its subsequent letter dated 25.01.2018.

15. The respondent No. 1 feeling dissatisfied with the aforesaid order passed by the CAT challenged the same before the High Court in W.P.(C) No. 30620 of 2020. The High Court allowed the writ application filed by the respondent No. 1 holding as under:

"On the analysis of the above factual matrix, we find that though the petitioner is functioning as Researcher under the Research Council/ National Institute, but as a requirement for upgrading the research skill, he treats patients in the OPD and IPD. In fact, he performs similar nature of duties like AYUSH doctor. Though his service condition is covered by different laws, but for all practical purposes, the petitioner is performing like a doctor. Though there is a clear-cut distinguishing features between the AYUSH doctor and that of the petitioner.

The petitioner herein is also treating the patients like AYUSH doctors in the OPDs and IPDs on regular basis. The Clause-34 and 35 of the bye-laws extends the force of the argument of the petitioner to be treated as AYUSH doctor, even though he has been appointed as Researcher. Clauses-34 & 35 of the said bye-laws deal with superannuation which read as under:

"34. The rules governing the retirement of employees of the Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council. Provided that an employee can be retained in service after prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.

35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council."

In view of the above, we are of the opinion that the view taken by the learned Tribunal vide its decision dated 02.11.2020 is erroneous. The learned CAT, Cuttack Bench, Cuttack has failed to consider the petitioner's duty and devotion in treating the OPD and IPD patients. Hence, the order dated 02.11.2020 passed by the learned CAT, Cuttack Bench, Cuttack is liable to be quashed and accordingly, it is quashed."

(Emphasis supplied)

16. Thus, the plain reading of the impugned order passed by the High Court referred to above would indicate that what weighed with the High Court was that the respondent No. 1 herein used to treat patients like AYUSH doctors in the Out-Patient Departments (OPDs) and In-Patient Departments (IPDs) on regular basis and the duty and devotion exhibited by the respondent No. 1 in treating the OPD and IPD patients would entitle him to claim the benefit of the enhanced age of superannuation i.e., up to 65 years.

The High Court recorded the said finding despite acknowledging that the respondent No. 1 was appointed as a researcher under the Research Council and his service conditions were governed by different laws. Of course, the High Court also took support of Clauses 34 and 35 respectively of the Bye-Laws while granting relief to the respondent No. 1.

17. In such circumstances referred to above, the appellants are here before this Court with the present appeal.

Submissions on Behalf of The Appellants

18. Mr. Aman Lekhi, the learned Senior Counsel appearing for the appellants made the following submissions:

a. The issue involved in the present case is the entitlement to seek extension in superannuation age as per FR 56(bb) and its applicability to the appellant Council which is an autonomous body. The said FR has been amended from time to time and the rule applicable in the present case i.e. at the time of the retirement of the respondent No. 1 is of 05.01.2018.

b. The respondent No. 1 was an employee of CCRAS having joined as Research Assistant and his terms of service were governed under the Rules of CCRAS. Subsequently, he was promoted to the post of Research Officer and at the time of superannuation he was holding the post of an Assistant Director.

c. The relevant clauses of CCRAS which are applicable to the facts of the present case are Clauses 25(b), 34, 35 and 47 of CCRAS Bye- Laws which are extracted herein for the sake of convenience:

"Appointments

25.(a)...

(b) Recruitments, appointments and promotions to all posts shall be made according to the recruitment rules laid down by the Governing Body or designated competent authority for the posts. Selection shall be made through

the Selection Committees/Departmental Promotion Committees duly constituted with the approval of the respective appointing authority.

Superannuation

34. The rules governing the retirement of employees of Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council. Provided that an employee can be retained in service after the prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.

35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council.

Other Conditions of Service

47. In respect of matters not provided for in these regulations the rules as applicable to Central Government servants regarding the general conditions of service, pay, allowances T.A. and daily allowances, foreign service terms, deputation in India and abroad, etc. and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Central Council."

(Emphasis supplied)

d. A bare perusal of the aforesaid rules indicates that the employees are recruited through a selection committee of the Council and the FRs will not directly apply where the Governing Body finalises the rules of superannuation.

e. In terms of Clause 34, the Governing Body had decided to fix the age of superannuation to be 60 years on 01.12.1998. The said decision was ratified on 27.01.2000 in the 14th Meeting of the Governing Body of CCRAS as Agenda Item No. GB 14.4.

f. The decision of the Governing Body as aforementioned applied on 30.04.2018 i.e. the date of superannuation of the Respondent.

g. No reference has been made by the respondent No. 1 to the aforementioned decision of the governing body in his representation. In fact, the Respondent relied on Clause 34 of the Bye-Laws which on its terms indicates that the rules governing the retirement of employees of Government of India will not apply in the instant case.

h. Reliance placed by the respondent No. 1 in its representation on the case of Salma Khatoon is equally inapt as the relevant rule in the said case was different from the Clause 34 of Bye-Laws herein. The said case pertained to the Central Council for Research in Unani Medicine ('CCRUM') which is governed by its own rules and regulation and the applicable rule in that case was worded differently. Moreover, the said case is still pending before the High Court of Delhi. The interim order in favour of Salma Khatoon was vacated by this Court in the case of Central Council for Research in Unani Medicine v. Dr. Salma Khatoon and Others reported as 2020 SCC OnLine SC 1332.

i. The Central Administrative Tribunal, Cuttack Bench ('CAT') rightly held that the assumption of the respondent No. 1 that FR 56 is automatically applicable is not correct as it is subject to Clause 34 of the Bye-Laws of CCRAS.

j. The very same grounds as aforesaid were urged by the Appellants in the Counter Affidavit filed by them before the High Court of Orissa.

k. While passing the impugned order, the High Court acknowledges that the respondent No. 1 was working as a Researcher and his service conditions were covered by a different clause. Strangely, however, the High Court makes no reference to Clause 34 of the Bye-Laws. This is despite the fact that the appellants had clearly pleaded that the respondent was not entitled to relief in terms of Clause 34 and that FR 56 was not applicable to him. Pertinently, this submission has been recorded by the High Court itself as also the clarification of 31.10.2017 and the separate method of recruitment. These factors were not considered while passing the impugned order.

l. The impugned order of the High Court is unsustainable as it is against the following settled propositions of law:

(i) Even a Constitutional Court cannot substitute the existing service conditions of an employee. V.M. Gadre v. M.G. Diwan and Others, (1996) 3 SCC 454 para 10 at page 459.

(ii) A writ in the nature of mandamus cannot be issued to frame a policy in a particular manner. Census Commissioner and Others v. R. Krishnamurthy, (2015) 2 SCC 796 para 25-26 at page 806-807.

(iii) The Court cannot fasten monetary liability on State instrumentality unless it emerges from the rights and liabilities canvassed in the lis itself. State of Himachal Pradesh and Others v. Rajesh Chander Sood and Others, (2016) 10 SCC 77 para 88 at page 160.

(iv) Employees of autonomous bodies are governed by their own rules and Bye-Laws and they cannot claim parity with government employees. T.M. Sampath and Others v. Secretary, Ministry of Water Resources and Others, (2015) 5 SCC 333 para 3 at page 336 & para 15 at page 345; State of Maharashtra and Another v. Bhagwan and Others, (2022) 4 SCC 193 para 24-26 at page 203- 204.

m. The reliance placed by the respondent No. 1 on the judgment of this Court North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma and Others reported in 2021 SCC Online SC 540 is completely misplaced. The issue in the said case pertained to different dates of enhancement of age of superannuation of AYUSH and CHS doctors of NDMC.

In the said case, the policy decision of enhancing the age of superannuation to 65 years was adopted by NDMC for AYUSH doctors but it was applied from a later date which was found to be discriminatory. Whereas, in the present case the appellant is an autonomous body with its own service rules and the government decision was never adopted by the Governing Body at any point of time.

n. The reference made to the appointment of Director of the Institute of Teaching and Research in Ayurveda ('ITRA') in context with the retirement age of 65 years is wholly misplaced. The appointments to ITRA are made as per the provisions of the Institute of Teaching and Research in Ayurveda Act, 2020. Section 5(e) of the Act, 2020 provides for the tenure of the Director of 5 years or until the age of 65 years whichever is earlier. Hence, the respondent No. 1 who is not covered under the provisions of the said Act cannot claim parity with the employees of ITRA.

Submissions on Behalf of the Respondent No. 1

19. Mr. Col. R. Balasubramanian, the learned Senior Counsel appearing for the respondent No. 1 made the following submissions:

a. His client is an AYUSH Doctor being fully and duly qualified in Bachelor of Ayurvedic Medicine and Surgery (BAMS). The fact that his client is an AYUSH Doctor is admitted by the appellants in their counter affidavit filed before the CAT. As per the existing rule, those who have completed BAMS from any University of India, which is recognised by the Central Council for Indian Medicine (CCIM) and who have registered under any State Council of Indian Medicine or CCIM, New Delhi are AYUSH Doctors. This is also admitted by AYUSH in their RTI reply.

b. That being a duly qualified AYUSH doctor, the respondent No. 1 was appointed as a Research Associate in the Central Research Institute (Ayurveda),

Bhuvaneshwar under the Control of the Ministry of AYUSH, vide appointment letter dated 03.10.1985.

The terms of appointment specifically stated inter alia, in para 2 (vi) & (vii) thereof, that "Private or Consultancy service is strictly prohibited" and that "Other terms and conditions of service will be governed by the rules and instruction applicable to similar personnel under the Government of India" respectively. Further it was stated that the pay and dearness allowances etc. will be as applicable to the Central Government servants of equivalent status and will be governed by the CCS Rules as amended by the Government of India from time to time.

c. The fact that the Institute where the respondent No. 1was serving is under the 'pervasive control' of the Government/Ministry is admitted by the appellants in their counter affidavit filed before the CAT and also in the Counter affidavit filed before the High Court. Therefore, two factual aspects are admitted and it is beyond any doubt that (i) the respondent No. 1 is an AYUSH Doctor and (ii) the Institute is under the administrative control of the Ministry of AYUSH.

d. In view of the aforesaid admitted facts, it is evident more particularly from the Union Cabinet decision of the appellants that the Government of India had approved the enhancement of age of superannuation from 60 to 65 years. This decision of the Cabinet was applicable to the respondent No. 1. In terms of the said decision at "iii. that the superannuation age has been enhanced to 65 years in respect of doctors under their administrative control of the respective Ministries/ Departments [M/o of AYUSH (AYUSH Doctors,".

e. The Cabinet has not made any distinction or difference in treatment between the AYUSH Doctors working under the administrative control of the Ministry of AYUSH in the matter of enhancement of retirement age up to 65 years. It is reiterated that only two conditions are required to be satisfied to avail the enhanced age of superannuation up to 65 years of age viz., (i) AYUSH Doctor and (ii) being under the Administrative Control of the Ministry. Therefore, the respondent No. 1 is squarely covered by the Cabinet's decision and is entitled to the enhanced age of retirement of 65 years.

f. That accordingly, Rule 56(bb) of the Fundamental Rules, 1922, which is a statutory rule framed under the Proviso to Article 309 of the Constitution of India, was amended vide Gazette Notification dated 05th January, 2018 in terms of which the age of superannuation inter alia of the AYUSH doctors [3rd line of amended Rule (bb) shall be sixty-five years.

This was further amended vide the Gazette Notification dated 11.08.2018 categorically laying down that the age of superannuation of doctors belonging to various cadres including AYUSH and working under the Ministry of AYUSH shall be 62 years unless they opt to continue in teaching, consultancy, etc in which case it shall extend up to 65 years. Therefore, even in the 2nd Gazette all the AYUSH doctors working under the Ministry of AYUSH were included without any distinction whether working in the Ministry or in any autonomous body.

g. That contrary to the Cabinet decision, the impugned letter dated 31.10.2017 was issued denying the extension of age up to 65 years to the AYUSH doctors working in autonomous bodies like the respondent No. 1. Para 2 of said letter is not sustainable in law and on facts for the following amongst other reasons:-

i. That the decision was a Cabinet decision and the same could not have been diluted or misinterpreted by the impugned letter of a subordinate functionary viz., a Senior Consultant working in the Ministry of AYUSH by excluding the AYUSH Doctors working in the autonomous bodies under the administrative control of the Ministry of AYUSH.

ii. That there is no Cabinet approval to exclude the AYUSH doctors working in autonomous bodies. Therefore, the impugned letter is contrary to the Cabinet decision and on this count alone the same cannot be enforced against the respondent No. 1.

iii. The letter dated 31.10.2017 in any case stood overruled/superseded in view of the subsequent Gazettes dated 05.01.2018 and 11.08.2018 respectively.

iv. That the sub classification introduced by the impugned letter besides being contrary to the Cabinet decision, is a suspect classification, and it is directly violative of Articles 14, 16 and 21 respectively of the Constitution of India. The reason being first, there is no rationale or nexus with the object which it seeks to achieve i.e, exclusion of the AYUSH Doctors working in autonomous bodies and secondly, it creates an artificial distinction of AYUSH doctors working in the Ministry and elsewhere, although both are similarly qualified and discharge functions of OPD/IPD treatment of patients including surgery etc, albeit at different places. The respondent No. 1 also drew NPA (Non-Practicing Allowance). These facts have not been disputed.

v. That it is well settled in law where the classification has no nexus with the object it seeks to achieve and that there is artificial distinction the same would fall foul of Articles 14 and 21 in the matter of conditions of service of an employee.

vi. That even otherwise, the respondent No. 1 is entitled to the benefit of enhanced age of retirement of 65 years on the strength of plain reading of Clause 34 of the Society Rules extracted @ Pg 12 of the Judgement by the High Court, on which extensive reliance is placed by the appellants contending that the applicability of the extension of age is dependent upon the decision to be taken by the Governing Body of the autonomous body, and hence the Central Govt rule of age of superannuation is not automatic. This contention is not correct for the following reasons:

- Clause 34 is in two parts. The first part is that the rules governing the retirement of employees of the Government of India as amended from to time shall apply to the employees of the Central Council. The plain and simple reading of this part makes it clear and unambiguous that the rules governing the retirement of Central Government employees as amended from time to time shall apply.

- The second part of Clause 34 "or as desired by the Governing Body" is merely an enabling provision to enable the Governing Body to take a decision regarding retention of an employee beyond the prescribed age of superannuation. In other words, the 'desire' of Governing Body is to extend the age of an employee even beyond prescribed age if he continues to be physically fit and efficient and it is in the interest of the Council to retain him in service.

- Therefore, the second part of Clause 34 really gives power to the Governing Body to retain an employee even after the prescribed age of superannuation provided the conditions for grant of such retention is met. This power cannot be negatively read to clothe the Governing Body with power to prescribe less age of superannuation than what is prescribed by the Central Government from time to time.

- While the age of superannuation of an employee of the Central Council shall be at par with the age of superannuation prescribed by the Central Government, the Governing body has the enabling power to retain the employee even beyond the age of superannuation in organisational interest.

- It is submitted that Clause 34 cannot be read negatively to deny the age of increase given by the Cabinet to AYUSH Doctors by wrongly interpreting Clause 34.

vii. That the terms and conditions of service of employees of the Council on all other aspects like Provident Fund/ GPF, Pension, Gratuity, Leave Rules, Scales of Pay, Conduct Rules, and other conditions of service are the same as applicable to Central Government employees as set out in Clauses 31, 32, 33,

42, 44, and 47 respectively of the Rules. Therefore, in the matter of age of superannuation the respondent No. 1 cannot be treated differently.

viii. That the appellants on one hand claim that the AYUSH doctors working in autonomous bodies are not entitled to increase in age of superannuation up to 65 years whereas other AYUSH doctors working in the Ministry of AYUSH and other autonomous institutions have been granted extension of age up to 65 years.

ix. That similarly, AYUSH doctors working in CGHS have been granted increase in age up to 65 years vide letter dated 24.11.2017. Therefore, the letter not to grant identical benefit to the respondent No. 1 is not only arbitrary but it is discriminatory and hence it is unsustainable.

h. This Court has dealt with the issue of extension of age of superannuation of similar AYUSH doctors working in the NDMC in Dr. Ram Naresh Sharma (supra), where in paras 23 and 24 it was held as follows:

"23. The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients.

In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.

24. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F. No. D. 14019/4/2016- E-I (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent-doctors, in the present appeals. All consequences must follow from this conclusion."

i. The appeal deserves to be dismissed with costs and directions be issued to the appellants to release the consequential benefits including arrears of salary for the period from 01.05 2018 to 30.04.2023 which would cover the entire period of 5 years of increase in age of superannuation. The respondent No. 1 worked from 25.04.2018 following the order of stay grated by the High Court till 05.04.2021 when stay was granted by this Court following which the services of the respondent No. 1 were abruptly ended.

Submissions on Behalf of The Intervenors/Applicants in I.A. No. 90789 of 2022 in SLP (C) No. 4110 of 2021

20. It is the case of the intervenors/applicants that their W.P.(C) Nos. 9554 of 2018 and 9584 of 2018 respectively are pending adjudication before the High Court of Delhi and one Original Application No. 272 of 2020 before CAT, Lucknow Bench. They submitted that the final outcome of the present appeal will have a direct impact on the aforesaid litigations. The intervenors claim that they are doctors under another corporation of AYUSH, namely, CCRUM.

21. Submissions canvassed on their behalf are as under:

a. That the Intervenors/applicants are qualified Unani Doctors by qualification and are equivalent to any other qualified Doctors, be it MBBS Doctors or otherwise.

b. The Intervenors/applicants are working under the Direct Administrative Control of Ministry of AYUSH and their service conditions are governed by the Ministry in spite of them performing the duties in CCRUM.

c. The Intervenors/applicants have been receiving the Non-Practicing Allowance while working under CCRUM which clearly indicates that the Intervenors/applicants are indeed qualified doctors at par with the other Doctors who also get the same allowances.

d. The Recruitment Rules which apply to the Intervenors/applicants are:

"for functional purpose, a medical officer (Ayurveda) when posted in the Ministry of AYUSH will be designated as Research officer (Ayurveda) and thus the medical officer and Research officer are one and the same and there cannot be any distinction between the two".

e. That the Government of India (Cabinet) vide its order has granted the benefit of enhancement of superannuation age to 65 years to the doctors under the administrative control of the respective Ministries/Department (Ministry of AYUSH) (AYUSH doctors) which is fully applicable to the doctors working

under the appellant council but the Ministry of AYUSH erroneously by their mis-interpretation has excluded the benefits to doctors working under autonomous bodies like the council. It is because of the wrong interpretation made by the Ministry of AYUSH, the said benefit was erroneously denied to the AYUSH doctors like the Intervenors/applicants.

f. That the Govt. of India vide its own order dated 02.11.2020 has given the said benefit to the Director of ITRA and enhanced the age of superannuation to 65 years. Therefore, as per own interpretation made by the Ministry of AYUSH, the benefit of enhancement of superannuation of age is fully applicable to all doctors (working in any capacity including researcher) who are under the administrative control of AYUSH and when Govt. of India (Cabinet) did not exclude the autonomous institution like Intervenors/applicants council then the Ministry of AYUSH has no right to differentiate and deny the benefit of superannuation to the Intervenors/applicants.

g. It is submitted that Clauses-34 & 35 of the Bye-Laws issued by the CCRAS, deals with superannuation and prescribes that the Fundamental and Supplementary Rules and General Financial Rules of the Government of India as amended from time to time shall apply mutatis mutandis to the employees of the Central Council.

h. It is submitted that the Intervenors/applicants during their entire tenure performed duties like treating patients in OPD and IPD along with research activities which would clearly establish that the Intervenors/applicants have been attending the patients, both, the OPDs and IPDs. The Intervenors/applicants have worked for prestigious hospitals like the RML & DDU while performing duties which include treating the patients along with Research work.

i. It is submitted that Non-Practicing Allowance has been given to the doctors working under Intervenor/applicants council and the said benefit was given to the Intervenor/applicants as well which clearly contradicts the stand of council that the Intervenors/applicants were not performing the duties of doctors. In fact, the Non-Practicing Allowance has been sanctioned only on the basis that the Intervenors/applicants are qualified doctors and are performing the duties of Clinical Doctor which includes the OPD & IPD duties and thus are not allowed to practice outside the scope of their official duties and in lieu were given the Non-Practicing Allowance.

j. It is submitted that those doctors are considered as AYUSH doctors who have completed the degree course either in BAMS, BHMS, BUMS, BNYS & BSM in Ayurveda, Homeopathy, Unami, Siddha, Yoga and Naturopathy and are at par with any other qualified Doctors.

k. The Intervenors/applicants Council is an autonomous body under the Ministry of AYUSH, Government of India and the Council has a Governing Body comprising of the Union Minister-In-Charge of AYUSH as its President and Secretary, Ministry of AYUSH as its Vice President. Its Bye-Laws reveal the pervasive control of the Union Government over the Central Council.

l. The aforesaid is clearly depicted from the Bye-Laws of Intervenor/applicants council. That the Clauses - 34 and 35 of the Bye- Laws deal with the superannuation of the employees of the Council which are quoted herein below: Clauses-34 & 35 of the said Bye-Laws deal with superannuation which read as under:

"34. The rules governing the retirement of employees of the Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council. Provided that an employee can be retired in service after prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.

35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council."

m. That, the clarification of Ministry of AYUSH vide its letter dated 31.10.2017 is not only misconceived but also uncalled for, arbitrary and discriminatory. The same is also contrary to the object for which the Central Council is established. The aforesaid clarification would rather frustrate the objectives for which the Central Council was established. The same is against Public Policy and liable to be struck down and the High Court of Orrisa rightly gave decision in favour of the respondent in the instant appeal.

n. That the Intervenor/applicants though were appointed as researcher but along with that they have been performing duties of doctors like treating patient in OPD, IPD etc. and for which requisite certificate was issued to them time to time.

Analysis

22. Having heard the learned counsel appearing for the parties and having gone through materials placed on record the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment?

23. The appellant Council is an autonomous body registered under the Society Registration Act, 1860 and is administratively controlled by the Ministry of AYUSH, Government of India. It is a body constituted for the purpose of undertaking, cooperating, formulating, developing and promoting the research on scientific guidelines in Ayurvedic Sciences. The recruitment rules, procedure and the service conditions of these employees are governed by the Bye-Laws and Memorandum of Association of the Council.

24. With a view to appreciate the rival contentions raised by the litigating parties before us, we must look into the Clauses 25(b), 34, 35 and 47 of the Bye-Laws in the Memorandum of Association of the Central Council for Research in Ayurvedic Sciences:

"Appointments

25. (a)...

(b) Recruitments, appointments and promotions to all posts shall be made according to the recruitment rules laid down by the Governing Body or designated competent authority for the posts. Selection shall be made through the Selection Committees/Departmental Promotion Committees duly constituted with the approval of the respective appointing authority.

Superannuation

34. The rules governing the retirement of employees of the Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council. Provided that an employee can be retained in service after the prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.

35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council.

Other Conditions of Service

47. In respect of matters not provided for in these regulations the rules as applicable to Central Government servants regarding the general conditions of service, pay, allowances T.A. and daily allowances, foreign service terms, deputation in India and abroad, etc. and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Central Council."

(Emphasis Supplied)

25. A plain reading of the aforesaid clauses of the Bye-Laws would indicate that the employees are recruited through a selection committee of the Council. It further indicates that the Fundamental Rules, 1922 will have no direct application in cases where the governing body finalises the rules of superannuation. In terms of Clause 34 of the Bye-Laws, the governing body had decided the age of superannuation to be 60 years on 01.12.1998. The said decision was ratified on 27.01.2000, in the 14th meeting of the governing body of the Council.

26. In our view, the learned Senior Counsel appearing for the appellants is right in his submission that the decision of the governing body dated 27.12.2000 applied on 30.04.2018 i.e., the date of superannuation of the respondent No. 1. It is not in dispute that the respondent No. 1 was working as a researcher and the service conditions of a Research Assistant are altogether different compared to the AYUSH Doctor. It is also not in dispute that the method of recruitment of the respondent No. 1 is different compared to that with the AYUSH doctors.

27. The principal argument canvassed by the learned Senior Counsel appearing on behalf of the respondent No. 1 is that the provisions of FR 56(bb) would apply to the respondent No. 1 in his capacity as an employee of the Council in view of Clause 35 of the Bye-Laws of the Council referred to above, by which the provisions of the FR and SR would apply to the employees of the Council mutatis mutandis.

On the other hand, the case put up by the appellants is that the said provisions are not applicable to the employees of the Council in view of the clarification of the Ministry dated 31.10.2017. In regard to the clarification of the Ministry vide its letter dated 31.10.2017, the stance of the respondent No. 1 is that such clarification cannot override the decision of the Cabinet or the provisions of the FR 56 as amended.

28. The aforesaid aspect was duly considered by the CAT. The CAT rightly took the view that the argument canvassed on behalf of the respondent No. 1, that the Council failed to consider the Clause 35 of the Bye-Laws referred to above, which states that the FR, SR and (GFR) as amended from time to time shall apply mutatis mutandis to employees of the Council, was without any merit and deserved to be rejected. The CAT in our opinion rightly rejected such argument. We say so because the applicability would be subject to the provision specific to the Clause 34 governing superannuation of the employees of the Council.

29. There is nothing in Clause 35 of the Bye-Laws referred to above on the basis of which, it could be said that the same will have an overriding effect on Clause 34 as regards the age of retirement. Clause 47 of the Bye-Laws makes it abundantly clear that for the matters not specifically provided in the Bye-Laws, the rules applicable to the government employees would apply. However, as there is a specific provision regarding superannuation in Clause 34, the rules governing the government services in respect of superannuation are not applicable to the employees of the Council unless it is in accordance with Clause 34 of the Bye-Laws.

30. We shall now deal with one another submission canvassed by Mr. R. Balasubramanian, the learned Senior Counsel appearing on behalf of the respondent No. 1. It was submitted that Clause 34 of the Bye-Laws should be read in two parts. The first part states that the Rules governing the retirement of employees of the Government of India as amended from time to time would apply to the employees of the Central Council.

According to the learned Senior Counsel, the second part of the Clause 34 which reads "or as desired by the governing body" is merely an enabling provision empowering the governing body to take a decision whether an employee deserves to be retained beyond the prescribed age of superannuation. According to the learned Senior Counsel such power should not be read in a negative form to clothe the governing body with the power to prescribe lesser age of superannuation than what has been prescribed by the Central Government from time to time.

We are afraid, we are not in a position to accept such an argument. The language of Clause 34 is very clear. What is important to note while reading the Clause 34 is the word "or". Thereafter, there is a proviso which says that an employee can be retained in service after prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Counsel to retain him in the service.

31. The expression "the rules governing the retirement of employees of Government of India as amended from time to time" is separated from the rest of the part of the Bye-Law by the word "or" which is disjunctive and giving natural meaning to the said word separates the rules that may be framed by the Government of India and the rules that the Council may desire to frame as regards the age of retirement of the employees of the Council.

32. It is a well-established principle of statutory interpretation that the word "or" is normally disjunctive and the word "and" is normally conjunctive. Both of

them can be read as vice-versa, but that interpretation is adopted only where the intention of the legislature is manifest.

33. Justice G.P. Singh in the Principles of Statutory Interpretation (Thirteenth Edition 2012) page 485 has stated as follows:

"The word 'or' is normally disjunctive and 'and' is normally conjunctive but at time they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by SCRUTTON, L.J.:

"You do sometimes read "or" as 'and' and in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. And as pointed out by LORD HALSBURY the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done". Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down.

But if the literal reading of the words produces an unintelligible or absurd, result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of 'and' and 'or' produces grammatical distortion and makes no sense of the portion following 'and', 'or' cannot be read in place of 'and'. The alternatives joined by 'or' need not always be mutually exclusive."

34. Thus, in view of the aforesaid discussion, we reject the submission canvassed on behalf of the respondent No. 1 as regards the interpretation of the Clause 34 of the Bye-Laws. In this context, we may only say that the governing body of the Council is not obliged to take a decision in tune with the decision of the Ministry of AYUSH regarding superannuation more particularly having made it clear that enhancement of retirement age is not applicable to an autonomous body like CCRAS.

35. We are also not impressed by the submission canvassed on behalf of the respondent No. 1 that as the terms and conditions of the services of the employees of the Council on all other aspects like the Provident Fund/GPF, Pension, Gratuity, Leave Rules, Scales of Pay, Conduct Rules and other conditions of services are the same as applicable to the employees of the Central Government as set out in Clauses 31, 32, 33, 42, 44 and 47 respectively of the Bye-Laws, the matter of age of superannuation of the respondent No. 1 should not be treated differently.

What should be the age of superannuation is a matter of policy. It is not within the domain of the court to legislate. It is only if a policy decision or a notification is arbitrary it may invite the frowns of Article 14 of the Constitution. In any case, the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay.

36. We may at this stage, refer to the following decision in Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others v. State of Tamil Nadu and Others reported in (1980) 3 SCC 97 : [SCC pp. 99 SCC (L&S) p. 296, para 7]

"7. In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right."

37. It is too late in the day for the respondent No. 1 to raise all such issues including infringement of Article 14 of the Constitution on the ground of artificial distinction between the Research Assistant and AYUSH Doctors. The respondent No. 1 knew from day one i.e., from the date of his appointment that he was being appointed as a Research Assistant. His service conditions and mode of recruitment are different compared to the AYUSH Doctors. It is a different thing that he might have treated the patients but that by itself would not entitle him to claim that his age of superannuation should be at par with the AYUSH Doctors.

38. In the aforesaid context, we may refer to and rely upon a decision of this Court in the case of State of Bihar and Another v. Teachers' Association of Govt. Engineering College and Others, reported in (2000) 10 SCC 527 wherein, the respondents were teachers of three engineering colleges owned by the State of Bihar. They were recruited through the Bihar Public Service Commission.

Their service conditions were governed by the Bihar Service Code. Under the relevant provisions of the Bihar Service Code, the age of superannuation up to 1989, was 58 years. However, with effect from 01.10.1989 it was raised to 60 years. They claimed that their age of retirement should be the same as the age of retirement of Bihar Engineering College which was a college of the Patna University. Its teachers were recruited through the University Service Commission.

Their service conditions were governed under the Patna University Act. At the relevant time, the age of retirement for university teachers was 62 years. However, with effect from 15.08.1992 the age of retirement was reduced to 60 years. The respondent's claim was upheld by the High Court. Allowing the State's appeal, this Court held:

"5. The respondents contend that their age of retirement should be the same as the age of retirement of university teachers employed in Bihar Engineering College, Patna. But the terms and conditions of service of teachers in the three engineering colleges of the State are different from the terms and conditions of service of the university teachers employed in Bihar Engineering College at Patna. The authority responsible for recruitment is also different. The method of recruitment is different and service conditions are prescribed under different rules and regulations and/or under a separate Act.

We fail to see how in respect of the teachers who are government servants, governed by the Bihar Service Code, the age of superannuation should be different from the age of superannuation for all other government servants governed by the Bihar Service Code. The High Court ought not to have equated the service conditions in the three State colleges with the service conditions in a University college. Application of Article 14, in these circumstances, is misconceived, when there are valid criteria for differentiating between the service conditions in the two sets of colleges.

In the premises the impugned judgment of the High Court insofar as it directs that the age of superannuation of teachers working in the three engineering colleges other than Bihar College of Engineering, Patna should be brought on par with the age of superannuation of those working in Bihar College of Engineering at Patna, is set aside. The further direction to pay arrears or give benefits flowing from the extended age of superannuation is also set aside. The appeals are allowed accordingly."

39. The only idea with which we have referred to and relied upon the aforesaid decision is to convey that the case on hand is not one of discrimination. Article 14 of the Constitution has no application having regard to the facts of the present case.

40. Mr. Lekhi, the learned Senior Council appearing for the appellants placed strong reliance on two decisions of this Court: (i) T.M. Sampath (supra) and (ii) Bhagwan (supra). Both these decisions have been relied upon to fortify the contention that the employees of autonomous bodies are governed by their own rules and Bye-Laws and they cannot claim parity with the government

employees. We must look into both these decisions. Paras 3, 15, 16 and 17 respectively of T.M. Sampath (supra) are as follows:

"3. The facts of these appeals are briefly stated hereinafter. The appellants herein are the employees of National Water Development Agency ("NWDA") which was established as a society in July 1982 and was registered under the Societies Registration Act, 1860. The Society NWDA, which falls under the aegis and control, both administrative and financial, of the Ministry of Water Resources, is fully funded by the Government of India, headed by the Union Minister for Water Resources as the President.

NWDA framed rules and regulations for its smooth functioning. Whatever emoluments have been prescribed for the government servants by the Central Government Office Memorandum ("the OM", for short) the same apply mutatis mutandis to the employees of NWDA. Bye-law 28 of NWDA also mandates that the rules and orders applicable to the Central Government employees shall apply mutatis mutandis to the employees of NWDA subject to modification by the Governing Body concerning service conditions and only in case of any doubt, the matter has to be referred to the Governing Body for a decision.

Byelaw 26(a) provides for the emoluments structure for all employees that will be adopted by NWDA, with the approval of the Ministry of Finance (Department of Expenditure). Bye-law 28 provides that till such time NWDA frames its rules governing service conditions of the employees, rules and orders applicable to the Central Government employees shall apply mutatis mutandis, subject to such modifications as made by NWDA from time to time.

15. In light of the facts and circumstances of this case and the submissions made by the learned counsel on both sides, it can be concluded that NWDA had framed its regulation: the CPF Rules, 1982 and they were duly approved by the Governing Body of NWDA. As NWDA is an autonomous body under the Ministry of Water Resources, it has framed its own bye-laws governing the employees.

It has been time and again reiterated that the court must adopt an attitude of total noninterference or minimal interference in the matter of interpretation of rules framed by autonomous institutions. In Kerala SRTC v. K.O. Varghese [(2007) 8 SCC 231 : (2007) 2 SCC (L&S) 862] , this Court held : (SCC pp. 240-41, paras 18 & 21)

"18. KSRTC is an autonomous corporation established under the Road Transport Corporations Act, 1950. It can regulate the services of its employees by making appropriate regulations in that behalf.

21. The High Court is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR to automatically give all enhancements in pension and other benefits given by the State Government to its employees." Thus, as the appellants are governed by the CPF Rules, 1982, the OM applicable to the Central Government employees is not applicable to them."

16. On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the OM i.e. 1-5-1987, the relevant date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government.

In Zee Telefilms Ltd. v. Union of India [(2005) 4 SCC 649], it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression "State" and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated on a par with their counterparts in the Central Government under sub-rule (6)(iv) of Rule 209 of the General Financial Rules, merely on the basis of funding is not applicable.

17. Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. As held by this Court in UT, Chandigarh v. Krishan Bhandari [(1996) 11 SCC 348 : 1997 SCC (L&S) 391], the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated.

The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be "Central Government employees" as stated in the OM for its applicability."

(Emphasis supplied)

41. The decision in the case of T.M. Sampath (supra) was later referred to and relied upon by this Court in the case of Bhagwan (supra). This Court in the Bhagwan (supra) observed in para 26 as under:

"26. As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on a par with the government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in

the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the autonomous Board/body cannot be put on a par."

(Emphasis Supplied)

42. We must also look into the decision of this Court in the case of Kerala Assistant Public Prosecutors Associations v. State of Kerala and Others reported in AIR 2018 SC 2652, wherein the Assistant Public Prosecutors were seeking parity with respect to the age of superannuation to that of Public Prosecutors.

This Court took notice of the fact that the method of selection between the two posts is very different and that the former are considered to be government employees, whereas the latter are not. The Court thereafter, proceeded to hold that merely because the nature of work between the two is similar, the same does not imply that the age of superannuation ought to be similar as well. The relevant portion is produced hereunder:

"6. The fact that the nature of duties and functions of Assistant Public Prosecutors and Public Prosecutors are similar, per se, cannot be the basis to claim parity with Public Prosecutors in respect of age of superannuation."

(Emphasis supplied)

43. In Union of India and Others v. Lieut (Mrs) E. Iacats, reported in (1997) 7 SCC 334, the respondent therein had filed a writ petition in the Guahati High Court challenging her retirement at the age of 55 years on the ground that in other nursing services under the military establishment the age of retirement was 58 years. It was argued before the High Court that it was discriminatory to retire the nurses who were appointed for local service only at the age of 55 years. The Petition was allowed by the High Court. The UOI came before this Court in appeal. This Court while allowing the appeal filed by the UOI, observed as under:

"3. If different nursing services are constituted under separate army instructions carrying their own separate terms and conditions of service, one cannot complain of discrimination if the ages of retirement prescribed under these different services are different. Each will be governed by its own rules and regulations. The respondent is, therefore, not justified in claiming that she has been discriminated against because she has retired at the age of 55."

(Emphasis supplied)

44. The age of superannuation is always governed by the statutory rules governing appointment on a particular post. Hence, even if it is averred that the nature of work involved in the two posts is similar, the same cannot be a ground to increase or alter the service conditions of an employee as each post is governed by its own set of rules. The same was held in the case of New Okhla Industrial Development Authority and Another v. B D Singhal and Others, reported in AIR 2021 SC 3457, wherein this Court held as under:

"24. Since the enhancement of the age of superannuation is a 'public function' channelised by the provisions of the statute and the service regulations, the doctrine of promissory estoppel cannot be used to challenge the action of NOIDA."

(Emphasis supplied)

45. We shall now look into the decision of this Court in Dr. Ram Naresh Sharma (supra). This decision of this Court has been relied upon by Mr. R. Bala, the learned Senior Counsel appearing for the respondent No. 1. He has relied upon paras 23 and 24 respectively which read thus:

"23. The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients.

The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia.

Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.

24. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of

extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F. No. D. 14019/4/2016EI (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent doctors, in the present appeals. All consequences must follow from this conclusion."

46. The aforesaid decision of this Court in the case of Dr. Ram Naresh Sharma (supra) upon which strong reliance has been placed on behalf of the respondent No. 1 is of no avail for the simple reason that in the said case, the only question that arose was whether the benefit of enhancement of age of retirement from 60 years to 65 years granted in favour of allopathy doctors was available even for ayurveda doctors or not? The said decision was based upon an order of the Ministry of AYUSH dated 24.11.2017.

47. As seen from paragraph 23 of the said decision referred to above, the age of retirement of allopathy doctors was enhanced by an order dated 31.05.2016 issued by the Ministry of Health and Family Welfare. This was followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since, Ayurveda doctors were not covered by the Ministry's order dated 31.05.2016, the Ayurveda doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an order dated 24.08.2017.

The North Delhi Municipal Corporation (Employer) filed writ petitions before the High Court of Delhi challenging the decision of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an order dated 24.11.2017 enhancing the age of retirement of AYUSH doctors also to 65 years, but w.e.f. 27.09.2017. It is in that context that this Court held as aforesaid in Dr. Ram Naresh Sharma (supra). Thus, this decision is in no manner helpful to the respondent No. 1.

48. We may only say that the entire approach of the High Court towards the present litigation was incorrect. We are a bit disappointed to observe that the High Court dealt with the present litigation in a very casual manner. First, the High Court went to the extent of granting interim relief extending the period of service beyond 60 years till the disposal of the Original Petition by the CAT.

By virtue of such interim order which the High Court ordinarily should not grant, the respondent No. 1 although was to retire in 2018 yet continued in service till 2021. It is only when this Court stayed the operation of the impugned order passed by the High Court while issuing notice that the service of the respondent No. 1 came to an end.

The Court or the Tribunal should, therefore, be slow and circumspect in granting interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated. But if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.

At the cost of repetition, we may state that the High Court was conscious of the fact as very much recorded in the impugned order that the respondent No. 1 was appointed as a Research Assistant and was functioning as a Researcher under the Research Council and his service conditions were also different compared to the AYUSH doctors serving with the Ministry of AYUSH.

The High Court misdirected itself saying that the benefit of enhanced age of superannuation can also be granted if the duties performed are the same like AYUSH doctors. We fail to understand how can the Court fix the age of superannuation of an employee saying that he is very much devoted towards his job. The age of superannuation is always governed by statutory rules & other service conditions.

49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based.

It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226

of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury.

It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

52. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa and Another, reported in AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

"7. In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal.

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Summer in King v. Nat Bell Liquors Limited [(1922) 2 AC 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction."

53. Relying on T.C. Basappa (supra), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (supra), laid down the following propositions as well established:

"(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous."

54. This Court explained that a court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.

55. In Syed Yakoob v. K.S. Radhakrishnan and Others, reported in AIR 1964 SC 477, P.B. Gajendragadkar, CJ., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction.

A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court.

This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the

Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.

Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

56. In Surya Dev Rai v. Ram Chandra Rai and Others, reported in 2003 (6) SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned.

In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque and Others, AIR 1955 SC 233 occasioning failure of justice.

57. From the aforesaid, it could be said in terms of a jurisdictional error that want of jurisdiction may arise from the nature of the subject matter so that the inferior court or tribunal might not have the authority to enter on the inquiry. It may also arise from the absence of some essential preliminary or jurisdictional fact. Where the jurisdiction of a body depends upon a preliminary finding of fact in a proceeding for a writ of certiorari, the court may determine, whether or not that finding of fact is correct. The reason is that by wrongly deciding such a fact, the court or tribunal cannot give itself jurisdiction.

58. In Anisminic Ltd. v. Foreign Compensation Commission and Another, reported in (1969) 2 AC 147, the House of Lords has given a very broad connotation to the concept of 'jurisdictional error'. It has been laid down that a tribunal exceeds jurisdiction not only at the threshold when it enters into an inquiry which it is not entitled to undertake, but it may enter into an enquiry

within its jurisdiction in the first instance and then do something which would deprive it of its jurisdiction and render its decision a nullity. In the words of Lord Reid:

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice.

It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."

59. So far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. To attract the writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on the face of the record. Mere formal or technical errors, even of law, are not sufficient, so as to attract a writ of certiorari. As reminded by this Court time and again, this concept is indefinite and cannot be defined precisely or exhaustively and so it has to be determined judiciously on the facts of each case.

The concept, according to this Court in K.M. Shanmugam v. The S.R.V.S. (P) Ltd. and Others, reported in AIR 1963 SC 1626, 'is comprised of many imponderables... it is not capable of precise definition, as no objective criterion could be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element.' A general test to apply, however, is that no error could be said to be apparent on the face of the record if it is not 'self-evident' or 'manifest'.

If it requires an examination or argument to establish it, if it has to be established by a long drawn out process of reasoning, or lengthy or complicated arguments, on points where there may considerably be two opinions, then such an error would cease to be an error of law. (See : Satyanarayan Laxminarayan Hegde and Others v. Mallikarjun Bhavanappa Tirumale, reported in AIR 1960 SC 137.)

60. However, in our opinion, such a test should not be applied in a straitjacket formula and may fail because what might be considered by one Judge as an error self-evident, might not be considered so by another Judge. 61. At this stage, it

may not be out of place to remind ourselves of the observations of this Court in Syed Yakoob (supra) on this point, which are as follows:

"Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Certiorari would also not lie to correct mere errors of fact even though such errors may be apparent on the face of the record. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court.

It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

It is also well settled that adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal and these points cannot be agitated before the writ court."

62. In the aforesaid context, it will be profitable for us to refer to the decision of this Court in the case of Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another, reported in AIR 2000 SC 1508. This Court observed as under:

"The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon such materials which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly undertaken."

63. However, we may clarify that findings of fact based on 'no evidence' or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.

64. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and

should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course.

To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

65. A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter.

However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion.

If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. (See: King v. Nat Bell Liquors Ltd., (1922) 2 AC 128 (PC))

66. We may quote with profit a decision of this Court in the case of Satyanarayan Laxminarayan Hegde (supra) to understand the true purport and meaning of an error apparent on the face of the record or an error which could be termed as self-evident. The facts of that case were as below:

67. The respondent made an application in the Revenue Court of the Mamlatdar of Sirsi praying for the delivery of possession of property which the appellant was on that date possessing as the tenant under him on the basis of a 'Mulegeni' deed executed by the respondent's predecessor-in-interest in favour of the appellant's predecessor-ininterest. The case was governed by the Bombay Tenancy and Agricultural Lands Act, 1948, and one of the questions in

controversy was whether before applying for the delivery of possession, it was incumbent upon the respondent to have given a notice terminating the tenancy.

The Mamlatdar made an order for possession in favour of the respondent. The Collector allowed the appeal and set aside the order of the Mamlatdar. The Bombay Revenue Tribunal, to whom the matter was taken up on appeal, held that as the respondent had failed to terminate the tenancy by notice before instituting the action for ejectment, he was not entitled to entertain the application for recovery of possession.

68. Thereafter, the respondent made an application to the High Court of Bombay under Article 227 of the Constitution of India for the quashing of the order of the Revenue Tribunal and the Collector and for the restoration of the order of the Mamlatdar. The High Court was of the opinion that the Tribunal had committed an error which was apparent on the face of the record in holding that an order of possession could not be made unless a notice terminating the tenancy had been given before the institution of the proceeding and it issued a writ of certiorari quashing the order of the Tribunal and restoring that of the Mamlatdar.

69. An appeal was filed against the order of the High Court and this Court reversed that order on the ground that the alleged error in the judgment of the Bombay Revenue Tribunal, namely that an order for possession should not be made unless a previous notice required by Section 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, had been given, was not an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari and the following observations were made by this Court:

"17. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

70. We may also quote with profit one more decision of this Court explaining the true scope of issue of a writ of certiorari and what is an error apparent on the face of the record, which could be corrected by issue of a high prerogative writ like certiorari. In the case of Ebrahim Aboobakar and Hawabai Aboobakar v. The Custodian General of Evacuee Property, New Delhi, reported in (1952) 1 SCC 798, this Court made the observations in paras 12, 13, 14 and 15, which we quote below:

"12. The remaining three questions canvassed before us, unless they are of such a nature as would make the decision of the respondent dated 13-5-1950, a nullity, cannot be the subject-matter of a writ of certiorari. It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice.

Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior court might not have authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the court has to try and which are conditions precedent to the assumption of jurisdiction by it.

But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly. The three questions agitated before us do not seem to be questions which bear upon the jurisdiction of the court of appeal, or its authority to entertain them.

13. It was contended that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depends and that the questions involved in the appeal before the respondent were collateral to the merits of the case. As pointed out by Lord Esher, M.R., in R. v. CIT [R. v. CIT, (1888) LR 21 QBD 313 (CA)] , the formula enunciated above is quite plain but its application is often misleading. The learned Master of the Rolls classified the cases under two categories thus : (QBD pp. 319-20)

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise.

There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist.

The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, [and] on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none.

In the second of the two cases, I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

14. The tribunal constituted to hear appeals under Section 24 has been constituted in these terms:

"Any person aggrieved by an order made under Section 7, Section 16, Section 19 or Section 38 may prefer an appeal in such manner and within such time as may be prescribed -

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian;

(b) to the Custodian General, where the original order has been passed by the Custodian, an Additional Custodian or an authorised Deputy Custodian."

15. Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in words of the widest amplitude and the legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a court of appeal has not only jurisdiction to determine the soundness of the decision of the inferior court as a court of error, but by the very nature of things it has also jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties.

Such jurisdiction is inherent in its very constitution as a court of appeal. Whether an appeal is competent, whether a party has locus standi to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate court so constituted.

Such a tribunal falls within Class 2 of the classification of the Master of the Rolls [R. v. CIT, (1888) LR 21 QBD 313 (CA)] . In these circumstances, it seems to us that the order of the High Court of Punjab that a writ of certiorari could not be issued to the respondent quashing the order of 13-5-1950, was right. We are further of the opinion that none of the contentions raised has any merit whatsoever."

71. This Court in Parry and Company Limited v. Commercial Employees' Association, Madras and Another (1952) 1 SCC 449 : AIR 1952 SC 179, held:

"14. The records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus there was absolutely no grounds here which would justify a superior court in issuing a writ of certiorari for removal of an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions. What the High Court has done really is to exercise the powers of an appellate court and correct what it considered to be an error in the decision of the Labour Commissioner.

This obviously it cannot do. The position might have been different if the Labour Commissioner had omitted to decide a matter which he was bound to decide and in such cases a mandamus might legitimately issue commanding the authority to determine questions which it left undecided [Board of Education v. Rice, 1911 AC 179 (HL)] ; but no certiorari is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous. The judgment of the High Court, therefore, in our opinion, is plainly unsustainable.

(Emphasis supplied)

72. In another case, the same Court held:

""A certiorari cannot be granted to quash the decision of the appellate tribunal on these points on the ground that the decision is wrong" - 'Ebrahim Aboobakar v. The Custodian General of Evacuee Property', 1952 Mad W.N. 502 (SC)."

73. It is, therefore, clear that in all findings on matters of fact and interpretation of law except in cases of defective jurisdiction, the decision of the tribunal must be deemed to be final.

74. The position is authoritatively summed up in Halsbury's Laws of England Vol.IX in para 1493 where it is laid down thus:

"1493. Where the proceedings are regular upon their face and the magistrates had jurisdiction, the superior court will not grant the writ of certiorari on the ground that the Court below has misconceived a point of law. When the Court below has jurisdiction to decide a matter, it cannot be deemed to exceed or abuse its jurisdiction, merely because it incidentally misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence. Nor will certiorari be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong in matters of fact, and the Court will not hear evidence impeaching the decision on the facts."

75. Similarly in the case reported in - 'Colonial Bank of Australasia v. Willan', (1874) LR 5 PC 417, it is observed by their Lordships thus:

"The question is whether the inferior court has jurisdiction to enter upon the enquiry and not whether there has been miscarriage of the procedure in the course of enquiry."

At page 443 of the same case, the learned Judges observed -

"An adjudication by a Judge having jurisdiction over the subject-matter is, if no defect appears on the face of it, to be taken as conclusive of facts stated therein.

"The case in (1874) LR 5 PC 417 has been approvingly cited by Fazl Ali, J. who held - 'Rai Brij Raj Krishna and Another v. Messrs S.K. Shaw and Brothers', AIR 1951 SC 115 that an error of law does not constitute an error of jurisdiction and that a wrong decision on facts or law cannot be questioned in a civil Court.

76. It being open to the tribunals to come to one or the other conclusion on the materials before them, it cannot by any means be said that the decisions are incorrect so as to attract the extraordinary jurisdiction for interference by a writ of certiorari. In a King's Bench decision in R. v. Brighton and Area Rent Tribunal, (1950) 1 All England Reporter 946, Lord Goddard, CJ. observed that:

"As the tribunal had observed all the formalities of the Act, had offended against none of its provisions or against the regulations made under it, there was no ground for holding that the tribunal's determination was not in accordance with law, and, therefore, the motions for certiorari and mandamus should be refused".

77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute.

The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334 observed:

"26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice.

However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

78. In view of the aforesaid discussion, we have reached to the conclusion that the impugned order passed by the High Court is not sustainable in law and the same deserves to be set aside.

79. In the result, the present appeal is allowed. The impugned order passed by the High Court dated 17.12.2020 in the Writ Petition (C) No. 30620 of 2020 is set aside.

80. No order as to costs.

81. The interim application filed by the intervenors also stands disposed.

.....CJI. (Dr. Dhananjaya Y. Chandrachud)

.....J. (J.B. Pardiwala)

New Delhi;

August 16, 2023

IN THE SUPREME COURT OF INDIA

Irfan @ Naka
Vs.
State of Uttar Pradesh

Criminal Appeal Nos. 825-826 of 2022

HEADNOTE – 'Great caution' must be exercised while placing reliance on dying declarations even as the law attaches a presumption of truthfulness to such statements.

JUDGMENT

J.B. Pardiwala, J.:

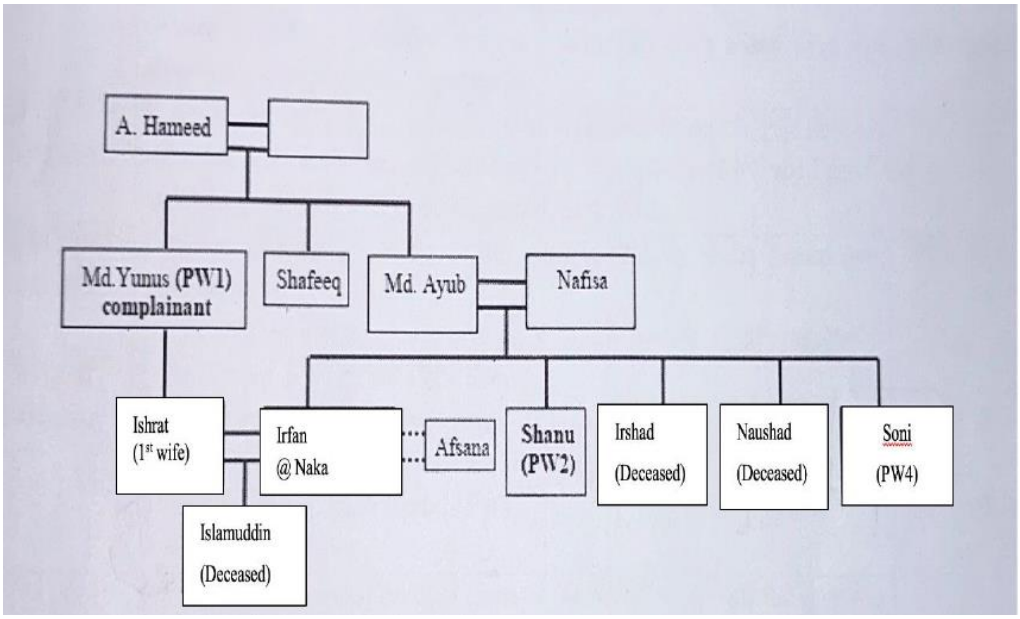
1. These appeals by special leave are at the instance of a convictaccused and is directed against the judgment and order dated 25.04.2018, passed by the High Court of Judicature at Allahabad in Capital Case No. 4669 of 2017 connected with Reference No. 11 of 2017 by which, the High Court dismissed the appeal filed by the convict-accused and thereby affirmed the judgment and order of conviction and sentence of death passed by the Additional Sessions Judge Court No. 6, Bijnore for the offence punishable under Sections 302, 436 and 326-A of the Indian Penal Code, 1860 (for short, 'the IPC') respectively.

2. The convict was awarded death penalty with fine of Rs. 20,000/- by the trial court for the offence punishable under Section 302 IPC. For the offence punishable under Section 436 IPC, the convict was awarded life imprisonment with fine of Rs. 10,000/- and for the offence punishable under Section 326-A IPC, the appellant came to be sentenced for life imprisonment with fine of Rs. 10,000/- and in default of payment of fines, further six months of rigorous imprisonment.

3. While the criminal reference was submitted by the trial court under Section 366 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') for confirmation of capital punishment awarded to the appellantconvict, the appellant-convict preferred an appeal by way of Capital Case No. 4669 of 2017, putting in issue his conviction and sentence. The High Court dismissed the case filed by the appellant-convict thereby confirming the death reference under Section 366 of the CrPC.

CASE OF THE PROSECUTION

4. FAMILY CHART



5. The appellant-convict was married twice. The first marriage was with a lady by name Ishrat, who was the daughter of his uncle Mohammad Yunus (PW-1). His second marriage was solemnised with a lady named Afsana. One son by name Islamuddin (deceased) was born in wedlock with Ishrat. The convict had two brothers, namely, Irshad (deceased) and Naushad (deceased), who lived along with him and his sister Soni (PW-4). Another brother by name Shanu alias Shahnawaz (PW-2) of the convict lived in the neighbourhood.

6. It is the case of the prosecution that the three deceased persons more particularly Islamuddin (convict's son) was highly opposed to the second marriage of his father, i.e., the appellant-convict. Islamuddin (deceased) was even once beaten by the appellant-convict as he had offered lot of opposition to the second marriage of his father. Islamuddin was also threatened by the appellant-convict that he would be thrown out of the house. Deceased Naushad (appellant-convict's brother) was in Saudi Arabia. He had just returned to Bijnore from Saudi Arabia on 04.08.2014.

7. Few days before the date of the incident, the appellant-convict had beaten his son (deceased Islamuddin) and at that point of time, Naushad and Irshad (deceased persons) had intervened to save Islamuddin. On 05.08.2014, at around 05.30 pm, PW-2 Shanu (convict's brother) went to see deceased Naushad and had dinner with PW-4 (convict's sister), Islamuddin and Irshad. The PW-2 also invited the appellant-convict for dinner. The appellant-convict lived in the same house as PW-4 and Naushad, but on a different floor.

8. On 05.08.2014, at around 10.00 pm, after the dinner was over, PW- 4 asked the PW-2 to stay overnight as it was too late. Naushad and Islamuddin slept in one room. As Irshad wanted to sleep on the roof, the appellant-convict advised him to sleep inside the room, as the weather was bad. Thus, all the three deceased persons ended up sleeping in one room.

9. PW-2 claims that the door of the room in which, the three deceased were sleeping, was open. However, according to the PW-4, it was locked from inside. The PW-2 lived at a distance of 200 metres from the place of the incident. It is pertinent to note that the High Court disbelieved the presence of the PW-2 at the place of occurrence, i.e., the house.

10. On 06.08.2014, at around 12.30 am, the PW-2 is said to have woken up to see flames and smoke coming from the room, where the deceased persons were sleeping. The PW-2 and his sister Soni (PW-4) claim to have seen the appellant-convict setting the room on fire and thereafter, fastening the door latch from outside and running away.

11. It is the case of the prosecution that the PW-2 and PW-4 opened the door and at that point of time, saw the appellant-convict running from the roof towards the stairs. According to the case of the prosecution, Amzad and one another person by name Shafiq (both not examined) also saw the appellant-convict running away.

12. The PW-1 (Original first informant- uncle of the appellant-convict) was sleeping in his room in his own house at the time of the incident. The uncle's house is at the distance of about 200 metres from the place of the occurrence.

13. The relatives first took Islamuddin, Irshad and Naushad to one Pooja Hospital situated at Najibabad in a vehicle. The Hospital declined to admit them. All the three injured were thereafter, taken to the hospitals at Bijnore and Meerut and finally were admitted to the Dr. Ram Manohar Lohiya Hospital, Delhi (RML Hospital).

14. On 06.08.2014, early in the morning at around 6.10 am all the three injured were brought to the casualty ward of the RML Hospital by Shafiq Ahmad (not examined). At 9.00 am, PW-1 (first informant) lodged a First Information Report with the Najibabad Police Station. In the FIR, the first informant alleged that it was the appellant-convict, who set his own son and two real brothers on fire, while they were sleeping on account of personal animosity.

15. The dying declaration of deceased Irshad was recorded on 07.08.2014 by the A.S.I. at the RML Hospital. Irshad passed away on 09.08.2014. In the same way, the dying declaration of Islamuddin was recorded on 07.08.2014. Islamuddin

passed away on 18.08.2014. It appears that the dying declaration of Naushad could not be recorded. Naushad also passed away on 18.08.2014. The two dying declarations were videographed in the mobile of the A.S.I.

16. On the strength of the FIR, the investigation was undertaken and on conclusion, the chargesheet came to be filed in the Court of Chief Judicial Magistrate, Bijnore, for the offences enumerated above, who in turn committed the case to the Court of Sessions.

17. On 06.01.2015, the Additional District and Sessions Judge framed charge against the accused for the offences punishable under Sections 436, 302 and 326-A respectively of the IPC. The accused did not admit the charge and claimed to be tried.

18. In the course of the trial, the prosecution adduced the following oral evidence in support of its case:

S. No.	**Oral Evidences**	**Witnesses**
1.	Mohd. Yunus, Uncle and Father-in-Law	PW-1
2.	Shanu @ Shahnawaz, Younger Brother	PW-2
3.	Mohd. Imran, Downstairs Neighbour, (examined to prove recovery memo)	PW-3
4.	Soni, Sister	PW-4
5.	ASI, Narender Singh Rawat, Police Post, RML Hospital	PW-5
6.	Dr Saurav, RML Hospital	PW-6
7.	Dr Rahul Band, Lady Hardinge Medical College, New Delhi	PW-7
8.	Dr Kuldeep Panchal, Lady Hardinge Medical College, New Delhi	PW-8
9.	Vishnu Gopal Upadhyaya, SI	PW-9
10.	R.P. Yadav, Inspector (Retd)	PW-10
11.	Dr Arvind Kumar, Associate Prof., Forensic Medicine, Lady Hardinge Medical College, New Delhi	PW-11
12.	Dr Charanjeet Kaur, RML Hospital	PW-12
13.	Riyaz-ud-din Khan, Constable Clerk 1184	PW-13

19. The prosecution also adduced the following documentary evidence:

S. No.	Particulars	Number and Name of with witness	Exhibit Nos.
1.	Original complaint dated 06.08.14	PW-1, Mohammad Yunus	Exhibit Ka-1
2.	Forensic Science Laboratory	Exhibited by Court	Exhibit

	Report, Agra dated 08.12.14	vide order dated 19.03.15	Ka-2
3.	Statement of the deceased Irshad dated 07.08.14	PW-5, A.S.I. Narender Singh Rawat	Exhibit Ka-2
4.	Request form of autopsy of the deceased Irshad dated 10.08.14	PW-5, A.S.I. Narender Singh Rawat	Exhibit Ka-3
5.	Request form of autopsy of the deceased Naushad dated 18.08.14	PW-5, A.S.I. Narender Singh Rawat	Exhibit Ka-4
6.	Copy of the statement of deceased Islamuddin dated 07.08.14	PW-5, A.S.I. Narender Singh Rawat	Exhibit Ka-5
7.	Statement of the deceased Islamuddin dated 07.08.14	PW-5, A.S.I. Narender Singh Rawat	Exhibit Ka-5A
8.	Request form of autopsy of the deceased Islamuddin dated 19.08.14	PW-5, A.S.I. Narender Singh Rawat	Exhibit Ka-6
9.	Receipt of dead body of Islamuddin 19.08.14	PW-5 A.S.I. Narender Singh Rawat	Exhibit Ka-7
10.	Statement for identification of dead body of deceased Irshad dated 10.08.14	PW-5 A.S.I. Narender Singh Rawat	Exhibit Ka-8
11.	Receipt of dead body of Irshad dated 10.08.14	PW-5 A.S.I. Narender Singh Rawat	Exhibit Ka-9
12.	Medico Legal Case Sheet of the deceased Irshad dated 06.08.14	PW-6 Dr. Sourav	Exhibit Ka-10
13.	Medico Legal Case Sheet of the deceased Naushad dated 06.08.14	PW-6 Dr. Sourav	Exhibit Ka-11
14.	Medico Legal Case Sheet of the deceased Islamuddin dated 06.08.14	PW-6 Dr. Sourav	Exhibit Ka-12
15.	Medico Legal Post Mortem report of the deceased Islamuddin dated 19.08.14	PW-7 Dr. Rahul Band	Exhibit Ka-10 A
16.	Medico Legal Post Mortem report of the deceased Irshad dated 10.08.14	PW-7 Dr. Rahul Band	Exhibit Ka-11 A
17.	Medico Legal Post Mortem Report of the deceased Naushad dated 18.08.14	PW-8 Dr. Kuldeep Panchal	Exhibit Ka-12 A
18.	Site Plan dated 06.08.14	PW-9 S.I. Vishnu Gopal Upadhyay	Exhibit Ka-13
19.	Recovery Memo dated 06.08.14	PW-9 S.I. Vishnu Gopal Upadhyay	Exhibit Ka-14

20.	Charge Sheet dated 28.09.14	PW-10 Inspector R.P. Yadav (Retd.)	Exhibit Ka14-A
21.	Death report of the deceased Islamuddin dated 18.08.14	PW-12 Dr. Charanjeet Kaur	Exhibit Ka-15
22.	Place of occurrence investigation report dated 06.08.14	PW-9 S.I. Vishnu Gopal Upadhyay	Exhibit Ka-16
23.	Chick FIR dated 06.08.14	PW-13 Constable Clerk Riyazudeen Khan	Exhibit Ka-17
24.	Carbon copy G.D.	PW-13 Riyazudeen Khan	Exhibit Ka-18

20. Upon completion of the oral as well as documentary evidence, the statement of the accused was recorded under Section 313 of the CrPC in which, the accused stated that he was innocent and had been falsely implicated in the alleged crime.

21. The trial court upon appreciation of the oral as well as the documentary evidence on record, arrived at the finding that the prosecution had been successful in establishing its case against the appellant-convict beyond reasonable doubt. Accordingly, the trial court held the appellantconvict guilty of the offence enumerated above and sentenced him to death.

22. The appellant-convict being dissatisfied with the judgment and order passed by the trial court, challenged the same before the High Court. The High Court dismissed the appeal of the appellant-convict and confirmed the death sentence imposed by the trial court.

23. In such circumstances referred to above, the appellant-convict is here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

24. Mr. Gopal Sankaranarayanan, the learned Senior Counsel appearing for the appellant-convict vehemently submitted that:

a. The courts below committed a serious error in recording a finding that the prosecution has been able to establish its case against the convict beyond reasonable doubt.

b. The entire case hinges on circumstantial evidence and none of the circumstances, relied upon by the courts below to hold the appellantconvict guilty of the charges, could be termed as incriminating circumstances.

c. The two dying declarations; one of Irshad and the other of Islamuddin could not have been relied upon, as they do not inspire any confidence and are in conflict with the ocular version of the two eyewitnesses.

d. The manner in which, the dying declarations came to be recorded, speaks for itself. He would submit that the dying declaration should ordinarily be recorded in a question-answer form. The Investigating Officer did not even deem fit to call the Executive Magistrate to record the dying declarations. It was also argued that there is nothing to indicate as regards the condition of the injured persons, while they are said to have made the dying declarations before the Investigating Officer.

To put it in other words, whether Irshad and Islamuddin were in a fit condition to speak so as to give dying declarations? It was pointed out by the learned Senior counsel that all the three Medico Legal Case (MLC) reports, which were prepared noted "No BP readable". Irshad and Naushad had suffered 95 % burns, whereas, Islamuddin had suffered 80-90 % burns.

e. In such circumstances referred to above, the learned Senior Counsel prayed that there being merit in his appeals, the same may be allowed and the judgment of the High Court and that of the trial court be set aside and the appellant-convict be acquitted of all the charges.

SUBMISSIONS ON BEHALF OF THE STATE

25. On the other hand, these appeals were vehemently opposed by Mr. Ardhendumauli Kumar Prashad, the learned AAG, appearing for the State. He submitted thus:

a. No error much less an error of law could be said to have been committed by the courts below in holding the appellant-convict guilty of the offences with which he was charged.

b. There was a strong motive for the appellant-convict to commit the crime. The second marriage of the appellant-convict was opposed by his son Islamuddin. As the appellant- convict wanted to disown his son, the same was opposed by his two brothers Naushad and Irshad. That is the reason why the appellant-convict was at inimical terms with his own son Islamuddin and his two real brothers Naushad and Irshad.

c. There is no good reason to discard the oral evidence of the PW-2 Shanu alias Shahnawaz and PW-4 Soni.

d. The courts below rightly believed the two dying declarations to be true and trustworthy.

e. To conclude, the learned counsel pointed out that the appellantconvict is a history-sheeter and has tendency to repeatedly indulge in serious crimes.

f. In such circumstances referred to above, the learned counsel prayed that there being no merit in the present appeals, the same may be dismissed and the death sentence awarded may be upheld.

ORAL EVIDENCE ON RECORD

26. Mohammad Yunus (PW-1) is the first informant. He has deposed that the appellant-convict is his real nephew and also happens to be his sonin- law. In the intervening night of 05/06.08.2014 at about 12.30 am in the night, the appellant set his real brothers, Naushad and Irshad on fire including his son Islamuddin by pouring highly inflammable substance on them, while they were sleeping in the room.

He has deposed that after setting the deceased persons on fire, the appellant shut the door from outside. On hearing the cries and shouts of Islamuddin, Naushad and Irshad, his brother Amzad and others including Shafiq and Shanu came running from the neighbourhood and broke upon the door. The injured were thereafter, taken to the Hospital at Najibabad.

27. Shanu alias Shahnawaz was examined as PW-2. Shanu is the younger brother of the appellant-convict. He has deposed that on 05.08.2014, late in the evening, he had gone to his old house to meet his brother Naushad. Naushad had returned from Saudi Arabia after a long time. His younger sister Soni (PW-4) had cooked food for them and they all had dinner together. His elder brother (convict) had also come down from his place of living to the ground floor.

The convict had hatred towards Naushad and Irshad. The convict had solemnised his second marriage at Jaspura town, after his release from jail. After arrival of his second wife, the convict wanted to separate his son Islamuddin. The convict had also assaulted Islamuddin two days before the incident, which was settled by Irshad and Naushad. On 05.08.2014, the second wife of the convict had gone to her parents' house at Jaspura. Being the elder brother, he asked the convict to take meal along with them.

It was around 11.00 in the night. His sister Soni asked the PW-2 to stay back as it was late in the night. Naushad slept in one room. Islamuddin slept in the room on the floor on a mattress. When Irshad went to sleep outside the room on the roof, the convict asked Irshad to sleep inside the room as the weather outside

was bad. Irshad also slept by the side of Islamuddin in the room. Islamuddin, Irshad and Naushad slept together in one room.

The door of that room was open. PW- 2 and his sister Soni slept in the adjoining room. At about 12.30 in the night, they saw smoke and flames coming out from the room, in which all the three deceased were sleeping. Then, he saw that the convict had poured some highly inflammable substance in the room in which Islamuddin, Irshad and Naushad were sleeping and set it on fire.

The convict ran away after closing the door of the room from outside. All the three were severely burnt. All the three injured died at the RML Hospital. When the convict had solemnised second marriage, the same was opposed by Islamuddin. The convict at that point of time had beaten Islamuddin and had threatened that he would expel him from the house.

28. Soni (PW-4) was examined as an eye-witness to the incident. She deposed that the convict was her real brother. She was present at her house on 05.08.2014. She herself had prepared the meal in the evening on that day. Her brothers, the convict, Naushad and Irshad and her nephew Islamuddin were present on the second floor of her house. All of them had meal together. After taking meal, Naushad and Islamuddin went to sleep in the adjoining room and Irshad was sleeping on a cot outside the room.

The convict asked Irshad to sleep inside the room, as the weather outside was bad. Irshad also slept by the side of Islamuddin in the room. They shut the door of the room from inside. The convict shut the door of the room from outside. Then cries "bachao-bachao" came from the room and flames of fire were seen inside the room. When she opened the room, she saw that the convict was running towards the stairs. Amzad and Shafiq saw the convict while he was running away.

They all saw the burning room. After opening the door, they evacuated Naushad, Irshad and Islamuddin. All three were severely burnt. The skin of their legs got stuck on the floor. They took all the three injured to Pooja hospital in a vehicle. On refusal to admit, they were taken to Bijnore, thereafter to Meerut and from Meerut to the RML Hospital. During travel, her brothers and nephew were talking. Her brothers and nephew said that the convict set fire in the room after pouring petrol on account of which, all of them got burnt.

All the three died at the RML Hospital, Delhi. The convict had solemnised second marriage after coming out from jail. Her brothers Irshad, Naushad and nephew Islamuddin had objected to it. The convict wanted to oust Islamuddin from their house. Her brothers Irshad, Naushad took the side of Islamuddin. For

this reason, the convict burnt all of them by pouring petrol, setting them on fire and shutting the room from outside in order to kill them.

29. In her cross-examination, she stated that to the best of her knowledge, Islamuddin and Naushad had bolted the room from inside. The room in which, she was sleeping, was not bolted from outside. No other room was bolted from outside, except the room in which Islamuddin and Naushad were sleeping.

30. A.S.I. Narender Singh Rawat was examined as PW-5. He was examined to prove the dying declarations of Irshad (Ex. Ka.2) and Islamuddin (Ex. Ka.5A) recorded by him. He has deposed that on 19.08.2014, he was posted at the Police Out-post of RML Hospital, New Delhi. Irshad, Naushad and Islamuddin were admitted on 06.08.2014, in the RML Hospital. He recorded statement of Irshad on 07.08.2014, who told that they lived with the entire family.

He ran a mobile phone shop. On 05/06.08.2014, while he and his elder brother Naushad and nephew Islamuddin were sleeping in his house, at about 12.30 in the night, his brother Irfan/convict closed the door from outside and set the room on fire from inside with some inflammable substance. Due to which, they suffered severe burn injuries. The neighbours evacuated them from the room after a long time, and admitted them in the Pooja Hospital, Najibabad.

They were referred to the RML Hospital from there for treatment. This statement was given by the deceased Irshad. Paper No. 13, filed in the case, was in his handwriting and signature. He had obtained thumb marks of Irshad, which was identified by him. It was marked as Ex. Ka-2. Irshad died on 09.08.2014 at 07.30 pm. The dead body was sent to the Lady Hardinge Hospital for postmortem on 10.08.2014. After the postmortem, the body was handed over to his relatives Sadaqat and Shahnawaz after proper identification.

The deceased Naushad died on 18.08.2014 at 08.40 am. His postmortem was conducted on the same day and dead body was handed over to his relative. He had also recorded the statement of the deceased Islamuddin. He had stated that the convict had closed the door from outside and set the room on fire from inside with some inflammable substance, due to which, he, his uncles Irshad and Naushad got burnt.

The neighbours saved them on hearing their cries. PW-5 recorded the statement of the deceased on 07.08.2014, which was filed in case file and under his handwriting and signature. The same was marked as Ex. Ka-5. Islamuddin died on 18.08.2014 at 09.15 pm. His postmortem was conducted on 19.08.2014. Dead bodies of all the three were handed over to Shahnawaz and Sadaqat, after postmortem.

31. In his cross-examination he stated that he had not investigated this case. Neither any officer of Delhi Police nor U.P. Police deputed him to investigate this case. He had recorded the statements of the deceased Irshad and Islamuddin on 07.08.2014. He had recorded the statements of both in the emergency ward of the hospital. No one else was present at the time of recording the statement except him and the deceased persons.

Both of them were in a fit condition when he recorded their statements. Exhibit Ka-2 and Exhibit Ka-5, the statement of Islamuddin does not bear the thumb impression or signature of anybody else except his own and the deceased. Exhibit Ka-2 and Ex. Ka-5 do not bear any certificate from the doctor with regard to fitness of both the deceased. Ex. Ka-2 and Ex. Ka-5 do not bear his endorsement with regard to fitness of the deceased at the time of recording the statements.

There was a time gap of 15 - 20 minutes in recording of the two dying declarations. Both were written on the same day and at the same place. PW-5 had written only two statements. Different pens were used in recording the statements, but to obtain thumb impressions of the deceased, one ink pad was used.

32. A.S.I. Narender Singh Rawat PW-5 was recalled for the purpose of re-examination on 28.04.2017 in compliance of the order dated 15.04.2017. That on 07.08.2014, he was posted at the RML Hospital. On that day he had recorded the statement of Islamuddin aged about 16 years, son of the convict, resident of mohalla Muglooshah, Najibabad, District Bijnore. Islamuddin was in a fit condition to give a statement.

He had recorded his statement word by word as stated by him. His thumb impression was taken on the statement. The thumb impression was identified by him. He had also put his signature on the statement. His statement has been recorded earlier in the court.

33. The appellant-convict examined himself as a defence witness. He deposed that his parents had five children. He was the eldest, his brothers were, namely, Shanu, Irshad and Naushad and one sister Soni. Islamuddin was born from his first wife Ishrat. His first wife had left his house as his brothers used to quarrel with her in respect of property. At the time, when his first wife left the house, Islamuddin was aged about 10 years.

His brothers and sister were taking undue advantage of the tender age of Islamuddin and his mother deserting them. Taking advantage, they sent him to jail, in a false case. He came out from jail three years before the incident. During

these three years, he did not quarrel with any neighbours or any person from the mohalla. He married another woman, one and half years prior to this incident. His sister also used to quarrel with his second wife frequently for the property due to which she left her house.

He has deposed that his brothers, deceased Irshad and Naushad and his son Islamuddin used to consider him to be a weak person and with a view to grab the property, they all colluded to get my brothers and son killed. It was not known through whom, they got them killed. They falsely implicated him in the case. He ran away from the place of occurrence due to fear as he was released from jail in the recent past.

DYING DECLARATIONS:

34. We shall now look into the two dying declarations. 35. The deceased Irshad in his dying declaration recorded on 07.08.2014 stated thus:

"Statement of Irshad, s/o-Mo. Ayub, r/o Mohalla- Muglushah, P.S. Nazivabad, Distrinct-Bijnor, U.P., age- 20 years.

Stated that I am residing at the place mentioned above. I am running a mobile phone shop at Nazivabad. I was sleeping with my brother Naushad and nephew Islamuddin in the house. We were sleeping in the same room. Then at around 12.30 at night my brother Irfan locked the door from outside and set fire in the room with some inflammable substance.

As the room was on fire, we raised alarm. We all seriously got burnt and after a long time neighbours took us out of the room and they got us admitted at the Pooja Hospital, Nazivabad. After first aid they got admitted us at Dr. R.M.L. Hospital New Delhi and my treatment is continuing here. Heard the statement, it is correct."

36. The deceased Islamuddin, in his dying declaration recorded on 07.08.2014, stated thus:

"Statement of Islamuddin, s/o-Irfan, r/o- Mohalla- Muglushah, P.S. Nazivabad, Distrinct-Bijnor, U.P., age- 16 years.

Stated that I am residing at the place mentioned above. I am running a mobile phone shop at Nazivabad. I was sleeping with my uncle Irshad and Naushad in the house. We were sleeping in the same room. Then at around 12.30 at night my father Irfan locked the door from outside and set fire in the room with some inflammable substance.

After the room was on fire, we raised alarm. We all seriously got burnt and after a long time neighbours took us out of the room and they got us admitted at the Pooja Hospital, Nazivabad. After first aid they got admitted us at Dr. R.M.L. Hospital New Delhi and my treatment is continuing here. Heard the statement, it is correct. "

ANALYSIS

37. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the prosecution could be said to have proved its case against the appellant-convict beyond reasonable doubt.

38. The jurisdiction of this Court in criminal appeals filed against concurrent findings is circumscribed by principles summarised by this Court in Mst. Dalbir Kaur and Others v. State of Punjab reported in (1976) 4 SCC 158, para 8, as follows:

"8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

(2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;

(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;

(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence."

(Emphasis supplied)

DYING DECLARATIONS VIS-A-VIS ORAL EVIDENCE OF THE EYE-WITNESSES ON RECORD

39. The picture that emerges on cumulative assessment of the materials on record is that the appellant-convict had strained relationship with his son Islamuddin (deceased) born in the wedlock of his first marriage with Ishrat. His relations with his two brothers (deceased persons) were also strained. The defence put forward by the appellant-convict is that with a view to grab the property, PW-2 Shanu alias Shahnawaz, PW-4 Soni and others conspired to eliminate the deceased persons and thereafter, to throw the entire blame on the appellant-convict of having committed the crime.

The incident occurred in the night hours. The three deceased were sleeping in one room. The PW-2 and PW-4 are said to have been sleeping in an adjoining room in the house. The appellant-convict is said to have locked the door of the room from outside in which, the deceased persons were sleeping. He poured inflammable substance in the room and set the room on fire.

The three deceased persons suffered severe burn injuries and ultimately succumbed to death. Islamuddin and Irshad are said to have given their dying declarations before the A.S.I. as referred to above. Why the dying declaration of Naushad could not be recorded is not clear. A close perusal of the two dying declarations indicates that Irshad and Islamuddin raised alarm on getting severely burnt and they were taken out of the room by the neighbour. Who is this neighbour, they are referring to in their dying declarations is also not clear?

At the same time, it is pertinent to note that the Irshad and Islamuddin in their respective dying declarations do not say a word about the presence of the PW-2 Shanu alias Shahnawaz and PW-4 Soni. Both these witnesses do not figure in the two dying declarations. It is also pertinent to note that in both the dying declarations it has been very clearly stated that after a long time a neighbour came to their rescue and took them out of the burning room.

40. Keeping the aforesaid in mind, if we look into the oral evidence of the PW-2 Shanu alias Shahnawaz then according to him, he along with his sister Soni (PW-4) noticed fire in the room in which the deceased persons were sleeping. According to the PW-4, she also witnessed the appellantconvict pouring kerosene and setting the room on fire in which, the deceased persons were sleeping.

PW-2 also claims to have witnessed, the appellant-convict fastening the door latch from outside and thereafter, running away from that place. In the same manner, if we closely look into the oral evidence of the PW-4 Soni, then

according to her on seeing the flames of fire in the room, in which the deceased persons were sleeping, she immediately opened the door and saw that the appellant-convict was running from the roof towards the stairs.

The PW-4 claims that Amzad and Shafiq also saw the appellant-convict running away. Amzad and Shafiq have not been examined as the prosecution witnesses. It is not clear whether police even recorded the statements of Amzad and Shafiq under Section 161 of the CrPC?

41. If PW-2 and PW-4 were present at the time when the room was on fire and it is they who opened the door and took out the three deceased persons, then why the PW-2 and PW-4 do not figure in the dying declarations of Irshad and Islamuddin?

Why Islamuddin and Irshad said in their dying declarations that after a long time, the neighbour came to their rescue and took them out of the room? If a neighbour came to their rescue, then where were PW-2 and PW-4 at the time of the incident? PW-2 and PW-4 have deposed that they both were sleeping in the room adjacent to the room in which the deceased persons were sleeping. This is one very crucial aspect of the matter which, the prosecution has not been able to explain or clarify.

42. In such circumstances referred to above, we are left with either to believe the dying declarations or the oral evidence of the two so called eyewitnesses to the incident. It is also important to note that the PW-4 Soni, in her cross-examination has stated that to the best of her knowledge, Islamuddin and Naushad had fastened the latch from inside. If the door of the room, in which the deceased persons were sleeping was closed from inside, then how did the appellant-convict manage to open the door and enter the room so as to set the room on fire as alleged?

43. The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth.

Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with.

Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See: Laxman v. State of Maharashtra, (2002) 6 SCC 710]

44. The mode and manner, in which the dying declarations came to be recorded, is also something which creates a doubt, as regards its truthfulness and trustworthiness. Although, the Investigating Officer says that the recording of the dying declarations was video-graphed and the CD has been exhibited in evidence yet it is very important to determine the evidentiary value of the same.

45. We should also look into the genesis of the occurrence from a different angle. It is not in dispute that the three deceased died on account of severe burn injuries. It is also not in dispute that the room in which they were sleeping caught fire on account of which they suffered severe burn injuries.

It is also not in dispute that inflammable substance like kerosene was found from the room which ignited the fire. However, the moot question is who set the room on fire? Could it be said that the prosecution has been able to prove beyond reasonable doubt that it was only and only the appellant-convict who set the room on fire by pouring the inflammable substance?

46. It appears to us that whoever did the act, the inflammable substance was not directly poured or sprinkled on the three deceased persons. Had it been so, they would have immediately woken up and by the time, the room is sat on fire, they would make good their escape or catch hold of the culprit. It appears that the inflammable substance might have been poured on the floor of the room and thereafter, the fire must have been ignited.

Once, the room is on fire, the person responsible for setting the room on fire would immediately leave that place. We find it very difficult to believe that the appellant-convict was still inside the room or even outside the room to be witnessed by the deceased persons as well as by the PW-2 and PW-4, locking the room from outside after setting the room on fire.

The conduct of the accused may be unnatural because he was residing in the very same house, however, the conduct which may be a relevant fact under Section 8 of the Indian Evidence Act, 1872 (for short, 'the Act 1872'), by itself may not be sufficient to hold a person guilty of the offence of murder.

47. On overall assessment of the materials on record, we have reached to the conclusion that neither the two dying declarations inspire any confidence nor the

oral evidence of the PW-2 and PW-4 respectively inspire any confidence. Had the dying declarations stood corroborated by the oral evidence of the PW-2 and PW-4, then probably, it would have been altogether a different scenario. However, as noted above, the two dying declarations are not consistent or rather contradictory to the oral evidence on record.

48. The justification for the sanctity/presumption attached to a dying declaration, is two fold;

(i) ethically and religiously it is presumed that a person while at the brink of death will not lie, whereas

(ii) from a public policy perspective it is to tackle a situation where the only witness to the crime is not available.

49. One of the earliest judicial pronouncements where the rule as above can be traced is the King's Bench decision of the King v. William Woodcock reported in (1789) 1 Leach 500 : 168 ER 352, where a dying woman blamed her husband for her mortal injuries, wherein Judge Eyre held this declaration to be admissible by observing: -

"the general principle on which this species of evidence is admitted is, that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone: when every motive to falsehood is silent, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn, and so awful, is considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a Court of Justice.

(b) But a difficulty also arises with respect to these declarations; for it has not appeared and it seems impossible to find out, whether the deceased herself apprehended that she was in such a state of morality as would inevitably oblige her soon to answer before her Maker for the truth or falsehood of her assertions. Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence: but the degree of credit to which they are entitled must always be a matter for the sober consideration of the Jury, under all the circumstances of the case."

(Emphasis supplied)

50. Interestingly, the last observation of Judge Eyre showcases, even at the inception of this principle, that the Courts were wary of the inherent weakness of dying declarations and cautioned for great care to be adopted.

51. It is significant to note the observations made by Taylor that "Though these declarations, when deliberately made under a solemn sense of impending death, and concerning circumstances wherein the deceased is not likely to be mistaken, are entitled to great weight, if precisely identified, it should always be recollected that the accused has not the power of cross examination, a power quite as essential to the eliciting of the truth as the obligation of an oath can be, and that, where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or, in the case of mutual conflict, the natural desire of screening his own misconduct, may effect the accuracy of his statements and give a false colouring to the whole transaction.". [See: Taylor on "Treatise on the Law of Evidence", 1931, 12th Edition Pg. 462]

52. It is observed in Corpus Juris Secundum Vol XL, Page 1283 that:

"In weighing dying declarations, the jury may consider the circumstances under which they were made, as, whether they were due to outside influence or were made in a spirit of revenge, or when declarant was unable or unwilling to state the facts, the inconsistent or contradictory character of the declarations, and the fact that deceased has not appeared and accused has been deprived of the opportunity to crossexamine him, and may give to them the credit and weight to which they believe, under all the circumstances, they are fairly and reasonably entitled."

53. In India in the relevant provision of Section 32 of the Act 1872, the first exception to the rule against admissibility of hearsay evidence, is as under:

"32(1). When it relates to cause of death.-

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

54. Jon R. Waltz, American Jurist observed that, "It has been thought, rightly or wrongly, that Dying Declarations have intrinsic assurances of trustworthiness, making cross examination unnecessary. The notion is that a person who is in the process of dying, and knows it, will be truthful immediately before departing to meet his Maker. (Of course, the validity of this hearsay exceptions is open to some debate. What about the person who is not deeply religious? What of the person who, as his last act, seeks revenge by falsely naming a life-long enemy as his killer? How reliable is the perception and memory of a person who is

dying?)" [See: Waltz, J.R. (1975) Criminal Evidence, Chicago: Nelson-Hall. pp.75-76]

55. The Privy Council in Neville Nembhard v. The Queen reported in (1982) 1 AII ER 183, on Section 32(1) of the Act 1872 opined that the evidence of dying declaration under the Indian law lacks the special quality as in Common Law and hence, the weight to be attached to a dying declaration admitted under Section 32 of the Act 1872 would necessarily be less than that attached to a dying declaration admitted under the common law rules.

56. The below cited observations from the decision of Nembhard (supra) are of significant importance:

"final observation should be made concerning the cases al ready mentioned that have been decided in the Court of Appeal for Eastern Africa. It appears that rule of practice has been developed that when a dying declaration has been the only evidence implicating an accused person a conviction usually cannot be allowed to stand where there had been a failure to give a warning on the necessity for corroboration: see for example Pius Jasunga s/o Akumu v. The Queen (1954) 21 E.A.C.A. 331 and Terikabi v. Uganda [1975] E.A. 60.

But it is important to notice that in the countries concerned, the admissibility of a dying declaration does not depend upon the common law test: upon the deceased having at the time a settled hopeless expectation of impending death. Instead there is the very different statutory provision contained in section 32 (1) of the Indian Evidence Act 1872. That section provides that statements of relevant facts made by a person who is dead are themselves relevant facts:

"When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

(emphasis added).

In Pius Jasunga s/o Akumu v. The Queen it was pointed out (for the reason associated with the italicised words in the subsection) that the weight to be attached to a dying declaration admitted by reference to section 32 of the Indian Evidence Act 1872 would necessarily be less than that attached to a dying declaration admitted under the common law rules.

The first kind of statement would lack that special quality that is thought to surround a declaration made by a dying man who was conscious of his condition and who had given up all hope of survival. Accordingly it may not seem surprising that the courts dealing with such statements have felt the need to exercise even more caution in the use to be made of them than is the case where the common law test is applied.""

57. This Court in Muthu Kutty & Anr. v. State by Inspector of Police, T.N. reported in (2005) 9 SCC 113, while discussing the decision in Woodcock (supra) referred to above had cautioned the courts to ensure that a dying declaration is reliable before relying on it, with the following observations: -

"13. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

These aspects have been eloquently stated by Eyre, L.C.B. in R. v. Woodcock ((1789) 1 Leah 500 : 168 ER 352). Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

"Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?"

(See King John, Act V, Scene IV)

The principle on which dying declaration is admitted in evidence is indicated in the legal maxim "nemo moriturus praesumitur mentire - a man will not meet his Maker with a lie in his mouth".

14. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination.

The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

(Emphasis supplied)

58. This Court in Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, Andhra Pradesh reported in (2007) 15 SCC 465 and Bhajju alias Karan Singh v. State of Madhya Pradesh reported in (2012) 4 SCC 327 had explained the meaning and principles of dying declarations upon which its admissibility is founded, with the following observations: -

"20. There is a historical and a literary basis for recognition of dying declaration as an exception to the hearsay rule. Some authorities suggest the rule is of Shakespearian origin. In The Life and Death of King John, Shakespeare had made Lord Melun utter "Have I met hideous death within my view, retaining but a quantity of life, which bleeds away, lose the use of all deceit" and asked, "Why should I then be false, since it is true that I must die here and live hence by truth?" William Shakespeare, The Life and Death of King John, Act 5, Scene 4, lines 22-29.

22. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth.

This Court in more than one decision has cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In

order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

23. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be the last to give untruth as he stands before his creator.

24. There is a legal maxim "nemo moriturus praesumitur mentire" meaning, that a man will not meet his Maker with a lie in his mouth. Woodroffe and Amir Ali, in their Treatise on Evidence Act state:

"when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and crossexamination are dispensed with".

25. The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures."

(Emphasis supplied)

59. This Court in Bhajju (supra) has observed as under:

"23. The "dying declaration" essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath.

The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth. 26. The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity."

60. Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.

61. In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration? 63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused.

It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence.

The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.

65. In Sujit Biswas v. State of Assam reported in (2013) 12 SCC 406, this Court, while examining the distinction between "proof beyond reasonable doubt" and "suspicion" in para 13 has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions.

In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied.

In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record.

The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

66. It may be true as said by this Court, speaking through Justice Krishna Iyer in Dharm Das Wadhwani v. State of Uttar Pradesh reported in (1974) 4 SCC 267, that the rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy.

Judges are made of sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-convict in the crime.

67. In the present case, it is difficult to rest the conviction solely based on the two dying declarations. At the cost of repetition, the PW-2 has been otherwise also not believed by the High Court.

68. As discussed above, the oral evidence of the PW-4 Soni, also does not inspire any confidence. We are not satisfied that the prosecution has proved its case against the appellant-convict beyond reasonable doubt.

69. We, therefore, allow these appeals and acquit the appellant-convict of all the charges levelled against him. The appellant-convict is, therefore, directed to be released forthwith provided he is not required in connection with any other case or cases.

.....J. (B.R. Gavai)

.....J. (J.B. Pardiwala)

.....J. (Prashant Kumar Mishra)

New Delhi;

August 23, 2023

IN THE SUPREME COURT OF INDIA

Pesala Nookaraju
Vs.
Govt. of Andhra Pradesh

Criminal Appeal No. …….of 2023
Arising out of S.L.P. (Criminal) No. 9492 of 2023)

HEADNOTE – Preventive Detention - Three months limit under Art. 22(4)(a) of the Constitution applies only at initial stage till advisory board's report

JUDGMENT

J.B. Pardiwala, J.:

1. Leave granted.

2. This appeal is at the instance of a detenu, preventively detained under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (1 of 1986) (for short, 'the Act 1986') and is directed against the order passed by a Division Bench of the High Court of Andhra Pradesh dated 07.03.2023 in Writ Petition No. 33638 of 2022 filed by the appellant herein by which the Division Bench rejected the writ petition and thereby declined to interfere with the order of preventive detention passed by the District Collector, Kakinada District, Andhra Pradesh dated 25.08.2022 in exercise of his powers under Section 3(2) of the Act 1986.

FACTUAL MATRIX

3. The order of detention dated 25.08.2022 passed by the respondent No. 2 reads thus :-

"ORDER OF DETENTION

(UNDER SECTION 3(2) OF "THE ANDHRA PRADESH PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986").

Read:-

1) Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act,1986.

2) G.O. Rt. No. 1089, General Administration (SC-I) Dept., Dated 09.06.2022 3) Superintendent of Police, Kakinada District C.No.78/DSE0/SEB/ 2022, Dated 05.08.2022.

Whereas information is laid before me that Sri Pesala Nookaraju, S/o. Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram, Tuni Mandal, Kakinada District is an habitual offender and committing offences against AP Prohibition (Amendment) Act, 2020 and was arrested in 4 cases i.e. from January, 2021 to March, 2022, is indulging himself in committing the offences of distributing, storing, Transporting and selling ID Liquor which causes huge damage to the public health as well as public peace and tranquility, these acts are in contravention of Section 7(B) read with 8(B) of A. P. Prohibition (Amended) Act, 2020, which comes under the category of "BOOTLEGGER" as defined U/Sections 2 (b) of "The Andhra Pradesh Prevention of Dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

The details of cases are as follows:

1)	SEB Station, Tuni Cr. No. 13/2021, Dated: 06.01.2021, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.
2)	SEB Station, Tuni Cr. No. 376/2021, Dated: 13.08.2021, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.
3)	SEB Station, Tuni Cr. No. 532/2021, Dated: 30.09.2021, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.
4)	SEB Station, Tuni Cr. No. 213/2022, Dated: 09.03.2022, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.

Hence, it is necessary to make an order invoking powers conferred under Sec. 3 (2) of the Act (Act No. 1 of 1986) directing that Sri Pesala Nookaraju, S/o. Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram Village, Tuni Mandal, Kakinada District to be detained in Central Prison, Rajamahendravaram, East Godavari District with immediate effect, with a view to prevent him from acting in any manner prejudicial to maintenance of public health and public peace & tranquility.

Whereas, I am satisfied with the above material and information that the person named Sri Pesala Nookaraju, S/o Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N.S. Venkatapuram, Tuni Mandal, Kakinada District is acting and also

calculated to act in a manner prejudicial to the maintenance of public order and it is necessary to prevent him from acting further by directing the said person to be detained.

Therefore, I, Dr. Kritika Shukla, I.A.S., Collector & District Magistrate, Kakinada District in exercise of the powers conferred upon me under Sub Section 2 of Section 3 of the A. P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 read with G. O. Rt. No. 1089 General Administration (SC-I) Dept. Dated 09.06.2022 do hereby direct under Sub Section (1) of Section 3 of the said Act that Sri Pesala Nookaraju, S/o Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram Village, Tuni Mandal, Kakinada District shall be detained in Central Prison, Rajamahendravaram, East Godavari District until further orders to be received from the Government."

4. The grounds of detention dated 25.08.2022 furnished to the appellant herein along with the order of detention referred to above read thus:-

"Whereas information laid before me reveals that you Sri Pesala Nookaraju, S/o Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram, Tuni Mandal, Kakinada District an habitual offender and is committing offences against A.P. Prohibition (Amendment) Act, 2020 time and again though several cases were booked against you. It is evident that you were arrested in four cases from January, 2021 to March, 2022. You have been distributing, storing, Transporting and selling ID Liquor in and around of N. S. Venkatapuram village and surrounding places of Tuni Mandal which causes huge damage to the public health as well as public peace and tranquillity.

The following are the Grounds for Detention:

GROUND No. 1 (Cr. No. 13/2021, dated 06.01.2021 of U/s 7(B) r/w 8(B) of A. P. Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District.

On 06.01.2021, at about 06.00 A.M., while the Sub Inspector, Special Enforcement Bureau, Tuni along with staff conducting raids for detection of Proh. & Excise offences at N.S. Venkatapuram Village of Tuni Mandal and found one person with one mica hand bag in his right hand, near Ambedkar statue of SC Peta. On seeing the Police Party, he left the mica bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of the constables and the Enforcement Sub-Inspector sent one constable to secure mediators but he come back and informed that nobody is came forward to stood as mediators.

Then Sub-Inspector SEB got opened the bag and found one polythene cover containing five (5) liters of I.D. liquor. When enquired with the accused about his identity particulars, he voluntarily disclosed that his name is Pesala Nookaraju S/o Bulliyya, Age: 45 Years, Caste: SC (Mala) R/o N.S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A. P. Prohibition (Amendment) Act, 2020 and arrested the accused and registered the case against the accused and seized the ID arrack.

Then drawn 300 ml I.D liquor as sample for the purpose of chemical examination, from the seized ID arrack into a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized ID Liquor, under the cover of special report drafted on the spot, by the Enforcement Sub Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide. C. E. No. 366/2021 in Sl. No. 5890 dated 04.03.2021.

GROUND No. 2 (Cr. No. 376/2021, dated 13.08.2021 of U/s 7(B) r/w 8(B) of A. P. Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District.

On 13.08.2021, at about 09.30 A.M., while the Sub Inspector, Special Enforcement Bureau, Tuni along with staff conducting raids for detection of Proh. & Excise offences in N.S. Venkatapuram village of Tuni Mandal and found one person standing with one gunny bag to his right shoulder near Ambedkar statue of SC Peta. On seeing the Police Party, he left the Gunny bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of constables and the Enforcement Sub-Inspector sent one constable to secure mediators but he came back and informed that nobody is came forward to stood as mediators.

Then Sub Inspector SEB got opened the bag and found three polythene covers each containing 10 liters total 30 liters of I.D. liquor. When enquired with the accused about his identity particulars, he voluntarily disclosed that his name is Pesala Nookaraju S/o Builiyya, Age: 45 Years Caste: SC (Mala), R/o N. S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A. P. Prohibition (Amendment) Act 2020 and arrested the accused and registered the case against the accused and seized the ID arrack.

Then drawn 300 ml I.D. liquor as sample for the purpose of Chemical Examination, from seized arrack into a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized ID liquor, under the cover of Special Report drafted on the spot, by the Enforcement Sub- Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide C.E. No. 2381/2021 in Sl. No. 41632 dated 10.11.2021.

GROUND NO. 3 (Cr. No. 532/2021, dated 30.09.2021 of U/s 7(B) r/w 8(B) of AP Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District):

On 30.09.2021, at about 08.05 P.M., while the Special Enforcement Bureau, SHO, Tuni along with Technical wing sub-Inspector and staff conducting raids for detection of Proh. & Excise offences at near Ambedkar statue of SC Peta N.S. Venkatapuram village of Tuni Mandal and found one person came by walk with one mica bag in his right hand, on seeing the Police Party, he left the mica bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of constables and the Enforcement Sub Inspector sent one constable to secure mediators but he come back and informed that nobody is came forward to stood as mediators.

Then Sub Inspector SEB got opened the bag and found one polythene cover containing 10 liters I. D. liquor. When enquired with the accused about his identify particulars, he voluntarily disclosed that his name is Pesala Nookaraju S/o Bulliyya, Age: 45 Years, Caste: SC (Mala) R/o N. S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A.P. Prohibition (Amendment) Act 2020 and arrested the accused and registered the case against the accused and seized the ID arrack.

Then drawn 300 ml I. D. liquor as sample for the purpose of chemical examination, from the seized ID arrack in to a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized I.D. liquor, under the cover of Special Report drafted on the spot, by the Enforcement Sub-Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide C. E. No. 2796/2021 in Sl. No. 45126 dated 27.11.2021.

GROUND No. 4 (Cr. No. 213/2022, dated 09.03.2022 of U/s 7(B) r/w 8(B) of AP Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District):

On 09.03.2022, at about 10.00 A.M., while the Special Enforcement Bureau, SHO Tuni along with staff conducting raids for detection of Proh. & Excise offences at near Ambedkar statue of SC Peta N. S. Venkatapuram Village of Tuni Mandal and found one person came by walk with one mica bag in his right hand, on seeing the Police Party he left the mica bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of constables and the Enforcement Sub Inspector sent one constable to secure mediators but he come back and informed that nobody is came forward to stood as mediators.

Then Sub Inspector SEB got opened the bag and found one polythene cover containing 10 ltrs I. D. liquor. When enquired with the accused about his identity particulars he voluntarily disclosed that his name is Pesala Nookaraju S/o Bulliyya, Age: 46 Years Caste: SC (Mala) R/o N.S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A.P. Prohibition (Amendment) Act 2020 and arrested the accused and registered the case against the accused and seized the ID arrack.

Then drawn 300 ml I. D. liquor as sample for the purpose of chemical examination from the seized ID arrack into a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized ID liquor under the cover of Special Report drafted on the spot by the Enforcement Sub-Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide C. E. No. 851/2022 in Sl. No. 13027 dated 04.04.2022.

Thus I am satisfied from the material placed before me that you fall under the category of "BOOTLEGGER" as defined in Sec. 2(b) of "The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986" and you are a fit person to be detained U/Sec 3(2) of the said Act and accordingly I will issue orders with a view to preventing you from acting in any manner prejudicial to the maintenance of the public order."

5. Thus, from the aforesaid, it is evident that the District Collector, Kakinada District was subjectively satisfied based on the materials on record that the activities of the appellant detenu were prejudicial to the maintenance of public

order. According to the detaining authority i.e. the respondent No. 2, the appellant is a "bootlegger" as defined under Section 2(b) of the Act 1986 and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was felt necessary that the appellant be preventively detained.

6. The appellant detenu being aggrieved by the order of preventive detention preferred Writ Petition No. 33638 of 2022 in the High Court of Andhra Pradesh seeking a writ of Habeas Corpus. The High Court vide its impugned order declined to interfere and accordingly rejected the writ petition.

7. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Ms. Bhabna Das, the learned counsel appearing for the appellant detenu, in her written submissions has stated thus:-

"I. A Preventive Detention Order Can Only Be Issued For 3 Months At A Time

1.1 The Petitioner herein has been preventively detained in terms of an order dated 25.08.2022 issued by the District Collector, Kakinada, under S. 3(2) of the AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (the "AP Act"). While the order dated 25.08.2022 did not specify any period of detention, the State Government, vide GO dated 18.10.2022, directed that the Petitioner shall be detained for a period of 12 months at a stretch.

1.2 The above orders are contrary to the proviso to S. 3(2) of the AP Act, which states that "the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary to do so, amend such order to extend such period from time to time by any period not exceeding three months at any one time".

1.3 This provision has been interpreted by this Hon'ble Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh, (2015) 13 SCC 722, to mean that a detention order can only be in force for 3 months in the first instance. The Government can extend the period for not more than 3 months at a time so that there is periodic assessment and review as to whether continuous detention of a person is necessary. Consequently, a detention order passed for 12

months at a stretch was quashed as being deterrent to the rights of the detenue [para 12- 15].

This judgment has subsequently been followed by this Hon'ble Court in order dated 17.04.2017 in Criminal Appeal No. 727/2017 titled 'S. Penchalamma v. State of Andhra Pradesh & Ors.' and Lahu Shrirang Gatkal v. State of Maharashtra, (2017) 13 SCC 519. In the present case, the Petitioner has now spent about 10.5 months in detention without any review as to whether his continued detention is necessary.

1.4 The State has contended that the proviso to S. 3(2) refers to the period for which the State Government can delegate its powers to a District Magistrate or Commissioner of Police, relying on the judgments of Harpreet Kaur v. State of Maharashtra, (1992) 2 SCC 177; T. Devaki v. Government of Tamil Nadu, (1990) 2 SCC 456; and Aravind Choudhary v. State of Telangana, order dt. 05.05.2017 in Crl. Appeal No. 924/ 2017. It is submitted that these judgments are inapplicable in the facts of the present case.

1.5 First, all the judgments cited by the Respondents were concerned with the validity of detention orders passed directly under S. 3(1) of the concerned statute [see para 2 of Harpreet Kaur; para 1 of T. Devaki, and page 2 of Aravind Chaudhary]. An argument was raised in these cases that the detention orders [under S. 3(1)] could not be issued for a period exceeding 3 months as per the proviso to S. 3(2). It was in this context that the findings in paras 33 of Harpreet Kaur, para 8 of T. Devaki and in Aravind Choudhary were rendered. These findings cannot therefore be applied to orders issued in exercise of delegated powers under S. 3(2) of the Act. This is evident from the observation of this Hon'ble Court in Aravind Choudhary that:

"the limit of three months is applicable to Section 3(2) of the above said Act and not to Section 3(1). This is clear from three judge Bench judgment of this Court in 1990 (2) SCC 456 T. Devaki Vs. Government of Tamil Nadu.". On the other hand, the detention order in Cherukuri Mani was issued by the District Magistrate [para 2] i.e. under S. 3(2) of the AP Act, and hence this judgment is directly on the point.

1.6 Secondly, the interpretation sought to be advanced by the State renders the proviso to S. 3(2) meaningless. In terms of S. 3(3) of the AP Act, the officer under S. 3(2) is required to "forthwith" report the detention order and grounds to the Government and "no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government". S. 3(3) therefore checks the issuance of preventive detention

orders in exercise of delegated powers by immediately subjecting them to scrutiny and confirmation by the State Government.

1.7 Restricting the time period for which the State Government can delegate its powers to such an officer to 3 months at a time neither curbs any mischief nor serves any fruitful purpose. This is so since an order under S. 3(2) is much shorter-lived, and lapses in 12 days unless approved by the Government. Pertinently, as per S. 3(2) and 3(3) of the Preventive Detention Act, 1950 (repealed), on which the State statutes are modelled, also such orders were valid for 12 days.

However, no time period was specified therein for delegation of powers by the Central Government. It is therefore absurd that such a condition should be imposed on the State Government. Accordingly, the proviso to S. 3(2) can be given a meaningful object and purpose only if the limitation of 3 months at a time is applied to the period of detention, and not to the period of delegation.

1.8 Thirdly, Art. 22 of the Constitution places some importance on curtailing the period of preventive detention to 3 months unless certain stringent conditions are satisfied. Art. 22(4) stipulates that no law can provide for preventive detention for a period longer than 3 months unless the opinion of an Advisory Board is obtained.

Further, Art. 22(7)(a) requires the Parliament to pass a law prescribing the circumstances under which persons can be detained for longer than 3 months without obtaining the opinion of an Advisory Board. The proviso to S. 3(2) and its interpretation in Cherukuri Mani are therefore expressions of the notion that a preventive detention order ought to be reviewed after 3 months, a limitation inherent in Art. 22 itself.

1.9 Lastly, if there is any ambiguity in a provision in a preventive detention statute or the same is capable of two possible interpretations, then the construction which enures to the benefit of the detenue and furthers the protection to life and liberty guaranteed under Art. 21 must be favoured. Preventive detention law/Art. 22 is merely an exception to the rule under Art. 21, and must therefore be confined within narrow limits. Consequently, the interpretation of S. 3(2) proviso in Cherukuri Mani ought to be preferred over the judgments relied upon by the Respondents. Reference may be had to the following case law:

(a) M. Ravindran v. Intelligence Officer, Directorate of Intelligence, (2021) 2 SCC 485.

(b) Rekha v. State of Tamil Nadu, (2011) 5 SCC 244 [paras 13-17 & 21].

II. The Detention Order is Based on Stale Material

2.1 It is a settled position of law that an order of preventive detention can only be based on criminal antecedents which have a proximate nexus with the immediate need to detain an individual. An order based on stale incidents is therefore not sustainable. Reliance is placed on the following judgments:

(a) Khaja Bilal Ahmed v. State of Telangana & Ors., (2020) 13 SCC 632 [paras 21-23 & 28]

(b) Mallada K. Sri Ram v. State of Telangana & Ors., 2022 SCC OnLine SC 424 [paras 11-15].

2.2 In Mallada K. Sri Ram, the detention order dated 19.05.2021 was based on 2 FIRs dated 15.10.2020 and 17.12.2020. The detenue was released on bail in the 1st FIR on 08.01.2021 and in the 2nd FIR on 11.01.2021 [paras 4 & 5]. This Hon'ble Court was pleased to quash the said detention order on the ground that it was passed nearly 7 months after the 1st FIR and 5 months after the 2nd FIR, and was therefore based on stale material and demonstrated non-application of mind [para 11]. This judgment is squarely applicable in the facts of this case.

2.3 The detention order dated 25.08.2022 in the present case is based on the following FIRs against the Petitioner:

(a) FIR No. 1/(2021)-Tuni-13 dated 06.01.2021, lodged 1 year 7 months and 20 days prior to the detention order. The Petitioner was released on bail in this matter on 08.01.2021.

(b) FIR No. 8/(2021)-Tuni-376 dated 13.08.2021, lodged 1 year and 12 days prior to the detention order. The Petitioner was released on bail in this matter on 18.08.2021.

(c) FIR No. 10/(2021)-Tuni-532 dated 30.09.2021, lodged 10 months and 26 days prior to the detention order. The Petitioner was released on bail in this matter on 07.10.2021.

(d) FIR No. 3/(2022)-Tuni-213 dated 09.03.2022, lodged 5 months and 17 days prior to the detention order. The Petitioner was released on bail in this matter on 08.04.2022.

2.4 There is no allegation regarding the Petitioner's conduct during the 4 month and 18 day interregnum between him being released on bail in the last FIR (08.04.2022) and being taken into preventive detention (25-26.08.2022). It is

therefore apparent that the grounds on which the Petitioner was detained are stale.

III. Ordinary Law and Order is Sufficient to Deal with the Situation and there is no Prejudice to the Maintenance of Public Order

3.1 A detention order under S. 3(1) or 3(2) of the AP Act can be issued inter alia against a "bootlegger" to prevent him from "acting in any manner prejudicial to the maintenance of public order". It is submitted that the Petitioner is not a 'bootlegger' as defined under S. 2(b) of the AP Act. There is no material to show that he was engaged in distillation, manufacture, storage, import/ export, sale or distribution of illicitly distilled liquor or was a mastermind engaged in any organized or systemic criminal activity or part of a cartel. The Petitioner has repeatedly asserted that he was merely a daily wage labourer working as a coolie.

3.2 Without prejudice, this Hon'ble Court has, in a catena of judgments, held that a person cannot be detained merely because he is a bootlegger, unless the activity also affects public order. Pertinently, it was alleged that the detenus in these cases were using dangerous weapons/ arms, force and violence, had created an atmosphere of fear and terror amongst the residents in the area. These were nevertheless not considered grievous enough to affect 'public order' or warrant preventive detention.

(a) Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City & Anr. (1989) Supp (1) SCC 322 [paras 14-18]

(b) Omprakash v. Commissioner of Police & Ors., (1989) Supp (2) SCC 576 [paras 1, 6-11]

(c) Rashidmiya @ Chhava Ahmediya Shaik v. Police Commissioner, Ahmedabad & Anr., (1989) 3 SCC 321 [paras 3-6 & 16-21]

(d) Ahmedhussain Shaikhhussain @ Ahmed Kalio v. Commissioner of Police, Ahmedabad & Anr, (1989) 4 SCC 751 [paras 3, 11, 13- 15].

3.3 As per the explanation to S. 2(a), the activity in question must cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health" to be prejudicial to public order. The expression 'public order' is different from general 'law and order' and must be interpreted narrowly.

Acts affecting public order must be such as to create panic, fear or insecurity among the public at large, destroy the even tempo of life of the community,

cause serious disturbance to public tranquility, the society and community at large. Where the ordinary law of the land is sufficient to deal with the offences in question, recourse to preventive detention is illegal.

(a) Rekha v. State of Tamil Nadu, (2011) 5 SCC 244 [paras 13- 17, 21, 23 & 29-35].

(b) Munagala Yadamma v. State of Andhra Pradesh & Ors, (2012) 2 SCC 386 [paras 7-9]

(c) Banka Sneha Sheela v. State of Telangana & Ors., (2021) 9 SCC 415 [paras 12-15, 19-25, 29-30 & 32]

3.4 In the present case, 4 FIRs have been filed against the Petitioner for offences under the AP Prohibition Act. Investigation is complete and chargesheets have also been filed and hence the matters are ready for trial. These cases involve ordinary 'law and order' problems. The Petitioner will undergo the requisite punishment if eventually convicted by the competent Court. However, he cannot be preventively detained and prevented from facing trial merely because he is allegedly a 'habitual offender' or has secured bail in all the cases.

3.5 The chemical analysis of the samples allegedly taken from the Petitioner state that they are "unfit for human consumption and injurious to health". The Impugned Judgment erroneously holds that this is sufficient to arrive at the subjective satisfaction that the Petitioner was required to be preventively detained, without examining whether the ingredients of the explanation to S. 2(a) regarding prejudice to 'public order' are satisfied.

The total quantity of ID liquor found in the Petitioner's possession in all 4 cases is allegedly 55 litres, which is a relatively small quantity. There is no imputation that any person consumed any liquor from the Petitioner or endangered his life or suffered any serious health issues as a result. Mere lab reports cannot be determinative of whether the alleged criminal activity is of such magnitude or intensity as to constitute a "grave widespread danger to public health".

3.6 Pertinently, in Rekha v. State of Tamil Nadu (supra), the detenu was accused of selling expired drugs after tampering with labels [para 2]. In Munagala Yadamma (supra), the allegation was of bootlegging/ illicitly distilling liquor. No doubt such expired drugs or illicitly distilled liquor may be unfit for human consumption and may even affect the health of those consuming such products.

Nevertheless, these were not considered as being prejudicial to the maintenance of public order. Rather, the ordinary provisions of the IPC/Drugs and Cosmetics Act and the AP Prohibition Act, as the case may be, were deemed sufficient to

deal with these situations. It is therefore submitted that the preventive detention orders against the Petitioner be quashed, and he be permitted to face trial as per ordinary due process.

IV. The Detention Orders are Disproportionate and Suffer from Non Application of Mind

4.1 A detention order under S. 3(1) or 3(2) of the AP Act can only be issued only if "it is necessary so to do" to prevent a person from acting in a manner prejudicial to public order. The doctrine of proportionality, which requires that the least restrictive means be used when imposing any restraint on a fundamental right, is therefore built into the statute. [See Madhyamam Broadcasting Ltd. v. Union of India & Ors., 2023 SCC OnLine SC 366 (para 85)]

4.2 In the present case, the Petitioner was granted bail in all cases against him, after giving an opportunity of hearing to the State. If the Petitioner subsequently committed any offence or violated any condition of bail, the State ought to have approached the concerned Court for cancellation of bail. Issuance of a preventive detention order which drastically curtailed the Petitioner's right to liberty under Art. 21 is certainly neither the most suitable nor the least restrictive method of preventing the Petitioner from engaging in any further alleged criminal activity.

4.3 Without prejudice, a person ought to be preventively detained only for the period absolutely necessary in order to achieve the object in question i.e. prevent public disorder. While the maximum period of detention can be 12 months as per S. 13 of the AP Act, the State nevertheless has the discretion to provide for a lesser period, or even revoke/ modify a detention order under S. 14. However, in the present case, Respondent No. 1 has, vide GO dated 18.10.2022, directed that the Petitioner be detained for the maximum period of 12 months without any application of mind or providing any reasons as to why this is necessary.

4.4 Further, the grounds for detention and order dated 25.08.2022 were admittedly issued on the basis of a proposal dated 05.08.2022 made by the Superintendent of Police, Kakinada. A bare perusal of this proposal shows that the grounds for detention therein are identical to the grounds of detention appended to the order dated 25.08.2022.

It therefore appears that the order dated 25.08.2022 was passed placing blind reliance on the proposal of the SP, without any independent application of mind. The delegated power and discretion vested in the District Magistrate under S. 3(2) has virtually been further sub-delegated to the Superintendent of Police, which is impermissible.

V. A Habeas Corpus Petition is Maintainable on behalf of the Petitioner

5.1 The Petitioner had preferred W.P. No. 33638/ 2022 dated 13.10.2022 before the Hon'ble High Court of Andhra Pradesh inter alia praying for the closure of his detention order dated 25.08.2022 and his release from prison. Since confirmation order vide G.O. Rt. No. 2190 dated 18.10.2022 was issued by Respondent No. 1 thereafter, the Petitioner subsequently amended his Petition to challenge the order dated 18.10.2022 as well.

5.2 The Respondents have contended that a writ of habeas corpus is not maintainable in the present case relying on the judgment of Home Secretary (Prison) v. H. Nilofer Nisha, (2020) 14 SCC 161. The said judgment was dealing with the issue of whether a habeas corpus would lie to secure release of a person who is undergoing imprisonment sentence as per Court orders, and had not been illegally detained [paras 1 & 17]. This is completely different from preventive detention. In fact, in para 16 of the said judgment itself it has been held that habeas corpus is often used as a remedy in preventive detention cases as the said order can only be challenged in writ jurisdiction. The Writ Petition filed by the Petitioner was therefore maintainable.

6. In view of the above, it is respectfully prayed that the Impugned Judgment and order dated 07.03.2023 be set aside, the order dated 25.08.2022 passed by Respondent No. 2 and the confirmation orders dated 01.09.2022 and 18.10.2022 issued by Respondent No. 1 be quashed, and the Petitioner be released forthwith from Central Prison, Rajamahendravaram, East Godavari District, Andhra Pradesh.

7. It is further prayed that in the event the Petitioner is convicted in any of the FIRs on which the detention order was based, then the period spent in illegal preventive detention may be treated as custody undergone for the purposes of any sentence of imprisonment imposed thereunder."

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. Mr. Mahfooz A. Nazki, the learned counsel appearing for the respondents, in his written submissions as stated thus:-

"A. Interpretation of Section 3(2) of the 1986 Act

i. Section 3, to the extent relevant, reads as under:

3. Power to make order detaining certain persons:-

(1) The Government may, if satisfied with respect to any boot-legger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said subsection:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

ii. It is evident from a plain reading of the above provision that the power to pass a detention order is ordinarily that of the State Government under Section 3(1) of the 1986 Act.

iii. However, such power may, under Section 3(2), be delegated by State Government to a District Magistrate (DM) or Commissioner of Police (Commissioner). It is here that the proviso comes in to play and provides that such a delegation in favor of a DM/Commissioner cannot be valid for more than three months at a time.

iv. It is therefore clear that the period of "three months" relates not to period of detention but to the duration for which State Government's order empowering the DM or Commissioner to issue detention orders can be valid.

v. The above view has found favour with this Hon'ble Court in various judgments including:

- Harpreet Kaur (Mrs) Harvinder Singh Bedi v. State of Maharashtra and Anr., (1992) 2 SCC 177 ("Harpreet Kaur"), @ para 31-33
- State of Maharashtra & Ors. v. Balu, (2021) 13 SCC 454, @para 6.3 to 6.6
- T. Devaki vs. Government of Tamil Nadu & Ors., (1990) 2 SCC 456, @ para 10

- Aravind Choudhary Vs. State of Telangana, Criminal Appeal No.924/2017 @ pg. 2 of the judgment

vi. It may be mentioned that the judgment in T. Devaki has been passed by a Bench of three Hon'ble Judges.

vii. It is submitted that both the judgments relied on by the Petitioner (mentioned above) have not taken into account the aforesaid decisions. The period of one year mentioned in the order is strictly in accordance with the 1986 Act.

viii. At this stage, the scheme of the 1986 Act may be noted:

- As mentioned above, a detention order is passed either by the State Government or by the Magistrate/Commissioner [as a delegate of the Government], under Section 3(1) or Section 3(2) of the Act respectively. The provision does not require any time period to be specified in the order of detention [See T. Devaki @para 10, 12 13 and 15].

  [Note: In the present case, the power was delegated to the DM vide G.O. Rt. No. 1089 dated 09.06.2022 [annexed herewith as Annexure 1] and the detention order was passed on 25.08.2022 thereafter - i.e., well within the time of three months.]
- Under Section 3(3), an additional safeguard is provided in case when the detention order is passed by Magistrate/Commissioner. This Section requires that the detention order passed by the DM/Commissioner shall be confirmed within a period of 12 days by the State Government, otherwise it lapses after expiry of 12 days.
- [Note: The order of confirmation, in the present case, was passed by the State Government on 01.09.2022 i.e., within the 12 days' period.]
- Thereafter, under Section 10, the detention order along with all relevant material is required to be placed before the Advisory Board within a period of three weeks from the date of detention.
- In the event the Advisory Board confirms the detention order, the Government may, under Section 12 read with Section 13, direct the detention order to continue for a period not exceeding twelve months. It is only under this provision that a period for detention has been prescribed.

  [Note: The order under Section 12 was passed by the Government on 18.10.2022.]

ix. In the present case, the aforementioned procedure was strictly followed. The period of one year has been mentioned in the order dated 18.10.2022 passed under Section 12 read with Section 13 not in the detention order dated

25.08.2022 passed under Section 3. The submissions of the Petitioner are therefore clearly misconceived.

The detention order has been passed strictly in accordance with the afore-mentioned procedure.

B. The Detention order is not stale.

i. It has been contended by the Petitioner that there is no proximate link between his acts and the detention order. The said submission is misconceived. Before detailing the factual aspects, the following legal position may be noted:

- If the grounds form a chain of proximate events and if the last incident is proximate to the date of detention, such a detention order cannot be set aside on the ground of being stale even if earlier incidents are not proximate to date of detention. [The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh v. Sangala Kondamma, 2005 3 SCC 666 (@ para 10) ("Sangala Kondamma")]
- Each case has to be analysed in light of its specific facts and circumstances by adopting a pragmatic approach and "no hard-and-fast formula is possible to be laid or has been laid in this regard". [Licil Antony v. State of Kerala and Anr., (2014) 11 SCC 326 @para 18].
- The word 'proximity' does not mean any immediate closeness but it rather means something which indicates a pattern [Bhupendra v. State of Maharashtra & Anr., (2008) 17 SCC 165, @para 10]."

DISCUSSION

10. Before we advert to the rival submissions canvassed on either side, we must look into the Preamble and few relevant provisions of the Act 1986.

The preamble to the Act 1986 reads thus:-

"PREAMBLE

An Act to provide for preventive detention of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers for preventing their dangerous activities prejudicial to the maintenance of Public Order.

Whereas public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders and land-grabbers.

And whereas having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which the dangerous activities are being clandestinely organised and carried on in violation of law by them, as bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders or land-grabbers in the State of Andhra Pradesh and particularly in its urban areas, it is necessary to have a special law in the State of Andhra Pradesh to provide for preventive detention of these six classes of persons and for matters connected therewith:"

11. The aforesaid Act 1986 came into force with effect from 28.02.1986. Section 2(a) reads thus:-

"Section 2. - Definitions

In this Act, unless the context otherwise requires,-

(a) "acting in any manner prejudicial to the maintenance of public order" means when a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a landgrabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order :

Explanation :- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health;"

(Emphasis supplied)

12. Section 2(b) defines "boot-legger". Section 2(b) reads thus:-

"(b) "boot-legger" means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968) and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing;"

(Emphasis supplied)

13. Section 3 is in respect with the power to make order detaining certain persons. Section 3 reads thus:-

"Section 3. Power to make orders detaining certain persons:-

(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drugoffender, goonda, immoral traffic offender or landgrabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

14. Section 12 provides for the action upon report of the Advisory Board. It reads thus:-

"Section 12. Action upon report of Advisory Board: -

(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in Section 13 as they think fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith."

15. Section 13 provides for the maximum period of detention. Section 13 reads thus:-

"Section 13. Maximum period of detention: -

The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention."

(Emphasis supplied)

ESSENTIAL CONCEPT OF PREVENTIVE DETENTION

16. The essential concept of the preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence.

There is no parallel between the prosecution in a Court of law and a detention order under the Act 1986. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond the reasonable doubt, whereas in the other a person is detained with a view to prevent him from doing such act(s) as may be specified in the Act authorizing preventive detention.

17. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched.

An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is

also not a bar to prosecution. (See : Haradhan Saha v. The State of W.B. and others, 1974 Cri.L.J.1479]

18. In Halsbury's Laws Of England, it is stated thus:-

"The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiate. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown.

The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."

19. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarized thus:-

"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf."

'Habeas corpus' literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo- Saxon Jurisprudence."

20. In Constitutional and Administrative Law By Hood Phillips & Jackson, it is stated thus:-

"The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing

a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judies and writers.

Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wide ranging statutory provision. It has been suggested that the need for the "blunt remedy" of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction.

Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted ex debito justitiae."

21. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". 'Habeas Corpus' literally means 'have his body'. The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody.

This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute.

It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. "Unlike certiorari or mandamus, a writ of habeas corpus is as of right" to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.

22. It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish

the person detaining and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention.

It is issued in the form of an order calling upon the person who has detained another, whether in prison or in private custody, to 'have the body' of that other before the Court in order to let the Court know on what ground the latter has been confined and thus to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus, the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial.

Habeas Corpus is available against any person who is suspected of detaining another unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty.

The writ be addressed to any person whatever-an official or a private individual-who has another in his custody. The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the writ of habeas corpus.

The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India, which provides:-

"Article 21. Protection of life and personal liberty.-

No person shall be deprived of his life or personal liberty except according to procedure established by law."

SUBMISSION NO. 1 OF THE APPELLANT

23. The learned counsel appearing for the appellant vehemently submitted that the High Court failed to appreciate that the order of detention could be termed as contrary to the proviso to Section 3(2) of the Act 1986 referred to above as the detention can only be in force for a period of three months in the first instance. According to the learned counsel, the Government thereafter may extend the

period for not more than three months at a time so that there is periodic assessment and review as to whether the continuous detention of a person is necessary or not.

In short, the sum and substance of the submission canvassed on behalf of the appellant detenu is that the detention order passed for 12 months at a stretch could be termed as without jurisdiction and contrary to the mandate of sub-section (2) of Section 3 of the Act 1986. In support of the said submission, the learned counsel has placed strong reliance on a decision of this Court in the case of Cherukuri Mani (supra).

24. We must first look into the decision of this Court in Cherukuri Mani (supra) as the same also dealt with subsection (2) of Section 3 of the Act 1986. This Court after reproducing the entire Section 3 of the Act 1986 in para 10 of the judgment interpreted and held as under:-

"11. A reading of the above provisions makes it clear that the State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first instance, whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days.

The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard. Sub-section (3) makes this aspect very clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months.

12. Proviso to sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, exceeding three months, at a time.

It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard.

13. The requirement to pass order of detention from time to time in the manner referred to above, has got its own significance. It must be remembered that restriction of initial period of detention to three months is nothing but implementation of the mandate contained in clause (4)(a) of Article 22 of the Constitution of India. It reads as under:

"22. (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)."

14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the government order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law.

The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.

15. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time.

Taking into consideration these factors, the legislature has specifically provided the mechanism "Advisory Board" to review the detention of a person. Passing a

detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned government order directing detention for the maximum period of twelve months straightaway cannot be sustained in law."

(Emphasis supplied)

25. Thus, from the aforesaid, it is evident that in Cherukuri Mani (supra), this Court took the view that sub section (2) of Section 3 more particularly the proviso to subsection (2) is in respect with the operation of the order of detention. To put it in other words, the time period for which the detenu is to be detained.

26. In the aforesaid context, we may say with profound respect that Cherukuri Mani (supra) does not lay down the correct law. Sub-section (2) of Section 3 has nothing to do with the period of detention. In Cherukuri Mani (supra), the Bench completely mis-read the entire provision.

27. We are of the view that Section 3(2) is with respect to the delegation of powers by the State Government upon the District Magistrate or Commissioner of Police, as the case may be, for exercise of powers under sub-section (2) of Section 3 of the Act 1986. The period as mentioned in Section 3(2) of the Act 1986 refers to the period of delegation of powers and it has no relevance at all to the period for which a person may be detained. It appears that the attention of the learned Judges while deciding Cherukuri Mani (supra) was not invited to a three-Judge Bench judgment of this Court in T. Devaki v. Government of Tamil Nadu, (1990) 2 SCC 456, wherein it has been held as under:-

"8. Placing reliance on Section 3(2) Mr. Garg urged that since the impugned detention order did not specify the period for which the detenu was required to be detained, the order was rendered illegal. On an analysis of Section 3 of the Act as quoted above, we find no merit in the submission. Section 3(1) confers power on the State Government to detain a bootlegger or drug offender, or forest offender or goonda or an offender in immoral traffic or a slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

Section 3(2) empowers the State Government to delegate its power as conferred on it under sub-section (1) to District Magistrate or a Commissioner of Police, if it is satisfied that the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, make it necessary to delegate the power to them.

It further provides that the order of delegation shall be in writing and it shall also specify the period during which the District Magistrate or the Commissioner of Police, are authorised to exercise the powers of the State Government under sub-section (1) of Section 3. Proviso to sub-section (2) lays down that the delegation should not be for an unlimited period, instead it should not be for a period of more than three months. If the State Government is satisfied that it is necessary to extend the period of delegation it may amend its order, extending such period from time to time but at no time the extension shall be for a period of more than three months.

Once the State Government's power under Section 3(1) is delegated to the District Magistrate or the Commissioner of Police, they are authorised to exercise that power on the grounds, specified in Section 3(1) of the Act. Neither sub-section (1) nor sub-section (2) of Section 3 of the Act require the detaining authority to specify the period of detention for which a detenu is to be kept under detention.

9. Section 3(3) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter.

A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 8 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government.

Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned.

In a case where the Advisory Board forms opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may

confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in Section 13 of the Act.

Section 13 provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time it may think proper.

10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention.

The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention.

The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation.

But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification."

(Emphasis supplied)

28. The above referred decision of this Court in T. Devaki (supra) was later relied upon by a three Judge Bench, in the case of Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department and Another v. Kamala and Another reported in (2018) 5 SCC 322, for the proposition that the detaining authority is not obliged to specify the period for which a detenue is required to be detained.

In Secretary to Government of Tamil Nadu (supra), the High Court had set aside the detention order issued under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) on the ground that the period of detention was not specified. The High Court relied on the decision in the Commissioner of Police and Another v. Gurbux Anandram Bhiryani reported in (1988) Supp SCC 568, which came to be overruled by a subsequent decision of a larger Bench in T. Devaki (supra).

The Bench speaking through one of us, Justice Dr. D.Y. Chandrachud held that since the legislation does not require detaining authority to specify the period for which a detenu is required to be detained the order of detention would not be rendered invalid or illegal in absence of such specification.

29. The discussion as aforesaid has a different angle too. We may elaborate the same a little further. Whether determining the period of detention in the order of detention, would render the order bad and illegal? To put it in other words, what would have been the legal implications had the detaining authority stated in the detention order that the detenu be detained for a period of one year? In this context, we must look into a Constitution Bench decision of this Court in the case of Makhan Singh v. State of Punjab reported in AIR 1952 SC 27.

30. In the said case, the petitioner therein was arrested and detained under order dated 01.03.1950 by the District Magistrate, Amritsar under Section 3(1) of the Preventive Detention Act, 1950. The petitioner therein challenged the validity of the said order on various ground but during the pendency of the said petition the petitioner was served with another detention order dated 30.07.1951 on 16.08.1951 under the amended provisions of the Preventive Detention Act. By the said order the petitioner therein was to be detained upto 31.03.1952 the date on which the said Act was to expire.

31. In Makhan Singh (supra), this Court observed:-

"6. Whatever might be the position under the Act before its amendment in February 1951, it is clear that the Act as amended requires that every case of detention should be placed before an Advisory Board constituted under the Act (Section 9) and provides that if the Board reports that there is sufficient cause for

the detention "the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit" (Section 11).

It is, therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported."

(Emphasis supplied)

32. It was argued by the learned Advocate General in that case that if the Advisory Board reports that there is no sufficient cause for the detention the person concerned would be released forthwith and therefore the direction that he should be detained upto 31.03.1952, could be ignored as a mere surplusage. The said argument was repelled by this Court by observing as under:-

"We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected."

33. Thus, had the detaining authority specified the period of detention in the order of detention, it could have been argued that the detaining authority has usurped the power of the Government and the Advisory Board as per the scheme mentioned in the provisions of the Act 1986 and that the detention order was contrary to the constitutional mandate expressed in Article 22(4) of the Constitution.

34. It also appears that the attention of the learned Judges while deciding Cherukuri Mani (supra) was not drawn to yet one another decision of this Court in the case of Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra, (1992) 2 SCC 177, wherein a Bench of two- Judge interpreted Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981, which is pari materia to Section 3(2) of the Act 1986. We quote the relevant observations:-

"31. Coming now to the second argument of Dr Chitale to the effect that proviso to Section 3(2) of the Act, prohibited the State Government to make an order of detention in the first instance, exceeding three months, and since the order of

detention in the instant case had been made for a period exceeding three months, it was vitiated.

32. Section 3 reads as follows:

"3. Power to make orders detaining certain persons.-

(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person is detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this subsection shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

33. A plain reading of the section shows that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned.

Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may

be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government as conferred by sub-section (1).

The proviso to sub-section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu.

The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails."

(Emphasis supplied)

35. In the case of Abhay Shridhar Ambulkar v. S.V. Bhave, the Commissioner of Police, reported in AIR 1991 SC 397, this Court was dealing with a matter relating to the preventive detention under the National Security Act (65 of 1980). The principal argument before the Court was that there was no valid conferment of power on the Commissioner to make the detention order.

It was also argued that the Government had issued the order without applying its mind and by simply reproducing the words of sub-section (3) of Section 3. The satisfaction of the Government for conferring the power on the Commissioner for the purpose in question was purported to have been reached on the circumstances prevailing on the date of the order or likely to prevail during the three months period in question.

It was also argued that the Government was not certain which of the alternative circumstances was relevant for reaching the subjective satisfaction and it was submitted that it had acted in a mechanical manner without application of mind. In that context, the observations of this Court are worth taking note of:-

"The power to make an order of detention primarily rests with the Central Government or the State Government. The State Government, however, being satisfied with certain circumstances may order that the District Magistrate or the

Commissioner of Police may also make an order of detention in respect of matters relating to the security of the State or Public Order or maintenance of supplies and services essential to the community against any person within their respective areas.

The State Government can make such an order which shall not in the first instance exceed three months but it may extend such period from time to time making fresh order for a further period against not exceeding three months at one time. It may be noted that the conferment of this power on the District Magistrate or the Commissioner of Police is not to the exclusion of but in addition to the powers of the Government to exercise its own power.

7. The first paragraph of the order dated 6th January 1990 states that Government was satisfied that having regard to the circumstances prevailing or likely to prevail in Greater Bombay Police Commissionerate it is necessary that during the period commencing on 30th January 1990 to 29th April 1990 that the Commissioner should also exercise the powers conferred under subsection (2) of Section 3 of the Act.

This is indeed no more than a reproduction of the terms of subsection (3) of Section 3. But sub-section (3) refers to two independent circumstances namely : (i) the prevailing circumstances, (ii) the circumstances that are likely to prevail. The former evidently means circumstances in praesenti that is prevalent on the date of the order and the latter means the anticipated circumstances in future.

If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers for the current period, it has to satisfy itself with the prevailing circumstances. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers during the future period, it must be satisfied with the circumstances that are likely to prevail during that period. This seems to be the mandate of sub-section (3).

8. Subjective satisfaction for the exercise of power under sub-section (3) of Section 3 must be based on circumstances prevailing at the date of the order or likely to prevail at a future date. The period during which the District Magistrate or the Commissioner of Police, as the case may be, is to exercise the power provided by subsection (2) of Section 3 is to be specified in the order which would depend on the existence of circumstances in praesenti or at a future date.

If the subjective satisfaction is based on circumstances prevailing at the date of the order, the choice of period, which must not exceed three months, would have to be determined from the date of the order. If the conferment of power is,

considered necessary because of circumstances likely to prevail during the future period, the duration for the exercise of power must be relatable to the apprehended circumstances.

Therefore, the specification of the period during which the District Magistrate or Commissioner of Police is to exercise power under subsection (2) of Section 3 would depend on the subjective satisfaction as to the existence of the circumstances in praesenti or future. Since very drastic powers of detention without trial are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding the period during which such power shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail.

The subjective satisfaction cannot be lightly recorded by reproducing both the alternative clauses of the statute. The subjective satisfaction on the prevailing Circumstances, or circumstances that are likely to prevail at a future date is the sine qua non for the exercise of power. The use of the word 'or' signifies either of the two situations for different periods. That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail ,in future.

The latter may stem from the former. For example, there may be disturbances on the date of the order and the same situation may be visualised at a future date also in which case the power may be conferred on the subordinate officers keeping both the factors in mind; but in that case the two circumstances would have to be joined by the conjunctive word 'and' not the disjunctive word 'or'.

The use of the disjunctive word 'or' in the impugned Government order only indicates nonapplication of mind and obscurity in thought. The obscurity in thought inexorably leads to obscurity in language. Apparently, the Government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used the disjunctive word "or" in the impugned order."

(Emphasis supplied)

36. Thus, the decision of this Court referred to above while dealing with the conferment of powers under sub-section (3) of Section 3 of the National Security Act, makes it clear that the conferment of power has to be specific either with regard to the circumstances prevailing or likely to prevail and not for both.

In that case, even the order dated 06.01.1990 of the State Government conferring the power on the Commissioner of Police recorded the satisfaction of the

Government of Maharashtra that having regard to the circumstances prevailing or likely to prevail in the Greater Bombay Police Commissionerate, it was necessary that during the period commencing on January 30, 1990 and ending on April 21, 1990, the Commissioner of Police shall exercise the powers conferred by sub-section (2) of Section 3 of the Act. The same was not approved by this Court.

37. Section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'PASA'), which is pari materia to Section 3(2) of the Act 1986 with which we are concerned, fell for consideration before a two-Judge Bench of this Court in the case of Navalshankar Ishwarlal Dave v. State of Gujarat, reported in AIR 1994 SC 1496, wherein the contention raised on behalf of the detenu that the blanket power of delegation under sub-section (2) of Section 3 of the PASA could be said to be a negation of satisfaction on the part of the State Government which was likely to be abused by the District Magistrate or the Commissioner of Police. While repelling such contention, this Court observed:-

"3. Section 3(2) of PASA empowers the State Govt. that having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate and the Commissioners of Police, by an order in writing direct that District Magistrate, the Commissioner of Police, may also, if satisfied the existence of conditions envisaged in sub-sec. (1) of S. 3 to exercise the powers of the State Govt. to detain any person.

The contention of Shri Ganesh, the learned counsel for the appellants is that the blanket power of delegation is a negation of satisfaction on the part of the State Govt. and likely to be abused by the District Magistrate or the Commissioner of Police. The Legislature entrusted the power to the State Govt. and if need be only selectively but not blanket delegation is permissible. After the issue of the notification in 1985 no review thereafter was done.

The order of delegation made by the State Govt. without application of mind was, therefore, illegal and invalid and the sequator detention made became illegal. We find no force in the contention. PASA was made in exercise of the power under entry 3 of concurrent List III of 7th Schedule and reserved for consideration of the President and received his assent. So it is a valid law. It envisages that the State Govt. under S. 3(1) would exercise the power of detention or authorise an officer under S. 3(2) to detain bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber.

The PASA was made to provide for preventive detention of aforestated persons whose activities were satisfied to be prejudicial to the maintenance of public order. Subsection (4) of S. 3 declares that a person shall be deemed to be "acting

in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

Explanation thereto postulates that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities by any person referred to in the subsection (4) directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health.

Therefore, the Act postulates satisfaction on the part of the State Govt. that the dangerous and antisocial activities of any of the aforestated persons shall be deemed to be acting prejudicial to the maintenance of public order whether the person is engaged in or is making preparation for engaging in any activities enumerated in the definition clauses and the public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if the activities directly or indirectly, causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health.

In the counter affidavit filed on behalf of the State in the High Court and consideration thereof the High Court held that "the situation was found prevailing in the State in the year 1985 where the impact of the activities of various persons mentioned in the preamble with reference to their respective activities has heightened from being anti-social and dangerous activities to be prejudicial to the maintenance of public order."

It is, with a view, to curb those dangerous or anti-social activities, the Govt. considered it appropriate to delegate the power under sub-sec. (2) of S. 3 to the "authorised officer" and the Govt. has stated in the notification that "having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of each of the District Magistrate specified in the Schedule annexed thereto, the Govt. of Gujarat is satisfied that it is necessary so to do" and accordingly exercised the power under sub-sec. (2) of S. 3 and directed the authorised officers i.e. the District Magistrate of each District specified in the Schedule and also the three Commissioners of Police in the respective Corporations to exercise within their local limits of jurisdiction, the power conferred by sub-see. (1) of S. 3.It is seen that the dangerous or anti-social activities are legislatively recognised to be prejudicial to the maintenance of public order.

The enumerated activities hereinbefore referred to are not isolated but being indulged in from time to time adversely affecting the public order and even tempo. The District Magistrate concerned, being the highest Dist. Officer on the spot and the Commissioner of Police in the cities have statutory duty to maintain public order.

Therefore, with a view to have then effectively dealt with, to move swiftly where public order is affected or apprehended and to take action expeditiously instead of laying information with the Govt. on each occasion and eagerly awaiting action at State Govt. level, the State Govt. having exercised the power under S. 3(2) conferred on the District Magistrate or the Commissioner the power to order detention under S. 3(1) when he considers or deems necessary to detain any person involved in any of the dangerous or anti-social activities enumerated herein before, prejudicially affecting or "likely to affect the maintenance of public order."

The later clause lay emphasis on immediacy and promptitude and the authorised officer on the spot is the best Judge to subjectively satisfy from the facts and ground situation and take preventive measure to maintain public order. The reliance by Shri Ganesh on the decision of this Court reported in A. K. Roy v. Union of India, AIR 1982 SC 710, para 72 has no application in view of the factual background in this Act.

So long as the activities of bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber persist within the local limits of the jurisdiction of the concerned District Magistrate and Commissioners of Police, as the case may be, and being directly responsible to maintain public order and to deal with depraved person to prevent antisocial and dangerous activities which affects adversely or are likely to affect adversely the maintenance of public order, the necessity would exist. Therefore, the question of periodical review of delegation order does not appear to be warranted."

(Emphasis supplied)

38. Thus from the aforesaid, it could be said that the principal contention canvassed on behalf of the appellant detenu is thoroughly misconceived and deserves to be negatived at the threshold.

39. At the cost of repetition, sub-section (2) of Section 3 of the Act 1986 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower the District Magistrate or

the Commissioner of Police, as the case may be, to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also, if satisfied as provided in sub-section (1) exercises the powers of the State Government as conferred by sub-section (1).

The proviso to sub-section (2) therefore has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act 1986 referred to above which lays down that the person may be detained in pursuance of any detention order made under the Act which has been confirmed under Section 12 of the Act 1986.

40. But this Court in Cherukuri Mani (supra), interpreted the proviso to mean that when an order of detention is made by the State Government under Section 3(1) of the Act, then the period of detention can be only for a period of three months in the first instance. A similar order made under Section 3(2) would be for an initial period of twelve days unless approved by the State Government.

According to this Court, if the State Government intends to detain an individual under the Act for the maximum period of twelve months, there must be an initial order of detention for a period of three months and at least three orders of extension for a period not exceeding three months each. In support of such an interpretation, reliance has been placed on Article 22(4)(a) of the Constitution, which is extracted as under for immediate reference:

"22. Protection against arrest and detention in certain cases:-

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or"

41. A reading of Article 22(4)(a) would clearly indicate that no law providing for preventive detention shall authorize the detention of a person for a period beyond three months. Thus, an order of detention cannot be for a period longer than three months unless, the Advisory Board has reported before the expiration

of the said period of three months that there is, in its opinion such sufficient cause for detention.

Article 22(4)(a) clearly indicates that even if the order of detention does not prescribe any period of detention, such an order of detention cannot be in force for a period beyond three months, unless the Advisory Board before the expiration of three months opines that there is sufficient cause for detention.

In other words, if the Advisory Board does not give its opinion within a period of three months from the date of detention, in such a case, the order of detention beyond the period of three months would become illegal and not otherwise. If within the period of three months, the Advisory Board opines that there was no sufficient cause for such detention then, the State Government would have to release the detenu forthwith.

42. Hence, Article 22(4)(a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention.

That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, Article 22(4)(a) would no longer be applicable. Thus, Article 22(4)(a) applies at the initial stage of passing of the order of detention by the State Government or by an officer who has been delegated by the State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not at the stage subsequent to the report of the Advisory Board.

Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act.

Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of initial order of

detention, but up to a maximum period of twelve months from the date of detention.

43. We reiterate that the period of three months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board.

The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of detention would be upto such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.

44. Thus, in our view, the period of three months specified in Article 22(4)(a) of Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto. Further, the period of detention in terms of Article 22(4)(a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention.

Therefore, under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be.

If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention. With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by this Court in Cherukuri Mani (supra).

The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person

concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the maximum period of twelve months from the date of detention.

On the other hand, when under Section 3(2) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention, the delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time. [See: Abdul Razak v. State of Karnataka, ILR 2017 Kar 4608 (FB)]

45. The first submission canvassed on behalf of the appellant is answered accordingly.

SECOND SUBMISSION ON BAHALF OF THE APPELLANT

46. It was also vehemently argued by the learned counsel appearing for the appellant detenu that the registration of four First Information Reports (FIRs) under the Andhra Pradesh Prohibition Act, 1995 (as amended by the Act No. 18 of 2020) (for short, 'the Act 1995'), by itself, is not sufficient to arrive at a subjective satisfaction that the activities of the appellant detenu as a boot-legger is prejudicial to the maintenance of public order.

47. We take notice of the fact that between 06.01.2021 and 09.03.2022 i.e. in a span of fourteen months a total of four cases were registered against the appellant detenu. The offence in all the four FIRs is one under Section 7B and Section 8B resply of the Act 1995 as amended by Act No. 18 of 2020. Section 7B reads thus:-

"Section 7-B. Prohibition of Boot Legging Activities.-

The manufacturing, transporting, setting, buying, importing, exporting or storing of any alcoholic liquor and supplying or transporting of any raw materials for the manufacture of alcoholic liquor illegally or clandestinely, otherwise than in accordance with the provisions of the A .P. Excise Act, 1968 is hereby prohibited."

48. Section 8B reads thus:-

"Section 8-B. Penalty for sale, export, import and transport of alcoholic liquor manufactured illegally and clandestinely.-

Whoever in contravention of section 7-B of this Act indulges in sale, export, import or transport of illicitly distilled alcoholic liquor shall on conviction be

liable for imprisonment for a term which shall not be less than one year but which may extend upto eight years and with fine which shall not be less than rupees two lakhs for the first offence and which shall not be less than rupees five lakhs for the second offence."

49. The charge as enumerated below gives a clear picture:-

S. No.	FIR	Qty.
1	06.01.21 : FIR No. 01/21 (Cr. No. 13/21)	5 Ltrs.
2	13.08.21 : FIR No. 08/21 (Cr. No. 376/21)	30 Ltrs.
3	30.09.21 : FIR No. 10/21 (Cr. No.532/21)	10 Ltrs.
4	09.03.22 : FIR No. 03/22 (Cr. No. 213/22)	10 Ltrs.
	TOTAL	55 Ltrs.

50. In connection with all the four FIRs the appellant detenu was arrested and released on bail.

51. The detaining authority took notice of the following reports of the chemical analyzer:-

i. Ground No. 1 : The analysis report; C.E. No. 366/21 in Sl. No. 5890 dtd. 04.03.21 found the seized ID liquor in Cr. No. 13/21 unfit for human consumption & injurious to health.

ii. Ground No. 2: The analysis report; C.E. No. 2381/21 in Sl. No. 41632 dtd. 10.11.21 found the seized ID liquor in Cr. No. 376/21 unfit for human consumption & injurious to health.

iii. Ground No. 3: The analysis report; C.E. No. 2796/21 in Sl. No. 45126 dtd. 27.11.21 found the seized ID liquor in Cr. No. 532/21 unfit for human consumption & injurious to health.

iv. Ground No. 4: The analysis report; C.E. No. 851/22 in Sl. No. 13027 dtd. 04.04.22 found the seized ID liquor in Cr. No. 213/22 unfit for human consumption & injurious to health.

(Emphasis supplied)

52. Thus, the samples which were drawn and collected from the liquor seized from the possession of the appellant detenu were sent to the forensic science laboratory for the purpose of chemical analysis and in all the four cases referred to above, the analysis report states that the samples were found to be unfit for human consumption and injurious to health.

"LAW AND ORDER" AND "PUBLIC ORDER"

53. This Court on several occasions examined the concepts of "law and order" and "public Order". Immediately after the Constitution came into force, a Constitution Bench of this Court in the case of Brij Bhushan and Another v. The State of Delhi, (1950) SCR 605, dealt with a case pertaining to public order. The Court observed that "public order" may well be paraphrased in the context as "public tranquility".

54. Another celebrated Constitution Bench judgment of this Court is in the case of Romesh Thappar v. The State of Madras, (1950) SCR 594. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called Cross Roads printed and published in Bombay was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in this Court by filing a writ petition under Article 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquility and to create 63 disturbance of public order and tranquility. This Court observed:-

" 'Public order' is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established it must be taken that 'public safety' is used as a part of the wider concept of public order."

55. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of this Court in the case of Dr. Ram Manohar Lohia v. State of Bihar and Others, (1966) 1 SCR 709. In this judgment, Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:-

"Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder.

They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal

passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined.

The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order".

One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

56. In the case of Arun Ghosh v. State of West Bengal, (1970) 1 SCC 98, Hidayatullah, J. again had an occasion to deal with the question of "public order" and "law and order". In this judgment, by giving various illustrations, very serious effort has been made to explain the basic distinction between "public order" and "law and order". The relevant portion reads as under:-

"Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.

Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act

embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order.

An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only.

Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference.

The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.

It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society."

57. The concept of 'public order' and 'law and order' has been dealt with in the case of Pushkar Mukherjee & Others v. The State of West Bengal, AIR 1970 SC 852. In this case, this Court had relied on the important work of Dr. Allen on 'Legal Duties' and spelled out the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal.

Dr. Allen has distinguished `public' and `private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

58. This Court in the case of Babul Mitra alias Anil Mitra v. State of West Bengal & Others, (1973) 1 SCC 393, had an occasion to deal with the question of "public order" and "law and order". This Court observed that the true distinction between the areas of "law and order" and "public Order" is one of degree and extent of the reach of the act in question upon society. The Court pointed out that the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

59. In Dipak Bose alias Naripada v. State of West Bengal,(1973) 4 SCC 43, a three-Judge Bench of this Court explained the distinction between "law and order" and "public order" by giving illustrations. Relevant portion reads as under:

"Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed.

There is nothing in the two incidents set out in the grounds in the present case to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them from offering resistance.

But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them."

60. In Kuso Sah v. The State of Bihar & Others, (1974) 1 SCC 185, this Court had also considered the issue of "public order". The Court observed thus:-

"These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder."

61. This Court in yet another important case of Ashok Kumar v. Delhi Administration & Others, (1982) 2 SCC 403, clearly spelled out a distinction between "law and order" and "public order". In this case, the Court observed as under:-

"13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions.

In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not detrimental of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order."

62. It has to be seen whether the detenu's activity had any impact on the local community, or to put it in the words of Hidayatullah, J., had the act of the detenu disturbed the even tempo of the life of the community of that specified locality?

63. In Commissioner of Police & Others, v. C. Anita (Smt.), (2004) 7 SCC 467, this Court again examined the issue of "public order" and "law and order" and observed thus:-

"7. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society.

It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

64. Thus, from the various decisions referred to above, it is evident that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation.

What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.

65. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him.

To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

66. It is relevant to note that the Explanation to Section 2(a) of the Act 1986 referred to above in para 11 incorporates a legal fiction as to the adverse effect on public order. In the case of Harpreet Kaur (supra), the connotation of the Explanation was elucidated as under:-

"28. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect on 'public order'. It provides that if any of the activities of a

person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or a widespread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall-out of the activity of the "bootlegger" which determines whether 'public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act."

(Emphasis supplied)

67. It may be apposite to look into the decision of this Court in the case Rashidmiya @ Chhava Ahmedmiya Shaik (supra). It was a case under the provisions of the PASA. Section 2(b) of the PASA which defines a "bootlegger" is pari materia to Section 2(b) of the Act 1986 Act. Section 3(4) of the PASA reads as under:-

"Section 3: .....

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities whether as a bootlegger or common gambling house paper or and person or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order."

68. In the context of the aforesaid provisions, this Court observed as under:-

"16. A conjoint reading of Section 2(b) and Section 3(4) with the explanation annexed thereto clearly spells out that in order to clamp an order of detention upon a 'boot- legger' under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2(b) but also that the activities of the said bootlegger affect adversely or likely to affect adversely the maintenance of public order.

Reverting to the facts of this case, the vague allegations in the grounds of detention that the detenu is the main member of the gang of Abdul Latif Abdul Wahab Shaikh indulging in bootlegging activities and that the detenu is taking active part in such dangerous activities, are not sufficient for holding that his activities affected adversely or were likely to affect adversely the maintenance of public order in compliance with sub- section 4 of Section 3 of the Act that the activities of the detenu have caused harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or

widespread danger to life, property or public health as per the explanation to Section 3(4).

17. The offences registered in the above mentioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order."

From the aforesaid observations, it becomes evident that this Court, in the facts of the said case, found that the mere fact that the petitioner therein was dealing in liquor had no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

69. The learned counsel appearing for the appellant has also placed strong reliance on the decision of this Court in Piyush Kantilal Mehta (supra). In that case, the allegations in the grounds of detention were that the detenu was a prohibition boot-legger; that he was indulging in the sale of foreign liquor and that he and his associates indulged in use of force and violence. In that case, the detenu was alleged to have been caught red-handed possessing bottles of English wine with foreign marks and on the second occasion, he was caught while transporting 296 bottles of foreign liquor in an Ambassador car. While dealing with that case, this Court observed as follows:-

"It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order."

(Emphasis supplied)

70. The pronouncement in the case of Piyush Kantilal Mehta (supra) would be of no assistance in a case where the detaining authority, based on cogent material (i.e. multiple cases of dealing with liquor unsafe for human consumption), forms the opinion that the activity of boot-legger was prejudicial to the maintenance of public order.

71. In the case on hand, the detaining authority has specifically stated in the grounds of detention that selling liquor by the appellant detenu and the consumption by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu appellant is prejudicial to the maintenance of public order.

Not only that, the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu appellant from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record.

It is also well settled that whether the material was sufficient or not is not for the Courts to decide by applying the objective basis as it is matter of subjective satisfaction of the detaining authority.

72. In view of the aforesaid discussion, we find no error, much less an error of law, in the impugned judgement of the High Court.

73. In the result, this appeal fails and is hereby dismissed.

.....CJI. (Dr. Dhananjaya Y. Chandrachud)

.....J. (J.B. Pardiwala)

.....J. (Manoj Misra)

New Delhi;

August 16, 2023

IN THE SUPREME COURT OF INDIA

Harendra Rai
Vs.
State of Bihar & Ors.

Criminal Appeal No. 1726 of 2015

HEADNOTE – First Information Report (FIR) is a public document defined under Section 74 of the Evidence Act. The statement by an injured person recorded as FIR can be treated as a dying declaration and such a statement is admissible under Section 32 of the Indian Evidence Act.

JUDGMENT

Vikram Nath, J.

1. Everything was going as per the plan and wish of the main accused Prabhunath Singh, a political leader and a sitting Member of Parliament at the relevant time as he had mustered full support of the Administration and the Investigating Agency; he had influenced and won over almost all the witnesses of fact mentioned in the chargesheet (who were declared hostile), the relevant formal witnesses including the Investigating Officer were not produced in the trial by the prosecution, the Public Prosecutor prosecuting the case was supporting the defence, the Presiding Officers were completely insensitive towards their pious duty, but everything turned upside down when he committed a glaring mistake and that one mistake cost him heavily.

He got the court witness, Smt.Lalmuni Devi, mother of deceased Rajendra Rai abducted ten days before the date fixed for recording her statement. This led to filing of a Habeas Corpus Petition before the High Court, a report submitted by the Inspecting Judge as a result of an unruly incident which occurred in the Trial Court on the date Smt.Lalmuni Devi- CW-1 deposed before the Trial Court and another report of the Inspecting Judge commenting upon the judgment of acquittal by the Trial Court. All these aspects would be dealt in detail at a later stage.

2. This appeal assails the correctness of the judgment and order dated 02.12.2021 passed by learned Single Judge of the Patna High Court in Criminal Revision Petition No. 1345 of 2009, whereby the said Revision Petition was dismissed confirming the judgment of the Additional Sessions Judge, Fast Track

Court- III, Patna dated 24.10.2008 passed in Sessions Trial Nos. 469 of 2007 and 470 of 2007, acquitting Respondent Nos. 2 to 8 of all the charges.

3. FIR was registered on 25.03.1995 at the Police Station Masrakh (Panapur) District Saran at Chapra, Bihar as Case No. 62 of 1995 under Sections 147, 148, 149/307 of Indian Penal Code, 18601 and Section 27 of the Arms Act. Later on, Section 302 IPC was added as two out of three injured died during treatment. The said FIR was registered based on the statement of one of the injured Rajendra Rai at about 10AM, who subsequently succumbed to injuries.

The statement was recorded at the corridor of Camp Rajkiya Hospital, Panapur by Sub-Inspector N.N. Thakur of Police Station, Panapur in the presence of two other injured namely Daroga Rai and Smt. Devi and also before two other persons namely Narendar Singh and Sanjeev Kumar Singh who had signed as witnesses in the FIR.

4. The prosecution version, as recorded in the FIR in the statement of Rajendra Rai, narrated that the informant along with eight-nine other persons of his village was returning after casting their vote in the election on 25.03.1995 at around 9AM; when they reached south east of his residence, five persons came in a car armed with rifles and guns and stopped the car; Prabhunath Singh (accused no.1), who was the contesting candidate for Bihar People's Party (BPP), while sitting in the car enquired as to whom all of them had cast their votes; the informant answered that they had cast their votes in favour of Janta Dal Party having symbol of Chakrachap; on hearing this, the car moved towards south and stopped at a little distance; Prabhunath Singh (accused no.1) opened fire from his rifle pointing towards the informant and others and thereafter the car sped away. As a result of the firing, three persons got injured.

5. On the basis of the FIR, investigation was taken up. Inspection was made of the spot of occurrence. Three used cartridges were recovered from the place of occurrence, they were sealed and a recovery memo was prepared. The Investigating Officer recorded the statement of the witnesses.

The injured were provided medical treatment, the doctor prepared the injury report and after two of the injured expired, the post-mortem reports of the two deceased persons were also prepared. Daroga Rai died soon after the incident and his post-mortem was conducted on 26.03.1995. Rajendra Rai died after about five months on 21.08.1995 and his postmortem was conducted on 22.08.1995.

6. Prabhunath Singh (accused no.1) was avoiding the arrest, nor was he surrendering as he was the member of the ruling party. The District Magistrate,

considering the amount of influence being yielded by the accused, found that it was not feasible to conduct the cases in District Saran at Chapra and hence recommended the transfer of all the six cases to Hazaribagh.

In all these cases Prabhunath Singh was an accused. The transfer was approved by the High Court. However, later in the year 2000, upon re-organization of the State of Bihar, as Hazaribagh fell in the State of Jharkhand, the present trial was transferred to District Bhagalpur in Bihar.

7. It was only after 11 years that charges could be framed by the Trial Court on 26.03.2006 against all the accused for offences under various Sections of IPC as stated above. The prosecution examined 11 witnesses. It would be relevant to note that out of these 11 witnesses, PW-1 to PW-7 were examined on a single day i.e. 27.06.2006. The statement of all these seven witnesses were more or less similar to the effect that they saw the incident of firing but did not see who killed the two deceased. All seven witnesses were declared hostile by the Prosecution. PW-8 to PW-10 (three witnesses) were examined on 10.08.2006.

8. In the meantime, on an application under Section 311 of the Code of Criminal Procedure, 19732, the Trial Court, vide order dated 23.10.2006, summoned Lalmuni Devi (CW-1), mother of deceased (Rajendra Rai) as court witness and 03.11.2006 was fixed for recording her statement. On 24.10.2006, Lalmuni Devi (CW-1) and her husband were abducted from their residence by none other than the brother of Prabhunath Singh (accused no.1) and his associates.

The appellant (son of CW-1) made a complaint to the local police and when no action was taken, he approached the Superintendent of Police of District Saran and also the Director General of Police and the State Home Secretary which also went unattended. This resulted into filing a petition seeking a writ of Habeas Corpus before the Patna High Court.

9. The said Habeas Corpus Petition was registered as Cr.WJC No. 717 of 2006, Harendra Rai Versus State of Bihar and Others.

10. The said Habeas Corpus Petition was decided by the Division Bench of the Patna High Court vide the detailed judgment dated 13.03.2007. The Division Bench issued certain directions with respect to the trial in question. The said judgement would be dealt with in detail at a later stage.

11. Pursuant to the direction issued vide judgment dated 13.03.2007, the trial proceeded but again in a most shabby manner, not even complying with the directions of the High Court. The Special Public Prosecutor for the State, instead of getting the witnesses examined before the Court, filed affidavits on their

behalf reiterating their earlier statements. Only two witnesses were re-examined namely PW-1 and PW-10.

With respect to PW- 2, PW-4 to PW-7, affidavits were filed stating that they had nothing further to add and they reiterated their deposition given earlier. Shrimati Lalmuni Devi (CW-1) was again examined and cross-examined on 29.09.2008 where she fully supported the prosecution story. Prosecution evidence was closed on 29.09.2008. The Trial Court, vide judgment dated 24.10.2008, acquitted all the accused in both the Sessions Trials bearing no. 469 of 2007 and 470 of 2007. There was no challenge to the judgment of acquittal by the State.

12. During the trial, on the date of the statement of CW-1 i.e. 03.11.2006, there was some altercation in the Trial Court where the lawyers and pairokar of the accused, assaulted the family members of CW-1 inside the Courtroom. This was reported in the newspapers inviting attention of the Inspecting Judge.

The Inspecting Judge set up an inquiry in which he collected evidence and recorded statements. Based upon the same, he gave a detailed report dated 21.02.2007 criticizing the conduct of the Presiding Officer of the Trial Court. The judgement in the Habeas Corpus petition incorporates the findings of the Inspecting Judge in the report dated 21.02.2007. Relevant extract from the judgment in the Habeas Corpus petition is reproduced hereunder:

"On coming to learn, through some newspaper report about the fracas created in the Court of 7th Additional Sessions Judge, Bhagalpur while the court proceedings were going on, Mr. Justice C.K. Prasad, Inspecting Judge of the judgeship called for reports and ordered an enquiry in the matter. After a thorough and painstaking enquiry, he gave a report, dated 21.2.2007.

In the beginning of the report, he noted the circumstances in which the trial arising from Masrakh (Panapur) P.S. Case No.62 of 1996, that should normally have taken place at Chapra, was first transferred to Hazaribagh and when as a result of the bifurcation of the State Hazaribagh fell in Jharkhand, it was brought to Bhagalpur.

After taking into account the reports submitted by the District and Session Judge, the 7th Additional Sessions Judge, the Public Prosecutor, statements of witnesses and the report of Dr. D.N. Gautam to whom he entrusted the enquiry, the Hon'ble Judge, in his report, found and held as follows.

"I do not have the slightest hesitation in endorsing the reports of the District and Sessions Judge, Bhagalpur as also the Additional Director General of Police that the witness Lalmuni Devi was not produced under proper security. She was frightened and under heavy stress prior to her examination. She was intimidated

inside the Court room prior to her examination. She was not normal and the Court atmosphere was highly tensed and abnormal.

The materials on record led him to conclude that evidence of Lalmuni Devi cannot be said to have been voluntarily made. I am of the considered opinion that had the Presiding Officer of the Court exercised little discretion, this untoward incident ought not have taken place. The Presiding Officer of the Court having found that the witness was not looking normal and, in fact, looking frightened and having not been produced under proper security, he ought to have taken these facts seriously and prevented deflecting the Court of Justice.

The direction of this Court to record evidence cannot be construed to mean that the Court was obliged to record her statement despite the fact that she was produced without proper security. I am of the opinion that the Presiding Officer of the Court had also failed miserably in the matter."

13. The proceedings of the Habeas Corpus petition also need to be appropriately referred to. After the incident of abduction of Lalmuni Devi (CW-1) on 24.10.2006, the Habeas Corpus petition was filed on 31.10.2006 and was taken up by the Court on 01.11.2006. On the said date, it was adjourned on the request made by the Advocate General.

On 02.11.2006, the Advocate General stated before the Court that, on receiving report of abduction of Lalmuni Devi and Rama Rai, investigation was started and in the night itself Rama Rai appeared before the Officer In- Charge and the Sub Divisional Police Officer. He stated that, apprehending some threats from different quarters, he and his wife had gone underground for self-protection.

Rama Rai said that he had come forward on his own to speak the truth about going into hiding on their own accord on account of certain rumors that were spread. Rama Rai, however, refused to disclose the whereabouts of his wife Lalmuni Devi. The Advocate General assured the Court that Lalmuni Devi would be given full protection not only for appearing before the Court but also otherwise so that she may not be harmed by anyone.

On the above statement of the Advocate General, the Division Bench of the Patna High Court hearing the Habeas Corpus Petition directed for the production of Rama Rai to record his statement. The next date fixed was 08.11.2006 for production of Rama Rai. It was further provided by the Division Bench that in the meantime if Lalmuni Devi appears before the Trial Court on 03.11.2006, the Court may proceed with the case but if she failed to appear on the said date, the prosecution case should not be closed till further orders by the Court.

14. On 08.11.2006, it was reported that the statement of Lalmuni Devi was recorded on the date fixed i.e. 03.11.2006. Thereafter she was taken from Bhagalpur to Chapra from where she had been abducted and her statement was recorded under Section 164 CrPC before the Magistrate at Chapra. In the said statement, she stated that she was not abducted by anyone. The said statement was filed before the High Court along with the counter affidavits. On the above submissions, the Advocate General stated that the petition had become infructuous.

15. The Division Bench was further informed that on 03.11.2006, the deposition of Lalmuni Devi was not normal and smooth. Her appearance had led to a clash between two groups of people although the said incident was not reported by the Trial Judge. However, it had attracted the attention of the Inspecting Judge, Bhagalpur through newspaper reports and based on the same he called for reports and directed for enquiry. The final report dated 21.02.2007 given by the Inspecting Judge has already been referred to above.

16. On behalf of the writ petitioner before the High Court, it was submitted that their parents were not made free and they were still under the clutches and remote control of the accused. The Division Bench, therefore, did not close the proceedings of the case and adjourned the matter awaiting the result of the enquiry by Justice C.K. Prasad, as he was the Inspecting Judge.

17. The Division Bench further records that in the meantime two complaints were filed regarding the abduction of Lalmuni Devi and her husband; one was filed by their daughter in law Girija Devi at Panapur Police Station registered as Case No. 81 of 2006 and the other was lodged at Masrakh Police Station Dist.Saran registered as Case No.129 of 2006 at the instance of one Shankar Rai. Later on Shankar Rai retracted and had filed a written note stating that he had filed the complaint under some misunderstanding.

The said Shankar Rai was one of the persons from the side of the abductees accompanying Lalmuni Devi at the time of her appearance before the Trial Court on 03.11.2006. The Division Bench directed that both these complaints be thoroughly investigated and the reports of investigation be submitted under the signature of the Deputy Inspector General of Police, Saran range.

18. On 17.11.2006, Lalmuni Devi appeared before the Division Bench and filed an affidavit duly sworn in by her. In the said affidavit, it was stated that she and her husband Rama Rai were abducted by the men of Prabhunath Singh and were under their complete control all along. She appeared before the Court and gave oral statement before the Division Bench. The Court has recorded that she was

an old and rustic village woman and seemed to be under stress and looked quite vulnerable.

She spoke only Bhojpuri in which one of the members of the Division Bench Justice S.P. Singh was fluent. She stated before the Court that she and her husband were in fact abducted by the men of Prabhunath Singh. They had used force against her and had threatened her. Both her statements before the Trial Court on 03.11.2006 and her statement under Section 164 CrPC were not free and voluntary but under duress and intimidation.

19. At this stage also the Advocate General reiterated that nothing further survives in the matter with regard to the abduction. However, the Division Bench declined to close the proceedings noting that it was evident that lurking behind the surface, were much larger and far better issues than the alleged abduction of two old villagers.

The Registrar General of the High Court was given direction for making arrangements of stay of Lalmuni Devi at the Judges' Guest House at Patna so that she was isolated from any influence and that her statement was to be recorded at the Guest House on 20.11.2006 by a Magistrate. The conduct of the Police was also noticed by the Division Bench that they were not willing to see the reality and continued to work under the influence of Prabhunath Singh. The Division Bench directed the Additional Director General of Police Dr. D.N. Gautam to supervise the proceedings.

20. On 20.11.2006, the statement of Lalmuni Devi was recorded in writing as also a video cassette by the Magistrate was prepared of the same and submitted in a sealed cover. The Advocated General on 05.12.2006 submitted the interim report by Dr. Gautam. He had severely criticized the supervision report and described it as one of the shallowest of the shallow pieces of investigation. It was then that the Court directed the investigation of two cases would be made under the overall charge of Dr. Gautam.

21. On 24.01.2007, the Advocate General submitted the report by Dr. Gautam. In the meantime, report of the Inspecting Judge dated 21.02.2007 was also received by the Division Bench. The orders passed on 08.11.2006, 17.11.2006 and 05.12.2006 were challenged before this Court by way of Special Leave Petition (Criminal) Nos. 187, 377 and 378 of 2007 respectively. All the SLPs were dismissed by some observations by a common order dated 15.01.2007.

22. The Division Bench had three materials before it namely affidavit of Lalmuni Devi, her statement recorded by the Magistrate on 20.11.2006, the reports of Dr. Gautam, Additional Director General of Police dated 30.11.2006,

16.12.2006 and 22.01.2007 and the enquiry report by Justice C.K. Prasad, the Inspecting Judge, Bhagalpur dated 21.02.2007.

23. The Division Bench proceeded to record in detail the version of Lalmuni Devi as to how she had been abducted along with her husband by Dina Nath Singh (brother of Prabhunath Singh) and Chotelal, MLA from Parsa. She had stated in detail as to what all places they had been taken to and how they were ill-treated. She also described that Prabhunath Singh, his security guard, the Mukhiya and Shankar told her to change her statement and if she would not do the same, then Prabhunath Singh would kill her other son (Harendra Rai) as well.

She also described how she was taken to Court room where the incident took place in which the men of Prabhunath Singh assaulted her son, daughter-in-law and son-in-law who wanted to take her with them. The Judge was sitting in Court and in his presence her family members were assaulted but the Judge said nothing. She was also threatened that she would also be killed. She was again taken by Prabhunath Singh and his men from the Court on 03.11.2006.

She also stated that she had not given any statement on 03.11.2006 and only her thumb impressions were taken as she was frightened and afraid that she might lose her other son, daughter-in-law and son-in-law who were being continuously assaulted. It was after three-four days that she reached her home. She also narrated in her statement in the enquiry report about the working of Prabhunath Singh and that he was again preparing to get her abducted.

The honest and true version of Lalmuni Devi has been recorded above. In the report submitted by the Additional Director General of Police, he had condemned the report of D.I.G., Saran range, Chapra. He had concluded the report by observing that the investigation of the two cases was quite casual and the supervision and control of the investigation was also pitiable.

He had also recorded the statements of Lalmuni Devi and Rama Rai which was again reproduced in the order and the same is not being repeated as it is more or less the same as recorded above. Dr. Gautam in his report also commented that the sequence of events started only after the application under Section 311 CrPC was allowed and Lalmuni Devi was called as a court witness on 03.11.2006.

24. Further, according to the report of Dr. Gautam, after abduction of Lalmuni Devi, her son and daughter-in-law represented not only to the officer-in-charge, Panapur Police Station but also to the Superintendent of Police, the Director General of Police and the Home Secretary at Patna.

The Director General of Police forwarded the petition given by the son and daughter-in-law to the Superintendent of Police, Chapra by fax for taking necessary action on 25.10.2006. The same was communicated and received in the office of Superintendent of Police, Chapra on the same day but it remained unattended till 02.11.2006. It was only after the petition was instituted on 31.10.2006 that formal notice was taken of the said petition by the Superintendent of Police.

The report further notices that from 24.10.2006 till 03.12.2006, the son of Lalmuni Devi had been running from pillar to post between Chapra, Patna and Bhagalpur but no public authority paid any heed to his complaints. Dr. Gautam stated that he had tried to put the investigation of the two cases back on the right track and also pointed out the glaring omissions and deficiencies in the investigation.

He had also observed in his report that the cases instituted against the witnesses and the attitude of the Police was another cause of grave concern. He also made a request to the Court to be spared from being involved in the matter any further as he had no machinery of his own by which he could conduct an independent and impartial investigation.

25. The Division Bench further proceeds to record the findings of the Inspecting Judge given in his report dated 21.02.2007, which we have already reproduced in the earlier part of this order.

26. The Division Bench further records the finding that the above facts and circumstances and the evidence placed on record clearly establish the connection between abduction of Lalmuni Devi at Chapra and the murder trial taking place before the Bhagalpur Court. Lalmuni Devi had been abducted to prevent her from deposing freely in the trial relating to the murder of her son. The abductors of the Lalmuni Devi succeeded in their design to make sure that she was not allowed to make a free deposition before the Bhagalpur Court. The finding of the Division Bench is extracted from the order and reproduced hereunder: -

"The reports of Dr. D.N. Gautam and the statement of Lalmuni Devi clearly establish the connection between her abduction at Chapra and the murder trial taking place before the Bhagalpur Court. It is evident that Lalmuni Devi was abducted to prevent her from deposing freely in the trial relating to the murder of her son. Her statement made in the Court and recorded by the Magistrate at the Judges' Guest House, Patna and the report of Justice C.K. Prasad, the Inspecting Judge of Bhagalpur Judgeship further make it clear that the abductors of Lalmuni Devi succeeded in their design and she was not allowed to make a free deposition in the Bhagalpur Court."

27. Despite the above material which had come on record, the senior counsel appearing for Prabhunath Singh before the High Court continued to oppose any directions to be issued by the Division Bench. He reverted to the old theme that the petition had been rendered infructuous and the Court was needlessly proceeding further in the matter. The submission was that both the reliefs claimed in the petition namely, recovery of Lalmuni Devi and the other for getting a case registered and investigation carried out regarding her abduction stood already granted and the proceedings may be brought to an end.

He also objected to the Court's previous orders calling for reports from Dr. D.N. Gautam, Addl. Director General of Police. He also made an effort to argue that the report was based upon material which was in the nature of hearsay evidence and as such on its basis the Court may not hold that deposition of Lalmuni Devi before the Trial Court on 03.11.2006 was not free and voluntary.

28. The Division Bench rejected the submissions of Mr. Vindhya Kesari Kumar, learned senior counsel appearing for Prabhunath Singh as being without any substance or merit. The Division Bench further proceeded to record the finding that the deposition of Lalmuni Devi on 03.11.2006 before the Trial Court was not voluntary but was made under duress and intimidation while she was under the control of the accused. Following is the relevant extract from the said judgment:

"Every criminal trial, specifically a trial relating to a double murder is supposed to be held fairly and impartially. The present trial was not held at Chapra, in departure from the normal, but was transferred to Hazaribagh and then to Bhagalpur in order to ensure that it should be held fairly. But the materials before the court leave no room for doubt that the proceedings of the trial were violently interfered with and the trial's sanctity has been badly abused.

In light of the materials before it, the court has no hesitation in finding that the deposition of Lalmuni Devi on 03.11.2006 in Sessions Trial No.19 of 2003 before the 7th ADDL. Sessions Judge, Bhagalpur was not voluntary. It was made under duress and intimidation while she was fully under control of the accused.

What this court finds indescribably regrettable is that the subversion of the trial was made possible only with the abetment, by acts of omission and commission, of those who were primarily responsible to ensure that it should be held independently, fairly and impartially. The unholy drama that took place in the Trial Court was not possible without the inaction and connivance of the Chapra Police, the active help and co-operation by the P.P. conducting the trial and the defence lawyer appearing for the accused.

The saddest part in the entire episode is that the Presiding Judge turned a Nelson's eye to what was happening in the Court room. He not only remained a silent spectator in the Court room but did not even report the matter to this Court. When an enquiry was directed there was an apparent attempt to cover up by all concerned."

29. Towards the end, the Division Bench recorded that the Advocate General by the said time, having perused the material which was placed, became fully alive to the seriousness of the matter. He gave up his earlier stand which was similar to the stand of the counsel for the accused Prabhunath Singh that the petition had been rendered infructuous and further proceeded to give some useful suggestions. It would be worthwhile to reproduce the stand of the Advocate General, as recorded by the Division Bench, which reads as follows:

"Here, I am pleased to note that the Advocate General was fully alive to the gravity of the matter. He completely gave up his earlier stand that with the appearance of Lalmuni Devi, the writ petition had become infructuous and gave some useful suggestions to the Court.

The Advocate General submitted that though there was an apparent connection between the abduction of Lalmuni Devi at Chapra and the trial taking place at Bhagalpur, the two matters were required to be dealt with separately as one was still at the stage of police investigation while the other was a trial before a Court. With regard to the abduction case at Chapra, he stated that the Government is willing to accept investigation by any mode and by any agency as may be directed by the Court.

With regard to the trial at Chapra, he submitted that the Government was willing to change the P.P. and to appoint a Special P.P. to conduct the trial in his place. He also submitted that prima facie the statement made by Lalmuni Devi before the Trial Court on 03.11.2006 was not free and voluntary and hence, she was required to be re-examined. He also said that there was need to change the Presiding Judge by transferring the case to another Court."

30. Here an apt Latin Maxim which means he who acts through another, acts himself, may be quoted "qui facit per alium facit per se".

31. Insofar as the investigation regarding the incident of abduction is concerned, the Division Bench, although noticed that the same was deplorable at that time but as it was still at the stage of investigation, the Advocate General assured that it would be done in a fair and impartial manner and also expeditiously. Directions were also issued that the report of Dr. Gautam along with the copy of

the judgment, be sent to the Director General of Police and the Home Secretary, Bihar to take curative measures in the matter without any loss of time.

The last part of the judgment contains the directions issued by the Division Bench with respect to the murder trial which was pending at Bhagalpur. The Division Bench found the suggestions given by the Advocate General positive and fully acceptable. Apart from transferring the trial out of Bhagalpur, the Court also issued a couple of other directions. The said directions are reproduced hereunder:

"In light of the discussions made above, it becomes necessary to give the following directions with regard to Sessions Trial No.19 of 2003 arising from Masrakh (Panapur) Police Station Case No.62 of 1995.

i. The proceedings of Sessions Trial no.19 of 2003 pending before the 7th Additional Sessions Judge, Bhagalpur is directed to be transferred to Patna. The records of the case should be transmitted forthwith to the Sessions Judge, Patna who should either keep the case in his own court or assign it to some Additional Sessions Judge or a Fast Track Court who would hold the trial on a propriety basis so as to conclude it without any undue delay and preferably within three months from the date of receipt of the records

ii. The Statement Government is directed to appoint a Special P.P. to conduct the trial. The Government shall take into account the way the trial was tried to be subverted in the past and would appoint as P.P. an experienced lawyer of reputed integrity.

iii. The deposition of Lalmuni Devi taken on 03.11.2006 would stand scrapped and she will be examined afresh before the Trial Court at Patna under Section 311 of the Code of Criminal Procedure.

iv. The order passed by the Bhagalpur Court closing the prosecution case is set aside and the trial shall proceed from the stage of examination of Lalmuni Defendant vi as directed above.

v. It will be open to the Special P.P. to make an application for recall of witness(establishment) earlier examined. In case such a petition is filed, the Trial Court shall pass appropriate orders, in accordance with law.

vi. The report of Hon'ble Mr. Justice C.K. Prasad is directed to be placed before the Standing Committee of the Court for consideration and suitable action.

vii. The Bihar State Bar Council is directed to examine the roles of the P.P. and the defence counsel who were conducting Sessions Trial No.19 of 2003 before

the 7th Additional Sessions Judge, Bhagalpur and to take appropriate action in the matter. This writ petition is disposed of with the aforesaid observations and directions."

32. The above completes the proceedings which were undertaken in the Habeus Corpus petition resulting into the judgment of the Division Bench dated 13.03.2007 of the Patna High Court.

33. Pursuant to the directions of the Division Bench, the trial was transferred to Patna from Bhagalpur. The proceedings at the Sessions Court, Patna were equally disappointing and the conduct of the State Government, the Public Prosecutor so appointed and the investigating agency, including that of the Trial Judge, remained unchanged. Although in the earlier part of the judgment, the proceedings, after the judgment dated 13.03.2007 of the Division Bench, before the Trial Court have been incorporated but in order to maintain the continuity the same at the cost of repetition are reproduced here again:

34. Pursuant to the direction issued, vide judgment dated 13.03.2007, the trial proceeded but again in a most shabby manner and not complying with the directions of the High Court in letter and spirit. The Special Public Prosecutor for the State, instead of getting the witnesses examined before the Court, filed affidavits on their behalf reiterating their earlier statements.

Only 2 witnesses were re-examined namely PW-1 and PW-10. With respect to PW-2, PW-4 to PW-7, affidavits were filed stating that they had nothing further to add and they reiterated their deposition given earlier. Shrimati Lalmuni Devi (CW-1) was again examined on 29.09.2008. Prosecution evidence was closed on 29.09.2008. The Trial Court, vide judgment dated 24.10.2008, acquitted all the accused in both the Sessions Trials bearing no. 469 of 2007 and 470 of 2007.

35. It would be appropriate to refer to the investigation, proceedings and evidence led during the trial right from the stage of FIR till the second statement of CW-1 Lalmuni Devi which was recorded on 29.09.2008. After the incident on 25.03.1995 at about 09.00 AM, the three injured were taken to the State Hospital Camp, Panapur. The Fard Bayan was registered on the oral statement given by one of the injured (later deceased) Rajendra Rai as recorded by Sub-Inspector N.N. Thakur at 10.30 AM.

The said Fard Bayan was signed by the injured Rajendra Rai, two witnesses Narendra Singh, Sanjiv Kumar Singh and by the officer in-charge, Panapur Police Station, Camp Panapur. The Fard Bayan also bears the endorsement of Sub-Inspector N.N. Thakur forwarding it to the Police Station Incharge Masrakh under Sections 147, 148, 149, 307 IPC and Section 27 of the Arms Act for

registering the report. Contents of the Fard Bayan have already been reproduced in the earlier part of this judgment.

36. On its basis, FIR was registered at P.S. Panapur as Case No. 62 of 1995 on 26.03.1995. The FIR contains endorsement of various authorities and Courts of its perusal. It also bears the endorsement that Section 302 IPC was added on 30.03.1995. On record is also available the Fard Bayan of Lalmuni Devi recorded during the investigation on 21.08.1995.

37. The statement of one Baidyanath Tiwari and one of the injured Smt. Devi recorded under Section 164 CrPC is also available on record. Baidyanath Tiwari stated that the incident of firing had taken place at around 09.00 AM. He was a teacher of Sanskrit in Gogal Singh High School Nayagaon, Chapra and on the relevant date was the Presiding Officer at the Polling Booth No.100. Around 09.00 AM, he noticed that four-five anti-social elements, armed with fire-arm weapons, started indiscriminate firing. In that group, there was one short height person who had covered his face.

He further stated that the CRPF deputed at the Polling Booth and the patrolling party started firing in retaliation which created a stampede. At some distance, he noticed a couple of people having fallen down in which one was a woman. He further stated that he did not know whether the injured had received the injury from the firing of antisocial elements or the CRPF men. He however states that Prabhunath Singh was not one of those who were firing. He also states that he knew Prabhunath Singh from before. This statement was recorded on 23.05.1996 i.e. after more than one year from the date of the incident.

38. Smt. Devi's statement under Section 164 CrPC was recorded on 17.05.1996. She had also stated that when she was returning home after casting her vote, a little ahead of the school where the polling was taking place from the field of Raher (kind of Pulse), fourfive persons came out, they were armed.

Some of them had covered their faces with piece of cloth and they started firing, as a result of which, she along with Rajendra Rai, Kadama Rai and Daroga Rai received injuries. Daroga Rai had died on the spot and Rajendra Rai fell unconscious. At that time, Prabhunath Singh was not there. She further stated that she knew Prabhunath Singh ever since he became a Member of the Legislative Assembly.

39. The chargesheet dated 29.08.1995 is also on record and bears an endorsement of the CJM dated 30.08.1995. The injury reports of Daroga Rai, Smt. Devi and Shri Rajendra Rai are also on record. The Post-mortem reports of both Rajendra Rai and Daroga Rai are on record.

40. The Trial Court had framed charges against the accused Krishna Nandan Singh, Shatrughan Singh, Santosh Singh, Sheetal Singh, Satyendra Singh and Harendra Singh on 26.05.2006 under Section 302/149, 147, 148 IPC and Section 27 of the Arms Act. On the same day separately, a charge was framed against Prabhunath Singh by the same Trial Court under Section 302 IPC and Section 27 of the Arms Act. On 27.07.2006, the statement of seven witnesses were recorded as follows:

PW-1 - Parma Rai;]
PW-2 - Harinath Rai;
PW-3 - Kedama Ram;
PW-4 - Harinder Rai;
PW-5 - Dinanath Bhagat;
PW-6 - Smt. Devi;
PW-7 - Tarkeshwar Rai.

41. These witnesses i.e. PW-1 to PW-7 are mentioned as witnesses in the chargesheet. It is interesting to note that their statements are almost identical. The opening line is that they were giving this evidence on their own free will; that they had not come to depose under any coercion or threat; that nobody has kidnapped them and brought them for giving evidence. Very unusual opening of deposition by all these seven witnesses.

42. They further stated that on 25.03.1995 which is the date of incident, at about 09-09:30AM, they were returning after casting their votes when they heard shots being fired; that they did not see who fired the shots; Daroga Rai, Rajendra Rai and Smt. Devi had received fire arm injuries; that they were returning along with the injured after casting their votes; that Police did not record their statements.

43. The prosecution requested for these seven witnesses to be declared as hostile and sought permission to cross-examine them, which was granted. The cross-examination by the prosecution of PW-1, PW-2, PW-4, PW-5, PW- 6 and PW-7 is similar. However, insofar as PW-3 Kadama Ram is concerned, he was neither sought to be declared hostile nor was he cross-examined. All six witnesses denied having narrated to the Police regarding the incident supporting the prosecution story.

44. It would further be relevant to mention here that PW-1 was re-examined on 24.09.2008 pursuant to the directions issued by the Division Bench of the High Court on 13.03.2007. This time, he again came up with a similar statement that he had come to depose on his own accord and that he was not giving the statement under any coercion. The prosecution again was trying to further help the accused and tried to make up for the lacuna left earlier, as this time PW-1

mentioned the names of the persons he was accompanied with and deliberately did not take the name of CW-1.

He further stated that all of a sudden firing started from the fields of Raher as a result of which Rajendra Rai, Smt. Devi and Daroga Rai received injuries. He further stated that the fields of Raher were dense and one feet higher than his height and as a result he could not see the persons who were firing. He further stated that he took the injured to the hospital at Panapur where the Doctor had referred them to the Chapra Sadar Hospital. He further states that the Police did not make any further inquiry from him.

He further denied that he had not given any statement that it was Prabhunath Singh of BPP who had come in the car. At this stage, on the request of the Special Public Prosecutor, he was sought to be declared hostile with liberty to cross-examine. In the cross-examination, he denies his statement recorded by the Police during the investigation. Rest of the statement is with respect to the treatment provided to the injured at different stages. He also denied the suggestion that earlier he had stated that CRPF had also fired in retaliation.

He also denied the suggestion that under the influence of the accused he is hiding the true facts. During cross-examination by the defence, whatever was not stated earlier to protect the accused was stated in this round of statement. He stated that all three of them, after receiving injuries, had become unconscious and were not in a position to speak anything.

He further stated that the Police Inspector did not record their statement at the hospital as he was throughout with the injured. He further goes on to state that Lalmuni Devi was not accompanying them when they were returning after casting their vote when the incident took place. He also goes on to state that Lalmuni Devi was not there even during the course of the treatment. He, however, admits that his leader was Lalu Yadav and he was a worker of his party.

45. Rest of the witnesses did not come forward to give their statement pursuant to the directions of the High Court. However, they filed their affidavits stating that they have nothing further to add and would only reiterate their earlier statements.

46. PW-8 and PW-9 were the security personnel who were on duty at the Polling Station. They only stated that they heard the sound of firing. They did not know who had fired and who had been injured.

47. PW-10 is Dr. Sudhir Kumar, who had examined the injuries of three injured and had proved the injury report which was marked as Ex.2 (Smt. Devi), Ex.2/1

(Daroga Rai) and Ex.2/2 (Rajendra Rai). In the crossexamination, he states that all the injured were in sensitive condition and were badly injured so he immediately referred them to the Chapra Hospital for better treatment.

He further states that no police person came to his hospital and recorded statement of any of the three injured persons. Again, he was reexamined on 24.09.2008 on the request of the Public Prosecutor in which statement he further strengthened the case of the defence by repeatedly stating that all the three injured were unconscious (at least three times).

48. PW-11 is Dr. Ashok Kumar Gada, who had conducted the post-mortem on the body of Daroga Rai, proved the post-mortem report that it was under his signature which was marked as Ex.3.

49. CW-1 Lalmuni Devi, in her original statement dated 03.11.2006, had stated that she had come to depose on her own; nobody has brought her; that she did not know anything about the case; that the Police had not recorded her statement at the Patna Medical College; that she did not put her thumb impression or signature on any document.

50. It would also be worthwhile to briefly refer to the proceedings before the Trial Court after the judgement of the High Court dated 13.03.2007.

a) Actual proceedings started on 13.06.2008 before the Trial Court at Patna. On the said date, on the request of the six accused they were allowed to remain on their previous bail. Thereafter five-six dates were fixed on which nothing substantial happened.

b) On 08.09.2008, the Special Public Prosecutor moved an application under Section 311 CrPC stating that the prosecution wants to examine evidence of CW-1 Lalmuni Devi, PW-1 Parma Rai and PW-10 Dr. Sudhir Kumar who had already been examined earlier before the High Court. The case was ordered to be put up on 10.09.2008. The Trial Court allowed the application under Section 311 CrPC and ordered for recalling of the witnesses Parma Rai (PW-1) and Dr. Sudhir Kumar (PW-10). It further directed the Superintendent of Police, Chapra to produce the prime witness Lalmuni Devi (CW-1) and fixed 24.09.2008 for their evidence.

On 24.09.2008, the order sheet records that both the witnesses PW-1 and PW-10 were cross-examined and discharged. It is in this statement that the prosecution, by producing them, further strengthened the case of the defence instead of strengthening the case of the prosecution. Further Lalmuni Devi (CW-1) could not be produced on the said date. Further directions were issued for her production on the next date, which was fixed for 29.09.2008. Another

application filed by the Special Public Prosecutor for reexamining PW-2, PW-4, PW-5, PW-6, and PW- 7, was allowed.

c) On 29.09.2008, the Special Public Prosecutor filed affidavits of PW-2, PW-4, PW-5, PW-6 and PW-7. Further on the said date, CW-1 Smt. Lalmuni Devi was examined, crossexamined, and discharged. Briefly the contents of the deposition of CW-1 may be reproduced here. In her examination-in-chief, as per the translated copy provided by the appellant which we have verified from the original record, she stated that:

"I am deposing willingly by and without any coercion in the Court. I had given my statement before the Assistant Sub- Inspector of Pirbahore Police Station on 21.08.1995. The A.S.I. of Police had recorded my statement. I affixed my thumb impression thereon after giving my statement. I had stated before the A.S.I. of police that my Dewar (husband's younger brother) namely Kedama Rai had gone with my son to caste their votes at middle school in the village Dhanuki at about 10.00 o'clock in the day. We were returning after casting our votes.

Motor vehicles came there from village Satzora. Prabhunath Singh asked as to how the votes were seing caste. I responded that people were casting their votes on "Chakra" (wheel). The motor vehicle entered into the rahar (a kind of pulse) field. Thereafter Prabhunath Singh fired shot from his vehicle. Three persons namely Rajendra Rai, Daroga Rai and Srimati Devi sustained bullet injuries however Srimati Devi sustained bullet injury on her arm.

I had taken the deadbody of my son to Panpur P.S. from the booth and the dead-body was sent to Patna from the Police station. My son was given medical treatment at Patna but he succumbed to his injury. His post mortem examination was conducted. My statement was recorded by the police after the demise of my son. Now I do not have to give my statement before the Court. I had given my statement before the Judge at Bhagalpur. My son died after six months of the occurrence."

In her cross-examination, she was subjected to many suggestions to which she gave satisfactory explanation. The defence could not elicit any major discrepancies in her examination-in-chief. The cross-examination is as under:

"I went back to my house with the police after adducing evidence at Bhagalpur. I had not gone to the Magistrate with the S.I. of police of Panapur P.S. after three days of coming back to my house. My Dewar Kedama Rai had come to the hospital with Rajendra Rai. Parma Rai is not my relative. There was no one with me at the time I was giving my statement to the police at hospital. Kedama rai

was present with me at the time I was giving my statement. I had given my statement on the day on which my son died.

I disclosed all the facts whatsoever relating to the occurrence before the S.I. of Police. The S.I. of police had read over the content of my statement to me. I affixed my thumb impression thereon after understanding the content to be true. Besides the statement given at hospital. The S.I. of Police did neither ask anything to me nor record my statement again in course of investigation. I had not given any petition against the police in the court that the police did not record my statement correctly.

It is not a fact that I had not given such statement before the police that we were returning after casting our votes and a which came from the side of the village Satzora and Prabhunath Singh had asked how the voting was going on and I responded that I had caste my vote in favour of "Chakra" mark. The vehicle went into the rahar (a kind of pulse) field and thereafter Prabhunath Singh fired shot which hit three persons.

The shots hit the arms of Rajendra Rai, Daroga Rai and Srimati Devi. I took the deadbody of my son to Panapur P.S. from the booth and the deadbody was sent to Patna from the police station but he succumbed to his injury. Harendra Rai is my son. Harendra Rai himself had told me that I had to utter the name of Prabhunath Singh among the shooters. It is not a fact that I have deposed falsely in the Court."

d) On the same date i.e. 29.09.2008, the Trial Court closed the prosecution evidence and fixed 15.10.2008 for examination of the accused under Section 313 CrPC. On 15.10.2008 examination of the accused under Section 313 CrPC was recorded. The defence also filed a certified copy of the statement of Lalmuni Devi recorded under Section 164 CrPC by Shri Sampat Kumar, Judicial Magistrate, Chapra on 06.11.2006 in connection with the abduction case in Panapur P.S. Case No. 81 of 2006.

e) Further an application was filed by private counsel Shri Ranjan Kumar Sinha, advocate on behalf of the informant, that additional evidence may be recorded for meeting the ends of justice. He also submitted that the Investigating Officer of the case is not examined, although liberty was given by the High Court for taking any additional evidence in the case. The Trial Court did not find it necessary to summon the Investigating Officer. The Trial Court further closed the evidence of the defence and fixed 17.10.2008 for arguments.

f) On 17.10.2008, another petition was filed by the private counsel for the informant, stating that the prosecution evidence was closed without taking

proper steps for the evidence of the Investigating Officer, the Doctor, PW-3 Kadama Rai and seizure list witnesses and prayed for them being called for recording their statements as court witnesses. This petition was also rejected by the Trial Court on the ground that private counsel has no locus standi to file such a petition. It completely failed to be sensitive to the facts and circumstances of the case as was apparent from the material on record.

g) The Trial Court also rejected another petition, moved on behalf of one Kishori Rai for recording his statement, on the ground that he was a stranger. Although Kishori Rai had prayed for transfer of the case as they had lost faith in the Court, the case was fixed on 18.10.2008 for further arguments.

h) On the said date, again an application was filed by Narendra Singh and Kishori Rai through their private counsel under Section 311 CrPC for recording statement of Narendra Singh, Kishori Rai and Sanjeev Kumar Singh two of them being witnesses of Fard Bayan, and Kishori Rai had produced the cartridges found at the place of occurrence of which the seizure list was prepared in presence of Janki Rai and Chabili Rai.

This application was also rejected on 18.10.2008 on the same ground that it was moved by strangers, who were not witnesses in the chargesheet and the application was not filed by the Special Public Prosecutor. On the same date, arguments were heard and 20.10.2008 was fixed for parties to file their written arguments. Thereafter the Trial Court proceeded to deliver the judgment on 24.10.2008.

51. With respect to the judgment of the acquittal dated 24.10.2008, a grievance petition was submitted by the seizure list witnesses, which was acknowledged by the then Inspecting Judge, Justice Navin Sinha, as he was then. The entire Sessions Trial Court records were called for and duly examined and studied by the Inspecting Judge. The Inspecting Judge noticed the glaring deficiencies both deliberate and malicious, step by step.

The Inspecting Judge not only noticed the deliberate mischief on the part of the Investigating Agency but also the Public Prosecutor and the Presiding Judge of the Trial Court in not discharging their pious duty of doing justice. The Inspecting Judge recorded that the trial that had been conducted by the Presiding Officer leads to only two possible conclusions, either the judgment is based on extraneous considerations or the Officer completely lacks judicial acumen.

He then goes on to record that he examined seven random Sessions Trial judgments of the Officer and was of the view that it cannot be said that he does not know the law which meant the conduct of the Trial Judge was for extraneous

consideration. The Inspecting Judge, vide his report dated 04.05.2009, recommended appropriate action against the Officer. The said report dated 04.05.2009 deserves to be reproduced and it is so done:

"Hon'ble the Chief Justice,
Re: Judgment and order dated 24.10.2008 by Sri Man Mohan Chaudhary, Additional Sessions Judge, F.T.C. III, Patna in Sessions Trial No.469-470 of 2007 arising out of Panapur P.S. Case No.62 of 1995 - GR No.819 of 1995 under Sections 147, 148, 149, 302, 307 of the Penal Code and Section 27 of the Arms Act. In a Sessions Trial, normally it is the accused, who are on trial.

Occasionally, apart from the accused, the judiciary, as an institution, is also on trial and its credibility is put to test. The present is definitely one such case. On a grievance petition by a seizure list witness, as the Inspecting Judge, Patna Judgeship, the entire Sessions Trial records were called for. I have gone through and studied the records. The informant Rajendra Rai, was deceased soon after the incident. Another injured Daroga Rai was also deceased subsequently. Three other persons were injured.

The F.l.R. is in the nature of a dying declaration. One person was specifically named as accused, having fired at the deceased. Three persons were named as F.l.R. witnesses, and another two persons signed the FIR as witness to the contents. A seizure list was prepared with regard to empty pellets seized from the spot signed by the independent witnesses. The named accused, a powerful political personality, sought to interfere with the trial at Chapra. To ensure a fair trial, the case was transferred to Hazaribagh. On re-organization of the State of Bihar, the trial was transferred to Bhagalpur.

At Bhagalpur witnesses were intimidated in the court room, and unruly created. Witnesses were kidnapped to prevent from deposing. The Presiding Officer remained a mute witness and did not submit any report to this Court. The Inspecting Judge on basis of a newspaper report made a surprise visit and submitted a report. Cr.WJC No.717 of 2006 (2007(2) PLJR 244) was filed by Harendra Rai, a prosecution witness and brother of the deceased for the abduction of their mother to prevent from deposing.

The Division Bench noticed how the process of law was being subverted and the trial interfered including the report of the Inspecting Judge. The trial was ordered to be transferred to Patna to ensure a fair trial. The Division Bench quoted extensively from the judgment of the Supreme Court in (2004) 4 SCC 158 (Zahira Habibullah Sheikh Vs. State of Gujarat). It cautioned the Presiding Officer to be wary and ensure that justice was done in all respects. Liberty was given for recall of prosecution witnesses under Section 311 CrPC.

The Presiding Officer in the order sheet dated 08.09.2008 specifically states that he has gone through the order of the Division Bench and then quotes the directions with regard to recall of witnesses but makes no reference to the observation from the case of Zahira Sheikh. He also refers to Cr. Misc. No.44589 of 2006 preferred by Kishori Rai, a seizure list witness for his examination under Section 311 CrPC. The FIR in the form of a dying declaration was not marked as an exhibit. The Presiding Officer himself states that it is the nature of a dying declaration.

The application filed by Kishori Rai, seizure list witness, to examine him along with Narendra Singh and Sanjeev Kumar Singh (attesting witness to the FIR) as witnesses, was rejected by stating that no such application was filed by the Public Prosecutor for their examination. No statement of the latter two was their under Section 161 CrPC and neither were they charge sheeted witness. The application of Kishori Rai was rejected by saying that the original seizure list was not on record. Kishori Rai was not a charge sheet witness or the informant but a stranger and no application by him on behalf of the informant, who was dead, would be entertained.

The P.P. remained silent. The Presiding Officer preferred to ignore the directions of the Division Bench from the observations in the case of Zahira Habibullah Sheikh. After the order of the Division Bench, the Public Prosecutor filed an application for recall of certain witnesses including FIR witnesses (not the attesting witnesses). The Public Prosecutor then himself filed their affidavits that they did not wish to depose beyond what was deposed by them at Bhagalpur. The Public Prosecutor then requested for evidence to be closed.

The Court took no further steps to verify the voluntary nature and genuineness of the affidavits. The conduct of the Presiding Officer ignoring these duties prescribed in the case of Zahira Habibullah Sheikh in taking no steps for having the F.I.R. exhibited is shocking. After acknowledging that it was in the form of a dying declaration, he rejects it as it had not been proved. No coercive steps whatsoever were taken to secure the attendance of the Investigating Officer. It was simply stated that despite efforts and notice to D.G.P., he has not appeared.

If the I.O. was evading appearance, the search for truth made his appearance a compelling necessity for the Presiding Officer. The original seizure list went missing. The Presiding Officer took no steps for reconstruction or holding an enquiry why and how the seizure list has gone missing from the records. Affidavits filed by the Public Prosecutor were accepted by the Presiding Officer as a gospel truth. The directions of the Division Bench of the duties of the Presiding Officer were completely ignored in the grab of a direction for expeditious disposal of the trial.

The Presiding Officer did not notice the dichotomy that the Public Prosecutor himself filed the application for recall of witnesses in the changed circumstances and then filed affidavits on their behalf himself. The application of seizure list witness, Kishori Rai, for his examination and that of the two F.l.R. witnesses was rejected on absolutely frivolous grounds even after noticing that the Public Prosecutor was not supporting the application. Cr. Misc. No.44589 of 2006, by Kishori Rai, a seizure list witness, was disposed with the observation that the Public Prosecutor has already been directed in Cr. W.J.C. No.717 of 2006 to move appropriately under Section 311 CrPC.

The duty of the Presiding Officer was to search for the truth in the criminal trial. He completely abdicated his duties and consciously chose to ignore the order of caution by the Division Bench reminding him of his duties. The manner in which the trial has been conducted by the Presiding Officer leads to only two possible conclusions. The judgment is either based on extraneous considerations or the Officer completely lacks judicial acumen.

I had called for random seven Sessions Trial judgments of the Officer. It cannot be said that he does not know the law. The public image of the judiciary is tested in such cases. The Officer has failed the institution. The desirability of appropriate action against the Officer merits serious consideration."

52. The said report was placed before the Standing Committee of the High Court and considered in the meeting dated 07.07.2009 wherein it was resolved to accept the recommendation. Later on when the said minutes came up for confirmation in the meeting dated 14.07.2009 it was resolved vide agenda item No.1(ii) that the recommendation made by the Inspecting Judge not only be accepted but be enlarged with further direction that the judgment in question dated 24.10.2008 be listed on judicial side before appropriate Bench for considering suo motu exercise of revisional power under CrPC. The said resolution of the Standing Committee is reproduced hereunder:

"Resolution It is resolved to confirm the proceedings of the meeting of the Standing Committee held on 7th July 2009 with the following modifications.

i. Under the Agenda- Any other matter- it is resolved to place on record the appreciation of valuable contribution made by Hon'ble Mr. justice V.N. Sinha as a Member of Committee during his tenure, which has just expired (V.N. Sinha, J. Abstaining.)

ii. In respect of Agenda Item No.5 of Vol.I the resolution will stand enlarged with a further direction that the judgment in question dated 24.10.2008 be listed

on judicial side before appropriate Bench for considering suo motu exercise of revisional power under Code of Criminal Procedure.

iii. In respect of Additional Agenda Item No.2 the resolution is modified to the extent that shri Krishna Kant Tripathi shall also not be posted as Principal Judge in Family Court at Aurangabad but as District and Sessions Judge Nawadah and Shri Akhilesh Kumar Jain Shall be posted as District and Sessions Judge at Jehanabad instead of Nawadah."

53. It is on the decision of the Standing Committee that Criminal Revision No. 1345 of 2009 was registered with cause title as "The State of Bihar Versus Prabhunath Singh & Ors". The Learned Single Judge dismissed the said criminal revision, vide impugned judgement dated 02.12.2011, giving rise to the present appeal.

54. Learned Single Judge of the High Court, while dismissing the revision, recorded the following findings:

a) Revisional Power is akin to the appellate power in view of Section 401 CrPC.

b) Fard Bayan, turned into lodging of FIR, has not been proved by any witness. The officer or authority, who recorded the said statement, has not been produced as a witness. Moreover, it does not contain a certification of the mental/physical health of the injured (later deceased). Besides, the non-production of any such witness, who was present and heard the statement being made, has not been produced as a witness. Hence, Fard Bayan is not liable to be read as evidence.

c) PW-10, the doctor, who attended to the injured persons and had prepared the injury report, had stated that the three injured were unconscious. Hence, the deceased Rajendra Rai (the injured) was not in a position to make his statement (Fard Bayan/Bayan Tahriri). He also stated that Daroga Rai was very serious and accordingly, after having given first aid, all the injured were referred to Sadar Hospital, Chapra.

d) Dr B.D. Prasad had conducted the postmortem of Rajendra Rai, but he was not produced in Court as a prosecution witness and the contention that his report could be admitted under Section 294 of CrPC, is unacceptable as the post-mortem report is not covered by the said provision.

e) CW-1 Lalmuni Devi is not a hearsay witness, as held by the Trial Court, but is a tutored witness in view of her last two lines in cross-examination. (The High Court went one step further from the Trial Court in treating the CW-1 as a tutored witness.)

f) Any other prosecution witness of fact does not corroborate the testimony of CW-1. Instead, their testimonies are against CW-1 as no other prosecution witness has stated about her presence.

g) It was observed that although CW-1 was not named in the chargesheet but Pirbahor Police Station probably recorded her statement while she was attending to her injured son in the Primary Medical Health Centre (PMHC), which is sufficient to indicate that her statement was recorded during the investigation.

h) Zahira Sheikh's judgement is not applicable as it relates to mayhem on account of communal hatred and disharmony, resulting in some mass massacres. The present case may have some political tinge, but that could not be of the same or deeper hue as was in Zahira's case.

55. We have heard learned counsel for the parties and also perused the original record.

56. The arguments advanced on behalf of the appellant are briefly summarized as follows:

a) None of the issues flagged in the report dated 04.05.2009 of the Inspecting Judge regarding the manner and illegality of trial of the case were considered much less in accordance with law.

b) Trial of the case was not conducted as per directions vide order dated 13.07.2007 in Cr.WJC No. 717/2006 passed by the Division Bench of the High Court in the Habeas Corpus Petition.

c) A case is made out for de-novo trial to cure the travesty of justice committed in a case wherein in a broad day light, two persons were done to death, apart from causing injury to another.

d) Witnesses were not allowed to be properly examined and the trial of the case was not conducted by the Special Public Prosecutor as per directions of the High Court.

e) The Special Public Prosecutor of the case was not competent person since he was not having practice as an advocate for ten years in terms of Section 24(8), CrPC.

f) The findings in the impugned order are perverse and erroneous and the evidences, available on record are not appreciated properly.

g) The evidence of CW-1 has not been appreciated in accordance with law either by the Trial Court or the High Court. On the sole evidence of CW-1 the conviction of accused deserves to be recorded.

h) Not a single Police Officer, including the Investigating Officer, was examined in the case showing clear malice.

57. On the other hand, learned senior counsel appearing for the Respondent Nos. 2 to 8 submitted as follows:

a) That the judgment of the High Court and the Trial Court are just, valid and proper, based upon the evidence adduced during trial.

b) It was a case of no evidence as all the witnesses turned hostile.

c) Lalmuni Devi's (CW-1) evidence was tutored and could not be relied upon.

d) The FIR itself was not proved.

e) The Doctor, who had examined the injured, had stated that they were in an unconscious state and as such also Rajendra Rai could not have been in a condition of narrating the incident.

f) Neither the Investigating Officer nor any of the police officials, though may be formal in nature were produced.

g) Scope of revision before the High Court was limited and so would be the status before this Court.

h) No perversity or material irregularity have been found or argued by the learned counsel for the appellants.

i) The present appeal, with its limited scope, deserves to be dismissed.

58. Learned counsel appearing for the State of Bihar has supported the appellant.

59. Before dealing and discussing the evidence led in the Trial Court, relevant facts relating to the manner in which the trial has been conducted, deliberate lapses on the part of the Public Prosecutor in leading the prosecution witness, lapses on the part of the Trial Court in not exercising the powers vested in it to ensure a fair and just trial, the facts mentioned in the reports of the Inspecting Judge and also the findings recorded by the High Court in the Division Bench, need to be mentioned.

Lapses on the part of the prosecution conducting the trial and that on the part of the Investigating Agency:

60. Briefly the lapses are summarized as under:

a) No explanation was given for not producing the scribe of the FIR. In case the scribe was not available for some reason then someone else from the police station could have been produced to prove the hand writing and signature of the scribe.

b) The Investigating Officer not produced by the prosecution, is again a clear and deliberate lapse.

c) Non-production of other prosecution witnesses of preparing the recovery/seizure list, inquest report, carrying the dead-body to the hospital, and absence of any effort to prove other formal aspects of the investigation clearly indicate malice and deliberate lapse on the part of the prosecution.

d) The conduct of the Public Prosecutor in filing affidavits in evidence of the witnesses of fact despite directions of the High Court and further examining witnesses under 311 CrPC to strengthen the case of defence reflects the tainted role of the Public Prosecutor.

61. The legal issues which arise for consideration in the present case may be summarized as under:

A) Whether the Supreme Court, in appeal against acquittal, can consider the High Court's judgement dated 13.03.2007 passed in the Habeas Corpus Writ Petition, which was not part of the evidence produced (although it was part of the Trial Court record) and was not relied upon by the prosecution before the Trial Court, as a piece of incriminating evidence in the nature of a Public Document and, if yes, up to what extent?

B) Whether the previous or subsequent conduct of the accused, established on record, can be treated as a circumstance against the accused in view of Section 8 of the Evidence Act?

C) Whether the FIR or Bayan Tahriri can be said to be proved as a piece of reliable prosecution evidence and if so, what would be the position of law on the issue of treating the FIR or Bayan Tahriri as the Dying Declaration?

D) Whether the testimony of a Prosecution Witness (an old feeble, rustic, illiterate lady and mother of the deceased and an eyewitness of the incident), who stated in the end of her cross- examination that "her son (another alive son)

had asked her to take the name of accused before the Court," can be treated to be a reliable evidence against such accused, especially in view of the checkered and abnormal history of the case?

Issue (A): - Relevance and admissibility of the FIR:

62. According to the general procedure, facts need to be proved by adducing evidence in the Court of law, and the evidence must be produced in accordance with the procedure mentioned in the Indian Evidence Act, 1872. The doctrine of judicial notice, as provided under Section 56, is an exception to this rule.

63. Section 56 of the Evidence Act says that "No fact of which the Court will take judicial notice need to be proved." Section 57 of the Evidence Act goes one step further by providing that the Court has no other option but to take judicial notice of the facts mentioned in the list given in the Section as it uses the word "shall" and not "may". Section 58 of the Evidence Act says that if the parties or their agents have agreed to admit a fact during the court proceeding or in writing before the hearing, then such fact need not be proved unless the Court believes that it needs to be proved. The aforementioned three Sections i.e. 56 to 58 of the Evidence Act are reproduced hereunder:

"56. Fact judicially noticeable need not be proved.-

No fact of which the Court will take judicial notice need be proved.

57. Facts of which Court must take judicial notice.-

The Court shall take judicial notice of the following facts: -

[(1) All laws in force in the territory of India;]

(2) All public Acts passed or hereafter to be passed by Parliament 1 [of the United Kingdom], and all local and personal Acts directed by Parliament 1 [of the United Kingdom] to be judicially noticed;

(3) Articles of War for [the Indian] Army [Navy or Air Force]

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States;]

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice: the seals of all the [Courts in [India] and of all Courts out of [India] established by the authority of [the Central Government or the Crown Representative]; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by [the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in [India];

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in [any Official Gazette];

(8) The existence, title and national flag of every State or Sovereign recognised by 10[the Government of India];

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion of 10[the Government of India];

(11) The commencement, continuance and termination of hostilities between [the Government of India] and any other State or body of persons;

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorised by law to appear or act before it;

(13) The rule of the road [on land or at sea]. In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. Facts admitted need not be proved.-

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

64. We are concerned with Section 56 of the Evidence Act, which deals with the authority of a Court to accept certain facts, which are either of common knowledge or from sources which guarantee the accuracy or are a matter of authoritative official record or court record, without the need to establish such fact. The judicial notice of any fact is taken when the facts cannot reasonably be doubted.

65. This Court, in its various pronouncements, has taken support of Section 56 of the Evidence Act to do substantial justice in respective matters. Some of them are being reproduced hereinafter to get a better picture of how judicial notice is taken:

a) In the case of State of Kerala v. Unni3, in paragraph 27 it has been held as follows:

"27. Judicial notice can be taken of the fact that each village would not have a chemical laboratory where the process of analysis of ethyl alcohol can be carried out." For example, if a sample is taken in a village, by the time sample is sent for and is analysed, the volume of ethyl alcohol may increase. Although we are informed that some chemical is mixed when a sample is taken, no material has been placed in that behalf.

(Emphasis added)

b) In the case of Prabhakara v. Basavaraj K.4, it was observed in paragraph no. 21 as follows:

"21. A relief can only be on the basis of the pleadings alone. Evidence is also to be based on such pleadings. The only exception would be when the parties know each other's case very well and such a pleading is implicit in an issue. Additionally, a Court can take judicial note of a fact when it is so apparent on the face of the record.

(Emphasis added)

c) In the case of Ved Mitter Gill v. UT, Chandigarh5, in paragraph 26, it was held as follows:

"26. The links of the escaped undertrial prisoners with the Babbar Khalsa International, a known and dreaded terrorist organisation was also clearly expressed in the impugned order, as one of the reasons, for it being impracticable, to hold an inquiry against the appellant/petitioners. It is a matter of common knowledge, and it would be proper to take judicial notice of the fact, that a large number of terrorists came to be acquitted during the period in

question, on account of the fact that witnesses did not appear to depose against them on account of fear, or alternatively, the witnesses who appeared before the courts concerned for recording their deposition, turned hostile, for the same reason."

(Emphasis added)

d) In the case of Joseph M Puthussery vs T.S. Jhon and others6, this Court was dealing with an appeal filed under Section 116 A of the Representation of People Act, 1951, against the order of a single bench of the High Court declaring the election of the appellant as Member of Kerala Legislative Assembly from No. 106, Kallooppara Constituency as void on the ground that he was guilty of the corrupt practice within the meaning of sub-Section 4 of Section 123 of the Act. While evaluating the findings recorded by the High Court, this Court considered the scope of Section 56 of the Evidence Act in paragraph 65 and observed as follows:

"65. The High Court has summarily described "Crime" Magazine to be a yellow journal. Whether "Crime" magazine is a yellow journal is a matter of opinion and not of fact. It is impossible to conclude that an opinion of this sort is a judicially noticeable fact for the purposes of Section 56 or Section 57 of the Evidence Act, 1872. There is nothing in the impugned judgment which indicates that any evidence was led, much less considered as to whether "Crime" magazine is a yellow journal and hence magazine could not have been relied upon by the appellant in forming a belief that the contents of the magazine were not untrue."

(Emphasis added)

66. The law, in respect of taking judicial notice of any fact, may be summarised in the following manner:

(i). The doctrine of judicial notice, as provided under Section 56, is an exception to general rules of evidence applicable for proving any fact by adducing evidence in the Court of law.

(ii). According to Section 56 of the Evidence Act, judicial notice of any such fact can be taken by the Court, which is well-known to everyone, which is in the common knowledge of everyone, which is authoritatively attested, which is so apparent on the face of the record, etc.

(iii). Except in the rarest of rare cases, judicial notice of any fact is generally not taken in criminal matters in the normal course of proceeding, and the case is

decided on the basis of oral, material and documentary evidence adduced by the parties to find out the guilt or innocence.

67. As discussed above, the judicial notice of any fact is generally not taken in criminal matters, but the present matter stands on an altogether different footing in view of what has been noted hereinbefore. It falls in the category of rarest of rare cases and hence, it requires a different approach.

This Court, in its considered opinion, finds that the judgement in the Habeas Corpus Petition was passed on the basis of notes of the Inspecting Judge of the High Court, the report of Additional Director General of Police, statement of CW-1 Smt. Lalmuni Devi recorded in Court before the Magistrate under the directions of High Court, her affidavit filed before the High Court, her statement/disclosure in Bhojpuri before one of Judges hearing the Habeas Corpus petition and several other authoritative materials after giving the opportunity of hearing to the parties, including the accused of the crime in question.

In the said judgement, certain inferences, observations and findings arrived at by the Division Bench have a crucial impact on the merit of the present case, as it gives a complete picture as to how the prosecution version in the present case was being demolished brick by brick by using political authority and muscle power with the aid of not only the police administration but also with the aid of Public Prosecutor and unfortunately, the Presiding Officer of the Trial Court also conducted himself in a manner unbecoming of a Judicial Officer, despite directions and continuous vigil by the High Court.

68. The judgement dated 13.03.2007, which is a public document, is well discussed and is based upon authoritative materials and was passed in consonance with the doctrine of audi alteram partem. Moreover, it has a torch bearer effect over the facts of the case.

Thus, it qualifies the requirement of law for the purpose of taking judicial notice thereof, and this Court takes judicial notice of the inferences, observations and findings arrived at by the Division Bench and the directions issued in its judgement dated 13.03.2007 to the extent of the subsequent conduct of the accused, deplorable functioning of the Public Prosecutor, Police Administration and the Presiding Officer of the Trial Court to extend undesirable favour to the accused.

69. Another Latin Maxim, which means that a judicial decision must be accepted as correct, may be usefully extracted here, "res judicata pro veritate accipitur".

Issue (B): - Conduct of the accused-Section 8:

70. In the case in hand, the conduct of the accused is not only relevant under Section 8 of the Evidence Act but is also one of the major circumstances to arrive at a conclusion about his guilt. Section 8 of the Evidence Act is being reproduced hereinafter:

"8. Motive, preparation and previous or subsequent conduct. -

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

The illustration (e) of Section 8 throws some light on the case in hand and is significant in the present matter, which is being reproduced hereinafter:

"Illustration (e) - A is accused of a crime. The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant."

71. In a very interesting case of Anant Chintaman Lagu v State of Bombay7, this Court, while holding the accused of that case guilty of murder, has touched on the aspects of relevancy of conduct of the accused subsequent to the incident in question, and its inference by the Court to decide the guilt and innocence of the accused. Relevant extracts from the aforesaid judgement are quoted herein below:

"A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material. What inference can be drawn from his conduct after the death of Laxmibai is a matter to be considered by us.

And in this connection, we can only say at this stage that if some prior conduct is connected intrinsically, with conduct after death, then motive of the appellant would be very clear indeed. These arguments, however, are of no avail, in view of the appellant's entire conduct now laid bare, which conduct has been proved

to our satisfaction to have begun not after the death of Laxmibai but much, earlier. This conduct is so knit together as to make a network of circumstances pointing only to his guilt."

72. In the case with which we are dealing, there is no iota of doubt that the accused-Respondent No.2 was instrumental in making all possible efforts to wipe out the evidence against him and the Prosecution machinery as also the Presiding Officer of the Trial Court, if we may say so, was used as a tool of his highhandedness.

73. The obvious question pops up in the mind of any prudent person, as to why he was instrumental, when he was not guilty of the offence to which he was being tried. The obvious answer to this would reasonably come to mind of any prudent person that his guilty mind was fearful about the result. All these aspects leave no room for doubt that the subsequent conduct of Respondent No.2 is one of the major circumstances pointing towards his guilt for the incident that occurred at 9AM on 25.3.1995.

74. We may quote a Latin Maxim which aptly means that a person who receives advantage must also bear the burden, "qui sentit commodom, sentire debit et onus"

Issue (C): -Status of the Bayan Tahriri/Written Statement of the deceased

75. Before discussing the status of the record of the case, it is noted, at the cost of repetition, that this Court, with the strength of Section 56 of the Evidence Act, has already taken judicial notice of certain findings and observations recorded by the Division Bench of the High Court in the Habeas Corpus Petition.

76. According to the case record, the incident had occurred at 09:00 AM on 25.03.1995. A written statement (Bayan Tahriri) of the injured Rajendra Rai was recorded in CMHC, Panapur, on the morning of 25.03.1995 at 10:30 hours. An FIR was lodged on 25.03.1995 at ..... Hours, which was based on the written statement (Bayan Tahriri) of the injured Rajendra Rai, who subsequently succumbed to the injuries he received in the incident. The FIR was forwarded to the Judicial Magistrate on 26.03.1995, and on 27.03.1995, the FIR was seen by the Judicial Magistrate.

77. Because of the indescribably regrettable subversion of the Trial proceedings, the formal witness, i.e., the Constable Clerk and Investigating Officer, were not produced to prove the lodging of FIR and written complaint. Eventually, the written statement/Bayan Tahriri, as well as the FIR, were not marked as Exhibits.

All the witnesses of fact, except CW-1 Lalmuni Devi (mother of deceased Rajendra Rai), had turned hostile either under fear or being won over. Even the testimony of PW-10, Dr. Sudhir Kumar also appears to be influenced by the accused - side as he repeatedly stated (four times) before the Trial Court that "injured were unconscious", despite the fact that the injury report does not mention that the "injured were unconscious"

78. The deplorable conduct of the Presiding Officer of the Trial Court also resulted in the miscarriage of justice at various steps of the trial, but the most objectionable aspect is that one person Kishori Rai, a seizure list witness (who was not included as a witness in the chargesheet by the Investigating Officer) had filed an application before the Trial Court seeking his examination as well as examination of other two persons namely Nagendra Singh and Sanjeev Kumar Singh (who had signed said Bayan Tahriri as attesting persons but were not included as witnesses in the chargesheet by the Investigating Officer) as witnesses during the trial.

However, the said application was rejected by the Trial Court, vide order dated 18.10.2008, on flimsy grounds like, the application has not been moved through Public Prosecutor, the seizure list is not on record, the person Kishori Rai is not a witness of the chargesheet. The Presiding Officer of the Trial Court adopted such a pathetic approach despite noticing the detailed order dated 13.03.2007 passed by the Division Bench of the High Court in the Habeas Corpus Petition.

79. Even the High Court, despite acknowledging in the impugned judgment that Revisional Power is akin to the appellate power in view of Section 401 CrPC, failed to set the record straight by exercising the appellate powers given under Sections 386, 389, 390 and 391CrPC, as provided under Section 401(1) of CrPC.

80. Now in this background, we would analyze whether the FIR or Bayan Tahriri can be said to be proved as a piece of reliable prosecution evidence and if so, what would be the position of law on the issue of treating the FIR or Bayan Tahriri as a Dying Declaration.

81. It is an undisputed position of law that the FIR is a public document defined under Section 74 of the Evidence Act. Various High Courts have expressed this view from time to time.

a) In the case of Channappa Andanappa Siddareddy and others v. State8, the Karnataka High Court held as follows:

"3. The F. I. R. being a record of the acts of the public officers prepared in discharge of the official duty is a public document as defined under Section 74 of the Evidence Act. Under Section 76 of the Evidence Act, every public officer

having the custody of a public document, which any person has a right to inspect, is bound to give such person on demand a copy of it on payment of the legal fees therefore."

b) The Single Bench of Gujrat High Court, in the case of Jayantibhai Lalubhai Patel vs. State of Gujrat9, concluded as follows:

"10. From the aforesaid discussions, it clearly appears that whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code. Thus it becomes a public document. Considering (1) the provisions of Article 21 of the Constitution of India, (2) First Information Report is a public document in view of Section 74 of the Evidence Act."

c) In the case of Shyam Lal vs State of U.P. And Ors10, the Division Bench of Allahabad High Court followed the same view.

d) The Division Bench of the Delhi High Court, while dealing with a public interest litigation being Court on its Own Motion through Mr. Ajay Chaudhary vs. State11, discussed pronouncements of various High Courts and held that there can be no trace of doubt that FIR is a public document as defined under Section 74 of the Evidence Act.

e) Recently, a Single Bench of Chhattisgarh High Court took similar view in the case of Narendra Rajput vs. State of Chhattisgarh through Secretary, Department of Home Affairs (Police) and Others12.

82. This Court endorses the above view and holds that FIR is a public document defined under Section 74 of the Evidence Act.

83. Now, what is to be seen is that any public document does not stand proven by the mere fact of its production. It is proved in the usual manner of proof when an objection to it is taken. The Court usually accepts a fact as proved when, after considering the document and the evidence before it, concludes that what is stated in the document is believable based on what the document, on the face of it, states along with what a witness to the document states about the contents and how the document was prepared/authored.

84. According to the common practice of Trial Court and also according to the General Rules (Criminal) as applicable in the case, all the papers and documents filed and produced during any inquiry and trial of a criminal case are marked as 'Paper No.' and at the stage of evidence, when any article, weapon, material, or document is admitted as evidence, it is marked as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers (generally as Ex-Ka for prosecution evidence and Ex-Kha as defence evidence).

85. At the stage of evidence, when any document/paper is formally produced for being treated as a piece of evidence, the Court looks at two basic aspects. Firstly, the existence of the document on the Court's record and, secondly, the proof of its execution or its contents being sufficiently deposed to by a witness having requisite knowledge thereof, whereafter, the document in question is marked as exhibit. At the stage of exhibiting any document as a piece of evidence, the truth of what is stated in the document is not considered.

It is left open to final evaluation at the trial after cross-examination, and the entire testimony of the witness about the existence and contents of the document is weighed in conjunction with various other factors emerging during a trial. At the final evaluation stage, the Trial Court concludes whether the document speaks the truth and decides what weight to give it for final decision. In other words, its evidentiary value is analysed by the Courts at the time of final judgment.

86. This Court in the case of Arbada Devi Gupta vs Birendra Kumar Jaiswal and Anr.13, in paragraph 16 has held as follows:

"16. The legal position is not in dispute that mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue.'"

87. In this view of the matter, the marking of a piece of evidence as 'exhibit' at the stage of evidence in a Trial proceeding is only for the purpose of identification of evidence adduced in the trial and for the convenience of the Court and other stakeholders in order to get a clear picture of what is being produced as evidence in a Trial proceeding.

88. As we are dealing with this case as an "exceptionally painful episode of our Criminal Justice System", we have already taken judicial notice of the judgement passed by the High Court in the Habeas Corpus petition for drawing an adverse inference against the subsequent conduct of the accused of the trial in question, it's Public Prosecutor, Police Administration and the Presiding Officer of the Trial Court as provided under Section 8 of the Evidence Act.

89. In the present case, considering the failure of State machinery and failure of the Trial Court to ensure a fair trial from the perspective of the victim side, the aspect of non-marking of the FIR and Bayan Tahriri as an exhibit, nonproduction of the formal witnesses, i.e., the Constable Clerk and Investigating Officer to prove the lodging of FIR/Bayan Tahriri and the flimsy rejection of application filed by Kishori Rai seeking his examination as a witness

along with the examination of Nagendra Singh and Sanjeev Kumar Singh (who had signed said written statement/Bayan Tahriri as attesting persons) as witnesses in the Trial proceeding do not vitiate the genuineness of the FIR and Bayan Tahriri, and we refuse to give any discount to the accused persons for non-exhibition thereof.

90. The above view finds support from the judgement of this Court in the case of Ram Bihari Yadav vs State of Bihar & Ors14, relevant extract whereof is quoted herein below:

"Para 13. Before parting with this case, we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Exh. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant.

In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

91. Now further issue crops up about the treatment of the FIR/Bayan Tahriri as dying declaration and in this respect various earlier pronouncements of this Court have clarified the position of law that the statement by an injured person recorded as FIR can be treated as a dying declaration and such a statement is admissible under Section 32 of the Indian Evidence Act. It was also held that the dying declaration must not cover the whole incident or narrate the case history. Corroboration is not necessary for this situation; a dying declaration can be the sole basis for conviction.

92. In the case of Munnu Raja and another v. State of M.P.15, the following observations are relevant:

"**Para 5.** In regard to these dying declarations, the judgment of the Sessions Court suffers from a patent infirmity in that it wholly overlooks the earliest of these dying declarations, which was made by the deceased soon after the incident in the house of one Barjor Singh. The second statement which has been treated by the High Court as a dying declaration is Ex. P-14, being the FIR which was lodged by the deceased at the police station.

The learned Sessions Judge probably assumed that since the statement was recorded as a FIR, it could not be treated as a dying declaration. In this assumption, he was clearly in error. After making the statement before the police, Bahadur Singh succumbed to his injuries and therefore the statement can be treated as a dying declaration and is admissible under Section 32(1) of the Evidence Act. The maker of the statement is dead and the statement relates to the cause of his death.

Para 6. The High Court has held that these statements are essentially true and do not suffer from any infirmity. It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross- examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated.

Para 10. We are in full agreement with the High Court that both of these dying declarations are true. We are further of the opinion that considering the facts and circumstances of the case, these two statements can be accepted without corroboration. Bahadur Singh was assaulted in broad day light and he knew the appellants.

He did not bear any grudge towards them and had therefore no reason to implicate them falsely. Those who were in the constant company of Bahadur Singh after the assault, had also no reason to implicate the appellants falsely. They bore no ill-will or malice towards the appellants. We see no infirmity attaching to the two dying declarations which would make it necessary to look out for corroboration."

93. This Court in the case of Ram Bihari Yadav vs State of Bihar & Ors16, has discussed the law in paragraph 6 as follows:

"**Para 6.** The law relating to dying declaration - the relevancy, admissibility, and its probative value- is fairly settled. More often the expressions 'relevancy and admissibility' are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant are not admissible; so also facts which are admissible may not be relevant, for example, questions

permitted to be put in cross- examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible.

The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case. in this case, the thrust of the submission relates not to relevancy or admissibility but to the value to be given to Exh.2. A dying declaration made by a person who is dead as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which cause of his death comes in question, is relevant under Section 32 of the Evidence Act and is also admissible in evidence.

Though dying declaration is indirect evidence being a specie of hearsay, yet it is an exception to the rule against admissibility of hearsay evidence. Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused. But then the question as to how much weight can be attached to a dying declaration is a question of fact and has to be determined on the facts of each case."

94. We may usefully reproduce the relevant paragraphs of the judgement of this Court in the case of Suresh Chandra Jana vs. State of West Bengal and Ors., reported in (2017) 16 SCC 466, which reads as follows:

"32. It would not be out of place to discuss the importance of dying declaration under Section 32 of the Evidence Act. The principle underlying Section 32 of the Evidence Act is 'Nemo moriturus praesumitur mentire' i.e., man will not meet his maker with a lie in his mouth. Dying declaration is one of the exceptions to the rule of hearsay. It is well settled that there is no absolute rule of law 'that the dying declaration cannot form the sole basis of conviction unless it is corroborated'.

The rule requiring corroboration is merely a rule of prudence [refer Paniben (Smt.) v. State of Gujarat, (1992) 2 SCC 474; Munnu Raja and Anr. v. State of Madhya Pradesh, (1976) 3 SCC 104; State of U.P. v. Ram Sagar Yadav, (1985) 1 SCC 552; Ramawati Devi v. State of Bihar, (1983) 1 SCC 211]. Moreover, if the person making the dying declaration survives, then such statement would not be admissible under Section 32 of the Evidence Act, rather such Statements may be admissible under Section 157 of the Evidence Act [refer Gajula Surya Prakasrao v. State of A.P., (2010) 1 SCC 88]

33. In light of the importance the dying declaration holds in a criminal trial, the dereliction of duty in recording the dying declaration and the doctor's ignorance of medico-legal jurisprudence is apparent from the material placed before us.

My attention has been drawn to various judgments, which have addressed the aspects of dereliction of duty by the doctors and importance of medico-legal aspect in medical jurisprudence [refer State of Gujarat v. Hasmukh @ Bhikha Gova Harijan, (1996) 1 Guj LR 292, Muniammal v. Supt. of Police, 2008 SCC OnLine Mad 1251 and Indrajit Khandekar v. Union of India and Ors., 2014 SCC OnLine Bom 4810].

It has to be remembered that every stakeholder in this criminal justice system is expected to act with a sense of fairness to bring out the truth so that punishment can be meted out to those who deserve. Although courts are provided with the duty to dispense justice, it cannot be denied that effective dispensation of justice by the courts in this country requires support of all the stakeholders. In light of the above, every stakeholder is expected to be aware of their responsibility and work towards achieving ends of the criminal justice system.

34. The last aspect is regarding the defective investigation and prosecution. If a negligent investigation or omissions or lapses, due to perfunctory investigation, are not effectively rectified, the faith and confidence of the people in the law enforcing agency would be shaken. Therefore the police have to demonstrate utmost diligence, seriousness and promptness. [refer Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517].

35. The basic requirement that a trial must be fair is crucial for any civilized criminal justice system. It is essential in a society which recognizes human rights and is based on values such as freedoms, the rule of law, democracy and openness. The whole purpose of the trial is to convict the guilty and at the same time to protect the innocent. In this process courts should always be in search of the truth and should come to the conclusion, based on the facts and circumstances of each case, without defeating the very purpose of justice."

95. In the case at hand, the deceased Rajendra Rai gave his statement in the form of Bayan Tahriri and narrated the entire incident and circumstances of the transaction which resulted in his death. Subsequently, he died on account of injuries suffered by him in the incident in question. This fact is not in dispute and hence, following the above case laws, the FIR lodged on the basis of Bayan Tahrir of injured Rajendra Rai is liable to be treated as a dying declaration, which itself is a substantive piece of evidence and is admissible under Section 32(1) of the Evidence Act.

96. In the present case, the FIR, being a public document and a dying declaration of the informant, is the foundation of the entire prosecution case. However, in the present matter, we have to find out the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'.

As held in Narmada Devi Gupta (supra), to ensure the reliability of the contents of the FIR/dying declaration, for which along with the inference drawn by us against the subsequent conduct of accusedrespondent no.2 and the aspect of deplorable functioning of the Public Prosecutor, Police Administration and the Presiding Officer of the Trial Court to extend undesirable favour to the accused, the only incriminating evidence is the testimony of Smt Lalmuni Devi (CW-1), which aspect is being dealt with hereinafter.

Issue (D) : Testimony of CW-1:

97. In the present case, besides the FIR/Bayan Tahriri, which is in the form of dying declaration, the testimony of CW-1 Lalmuni Devi is another incriminating evidence against the accused persons. CW-1 Lalmuni Devi's statement was recorded during the investigation on 29.08.1995 and during Trial she was not produced as Prosecution Witness but was summoned by the Trial Court as Court's Witness (CW-1) and her first statement was recorded on 03.11.2006, which was scrapped by the Division Bench of High Court by means of one of the various directions issued in the Habeas Corpus judgment dated 13.03.2007 in view of a serious allegation of her kidnapping by the accused side on 24.10.2006 i.e., just before her examination in the Trial Court and the High Court directed that she will be reexamined afresh before the Trial Court at Patna under Section 311 of the CrPC. Subsequently, CW-1 was examined by the Trial Court when she had deposed about the incident in question and supported the prosecution's version narrated in the FIR.

98. The High Court, in its impugned judgement, concluded that CW-1 Lalmuni Devi is not a hearsay witness, as held by the Trial Court, but is a tutored witness in view of her last two lines in cross-examination. Any other prosecution witness of fact does not corroborate the testimony of CW-1. Instead, their testimonies are against CW-1 as no other Prosecution Witness has stated about her presence. The main reason assigned by the High Court for such a conclusion is that she has stated in the end of her crossexamination that "her son (another alive son) had asked her to take the name of accused before the Court,"

99. The above conclusion drawn by the High Court is unacceptable and suffers from a serious error of law and also an error of fact. The High Court has completely failed to take up the merit of the case in its right perspective and failed to take note of the sensitivity attached to the case.

100. The High Court ought to have considered the fact that on account of the complete failure of state machinery, it was the institution of justice which had taken the task in its hand, firstly, by means of a Habeas Corpus Petition and secondly, by means of Suo Moto Revision under Section 401 of CrPC having

the foundation of inspecting notes of the Inspecting Judge of the District Judgeship and the resolution of Standing Committee of High Court. The minutes of the Standing Committee and the report of the Inspecting Judge, Justice Navin Sinha dated 04.05.2009 were on record of the High Court but it chose to completely ignore the same.

101. The High Court ought to have considered the checkered history of events that occurred in the case, resulting in the judgement of the Division Bench of the High Court in the Habeas Corpus Petition containing serious observations about the conduct of all the stakeholders of the said criminal trial and also the impact of the report of the Inspecting Judge dated 04.05.2009.

102. CW-1 was an old lady and mother of the deceased Rajendra Rai and the eye-witness of the incident, whose first examination was scrapped by the High Court on the allegation of her kidnapping just a few days before that first examination dated 03.11.2006. She was under continuous threat and fear of facing dire consequence, which is apparent on the face of the record.

Under these circumstances, in case she had stated in the end of her cross-examination that her son had asked her to take the name of the accused before the Trial Court, there is nothing so contradictory or surprising so as to treat the rest of the substantive ocular evidence as tutored one. In this regard, it is interesting to note that in the impugned judgment, the High Court itself observed that although CW-1 was not named in the chargesheet, but Pirbahor Police Station recorded her statement while she was attending to her injured son in PMHC, which is sufficient to indicate that her statement was recorded during the investigation.

103. There is no serious discrepancy or variation in the testimony of CW-1 with regard to the sequence of events that occurred during the incident in question. A witness, like the CW-1 of the present case, cannot be expected to possess a photographic memory and to recall the details of an incident. The variations of trivial nature in her testimony are liable to be ignored. The very sentence uttered by her at the end of her examination that "her son had asked her to take the name of the accused before the Court" is not so surprising in a case like the present one.

When the entire family of CW-1 was facing so many storms, it is quite natural for a son to say to her mother (who was old, illiterate, rustic woman having faced immense trauma) that she should not forget to disclose the name of accused persons, in as much as the second occasion of her examination, as ordered by the Division Bench of High Court under Section 311 of CrPC, was the last opportunity for her to speak the truth before the Trial Court.

104. We do not find anything unusual in the statement of CW-1, and her ocular evidence appears to be trustworthy and corroborates the dying declaration of her son Rajendra Rai. This conclusion of ours is guided by the basic and well-settled principles of appreciation of evidence, which this Court in the case of Balu Sudam Khalde and Another vs. State of Maharashtra17, has summarized as principles of appreciation of ocular evidence in a criminal case, which we can usefully reproduce hereinafter:

"APPRECIATION OF ORAL EVIDENCE

Para 25. The appreciation of ocular evidence is a hard task. There is no fixed or straightjacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. "I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the timesense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to

contradict that witness." [See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : ((1983) 3 SCC 217 : AIR 1983 SC 753) Leela Ram v. State of Haryana, (1999) 9 SCC 525 : AIR 1999 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

105. In the totality of the Case, this Court finds that the testimony of CW-1, Lalmuni Devi (mother of deceased Rajendra Rai), corroborates the same and makes it reliable. The narration about the incident's time, place and manner, the specific role attributed to the accused persons, etc, as described by Lalmuni Devi (CW-1), conforms with the contents of the FIR/Bayan Tahriri.

106. This Court is conscious of the fact that a path different from the normal is being adopted to determine the guilt of the accused. The Court is compelled to do so in the glaringly peculiar facts of the present case which have been elaborately discussed in the preceding paragraphs.

107. We have noticed that the three main stake holders in a criminal trial, namely the Investigating Officer that is the part of the police of the State of Bihar, the Public Prosecutor, and the Judiciary, have all utterly failed to keep up their respective duties and responsibilities cast upon them. This Court time and again has commented upon the failure of the major stakeholders in the criminal delivery system. 108. In the case of State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors18., this Court had commented on the conduct of the Police Officer. The following extract from the said judgment is reproduced hereunder:

"Human dignity is a dear value of our Constitution. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution."

109. Insofar as the Public Prosecutors are concerned, a lot of comments have been made, not only by this Court but also by the Law Commission, highlighting the role and importance of a Public Prosecutor. We may quote with profit the role of the Prosecutors as stated in the 197th Law Commission of India Report on Public Prosecutors' Appointments (2006):

"The Prosecutor has a duty to the state, to the accused and the Court. The Prosecutor is all times a minister of justice, though seldom so described. It is not

the duty of the prosecuting counsel to secure a conviction, not should any prosecutor even feel pride or satisfaction in the mere fact of success."

In 154th Law Commission of India Report it was reported as follows:

"Prosecutors are the ministers of Justice whose job is none other than assisting the State in the administration of Justice. They are not representatives of any party. Their job is to assist the Court by placing before the Court all relevant aspects of the case. They are also not there to see the culprits escape conviction."

110. This Court in the case of Zahira Habibulla H. Sheikh v. State of Gujarat19, had commented as follows with respect to the conduct of fair trial:

"Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

"Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stagemanaged, tailored and partisan trial."

"Time has become ripe to act on account of numerous experiences faced by courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clout and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice to become ultimate casualties.

Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness."

"A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disrupting the judicial hearing with menaces, noises and worse."

111. The Trial Court and the High Court miserably failed to notice the sensitivity and intricacies of the case. Both the Courts completely shut their eyes to the manner of the investigation, the Prosecutor's role, and the highhandedness of the accused as also the conduct of the Presiding Officer of the Trial Court, despite observations and findings having been recorded not only by the Administrative Judge but also by the Division Bench deciding Habeas Corpus petition.

They continued with their classical rut of dealing with the evidence in a manner as if it was a normal trial. They failed to notice the conduct of the Public Prosecutor in not even examining the formal witnesses and also that the Public Prosecutor was acting to the advantage of the accused rather than prosecuting the accused with due diligence and honesty. The Presiding Officer of the Trial Court acquitting the accused as also the learned Judge of the High Court dismissing the revision, were both wellaware of the facts, legal procedures, as well as the law regarding appreciation of evidence in a criminal case.

Both the courts below ignored the administrative reports as also the judgment of the High Court in the Habeas Corpus petition. In fact they should have taken judicial notice of the same. They completely failed to take into consideration the conduct of the accused subsequent to the incident, which was extremely relevant and material in view of Section 8 of the Evidence Act. They failed to draw any adverse inference against the accused with respect to their guilt.

112. Section 311 CrPC confers wide powers on any court at any stage of any inquiry, trial or other proceeding under this Code to summon material witness or examine person present. Such person may not be a person summoned as a witness. Power to recall and re-examine is also vested. The concept is that it should be essential for the just decision of the case. The said section is reproduced hereunder:

"Section 311 in The Code Of Criminal Procedure, 1973

311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re- examine any person already

examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case."

This power can be exercised not only by the Trial Court but also by the appellate Court or revisional Court. The logic behind this provision is that the endeavour of the Courts is to find out the truth which would be essential for the just decision of the case. Additionally, Sections 367 and 391 CrPC confers powers on the High Court dealing with death reference and appellate Courts to take additional evidence. The said sections are reproduced hereunder:

"Section 367 in The Code of Criminal Procedure, 1973

367. Power to direct further inquiry to be made or additional evidence to be taken.

(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court."

"Section 391 in The Code Of Criminal Procedure, 1973

391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

Even otherwise under general principles of law and procedure appellate Courts can exercise all powers vested in the Trial Court in an attempt to arrive at a just and fair decision.

113. In the present case, unfortunately the Trial Court as well as the High Court failed to exercise their powers under the aforesaid provisions to summon the witnesses of the charge-sheet to prove the police papers. Despite applications being filed to summon persons who were not shown as witnesses to the charge-sheet, the Trial Court repeatedly rejected the said applications in 2006 and again in 2008 on the flimsy grounds that were not named in the charge-sheet or that the Public Prosecutor had not filed such application in gross violation of Section 311 CrPC.

114. In the above backdrop of facts and the legal position, the conclusions based on analysis of the evidence in the light of the legal position is as follows:

a) Fard Bayan of Rajendra Rai, which was later converted into an FIR, is admissible in evidence and is to be read as a dying declaration or his last statement.

b) The tainted investigation shows the highhandedness of the accused-Respondent no.2, who was a powerful person, being a sitting M.P. of the Ruling Party.

c) The prosecution had established, even through the hostile witnesses, that the date, time, and place of incidence as given in the Fard Bayan of Rajendra Rai were fully established. The only issue was with regard to the identity of the assailants.

d) The post-mortem reports, show that the death of Rajendra Rai and Daroga Rai was homicidal in nature. The medico legal reports supported the prosecution's story to the extent that the injuries were caused by a fire arm, which proved fatal for two out of the three injured.

e) Adverse inference against the accused is drawn in view of their subsequent conduct.

f) Judicial notice is taken of the judgment in the Habeas Corpus petition dated 13.07.2007 regarding the conduct of the accused, the investigating agency, the Public Prosecutor and the Presiding Officer conducting the trial.

g) The two administrative reports of the respective judges, who were constitutional functionaries, also have to be given due credence and cannot be ignored outright regarding the conduct of the accused, public prosecutor and the Presiding Officer conducting the Trial.

h) The statement of CW-1 is found to be reliable, and the Courts below wrongly discarded it on the ground that it was hearsay and tutored.

i) The dying declaration and the statement of CW-1 fully establish that it was Prabhunath Singh, who had caused the injuries from his firearm weapon, which proved to be fatal for two out of the three injured and also caused injury to the third surviving injured, namely Smt. Devi.

j) Prabhunath Singh (accused no.1) is thus liable to be convicted under Sections 302 and 307 IPC for committing culpable homicide amounting to murder and attempt to murder.

k) The rest of the accused, although named in the chargesheet after due investigation, since their names were not reflected either in the Fard Bayan of the deceased Rajendra Rai (dying declaration) or in the statement of CW- 1, therefore, their acquittal is not disturbed.

115. Accused-respondent no.2 is thus convicted under Sections 302 and 307 IPC for the murders of Daroga Rai and Rajendra Rai and also for attempt to murder of injured Smt. Devi.

116. The Secretary, Department of Home, State of Bihar and the Director General of Police, Bihar are directed to ensure that Prabhunath Singh (Respondent No. 2) is taken into custody forthwith and produced before this Court to be heard on the question of sentence in view of Section 235 CrPC.

117. Let the matter be listed again on 1st September, 2023. On the said date, accused Prabhunath Singh (respondent no. 2) be produced before this Court in custody for the aforesaid purpose.

.....J. [Sanjay Kishan Kaul]

.....J. [Abhay S. Oka]

.....J. [Vikram Nath]

New Delhi

August 18, 2023

1 In short, "IPC"

2 CrPC

3 (2007) 2 SCC 365

4 (2022) 1 SCC 115

5 (2015) 8 SCC 86

6 (2011) 1 SCC 503

7 AIR 1960 SC 500

8 1980 Crl LJ 1022

9 1992 CRl LJ 2377

10 1998 Crl LJ 2879

11 2011 CrlLJ 1347

12 2019 SCC Online Chh 16

13 (2003) 8 SCC 745

14 (1998) 4 SCC 517

15 (1976) 3 SCC 104

16 (1998) 4 SCC 517

17 2023 SCC OnLine SC 355

18 AIR 1992 SC 604

19 (2004) 4 SCC 158

IN THE SUPREME COURT OF INDIA

Manoj Kumar Soni
Vs.
State of Madhya Pradesh
[Criminal Appeal No. 1030/2023]

HEADNOTE – Disclosure statements under Sec. 27 Evidence Act cannot be the sole basis for conviction in a criminal case.

JUDGMENT

Dipankar Datta, J.

1. These criminal appeals, by special leave, assail the common judgment and order dated 12th October, 2022 of the High Court of Madhya Pradesh, Bench at Jabalpur ("High Court", hereafter) whereby Criminal Appeal No. 10474 of 2019 and Criminal Appeal No. 10549 of 2019 [appeals under Section 374(2) of the Criminal Procedure Code ("Cr. PC", hereafter)] carried by Manoj Kumar Soni ("Manoj", hereafter) and Kallu @ Habib ("Kallu", hereafter), respectively, were dismissed.

While Manoj assailed his conviction for the offence punishable under Section 411 of the Indian Penal Code, 1860 ("IPC", hereafter) and sentence of rigorous imprisonment of three years with a fine of Rs. 5,000.00 and a default sentence of three months, Kallu assailed his conviction for the offence punishable under Section 120-B, IPC and sentence of rigorous imprisonment of ten years with a fine of Rs. 5,000.00 and a default sentence of three months.

2. In all, five accused persons were convicted and sentenced for different offences punishable under the IPC vide the common judgment of the Additional Sessions Judge ("Trial Court", hereafter) dated 28th November, 2019. The aforesaid judgment having been confirmed by the High Court, all the accused persons preferred Special Leave Petitions ("SLPs", hereafter) before this Court challenging the common judgment dated 12th October, 2022.

The SLPs of the three accused, namely, Suleman, Arif and Jaihind, were dismissed and the judgment and order of the High Court affirming their conviction and sentence left undisturbed. However, notice was issued on the SLPs preferred by the remaining two accused, Manoj and Kallu, on 06th April, 2023 and 11th April, 2023, respectively.

3. These two appeals were heard on different dates. However, a common judgment being under assail, this Court proposes to dispose of both these appeals vide this common judgment.

4. The case of the prosecution, in a nutshell, is that a complaint was registered by PW-18 ("complainant", hereafter) to the effect that on 14th April, 2010, at around 1:30 pm, while the complainant was in her house, four persons rang the doorbell. When her servant, PW-8, answered the door, all four persons armed with a pistol forcefully entered the house.

They tied up the hands and legs of the complainant and her servant, threatened to kill them, and proceeded to rob the complainant of silver and gold jewellery, cash, and other valuables by taking the keys to the locker. The accused persons remained at the complainant's residence till 2:30 pm before fleeing. Based on the complaint, an F.I.R. was registered at around 4:30 pm against four unknown persons under Section 394, IPC and all of them were subsequently arrested.

5. Investigation of the F.I.R. was carried out by the Investigating Officer ("I.O.", hereafter). The specific allegations against Manoj are that the stolen jewellery ("articles", hereafter) had allegedly been sold to him and, despite being aware that the co-accused had sold him stolen goods, he still chose to receive and possess the same dishonestly. Consequently, he was arrested on 9th May, 2010.

Thereafter, these articles were recovered by the I.O. on two different days - 9th May, 2010 and 21st May, 2010. While the Seizure Memo dated 9th May, 2010 bears the signature of seizure witnesses PW-16 and PW-5, the Seizure Memo dated 21st May, 2010 bears the signature of seizure witnesses PW-11 and PW-6. The process of identification was conducted by PW-19, the Tehsildar, on 15th July, 2010.

The specific allegations against Kallu, former driver of the complainant, pertain to his involvement in a conspiracy with other co-accused persons. The allegation against him is that he shared information with them, disclosing that the complainant had a substantial amount of money and valuable jewellery in her residence, coupled with the knowledge that she lived alone; this, allegedly led to the subsequent planning and execution of the robbery at the complainant's house.

6. Upon completion of investigation, a chargesheet was filed before the concerned court against the accused persons including Manoj and Kallu. The offences with which all the accused were charged are shown as under:

Jaihind	Sections 450, 394, 397, IPC and Section 25(1-B), Arms Act, 1959 ("Arms Act", hereafter)
Arif	Sections 450, 394, 397, IPC and Section 25(1-B), Arms Act

Suleman	Sections 450, 394, 397, IPC
Kallu	Section 120-B, IPC
Manoj	Section 411, IPC

Upon committal, charges were framed and the accused including Manoj and Kallu pleaded not guilty and claimed to be tried.

7. Based on the complainant's testimony, it is established that among the four accused present at the scene during the incident, Suleman, Arif, and Jaihind were duly identified by the complainant, but the fourth accused remained unidentified. During the investigation, it was revealed that the fourth accused was a minor and the case was subsequently referred to the juvenile court for further proceedings.

Insofar as Kallu and Manoj are concerned, they were not present at the complainant's house during the incident and were apprehended at a later stage of the investigation when it was discovered that Manoj had purchased the stolen articles, and Kallu was involved in hatching the conspiracy.

8. After appreciating the oral and documentary evidence on record, the Trial Court convicted and sentenced all the five accused persons as follows:

Jaihind and Arif	Sections 450, 397, IPC and Section 25(1- B), Arms Act	R.I. for 5 years with a fine of Rs 1,000 R.I. for 10 years with a fine of Rs 5,000 R.I. for 1 year with a fine of Rs 1,000 Default: 1 month, 3 months, and 1 month respectively
Suleman	Sections 450, 397, IPC.	R.I. for 5 years with a fine of Rs 1,000 R.I. for 10 years with a fine of Rs 5,000 Default: 1 month and 3 months, respectively
Kallu	Section 120- B, IPC	R.I. for 10 years with a fine of Rs 5,000 Default: 3 months
Manoj	Section 411, IPC	R.I. for 3 years with a fine of Rs 5,000 Default: 3 months

9. In convicting Manoj, the Trial Court primarily relied on two pieces of evidence: the Seizure Memos, which were prepared upon recovery of the stolen articles from Manoj's possession, and the Identification Memo, in which the complainant identified the articles stolen.

The Trial Court drew presumption under Section 114 of the Indian Evidence Act, 1872 ("Evidence Act", hereafter), to the extent it provides that "a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession".

According to the Trial Court, the crucial corroborative evidence in Manoj's case was the fact that the articles found in his possession belonged to the complainant and were accurately identified by her. Additionally, Manoj failed to provide any explanation regarding how the stolen articles came into his possession. These collective factors resulted in his conviction under Section 411, IPC.

10. Insofar as Kallu is concerned, the Trial Court primarily based his conviction for criminal conspiracy on two key factors: first, the information provided by co-accused Jaihind during interrogation in his memorandum statement dated 12th May, 2010, stating that he had given Rs.3,000.00 to Kallu from the stolen money and had kept one country-made pistol along with three cartridges at his (Kallu) house/tapra; and secondly, during interrogation, Kallu himself in his memorandum statement admitted to keeping Rs.3,000.00 in his room's cupboard, which was subsequently seized upon his disclosure. Having held that Kallu had conspired with the other coaccused, the Trial Court convicted him of criminal conspiracy punishable under Section 120-B, IPC.

11. The aforesaid judgment having been challenged by Manoj and Kallu, a learned Single Judge of the High Court was of the view that the findings of the Trial Court did not warrant any interference and that the appeals were devoid of any merit; hence, the same were dismissed.

In confirming Manoj's conviction and sentence, the High Court relied on the finding that most of the stolen articles were recovered from his possession and some of them were melted by him. Considering that the articles were duly identified by the complainant, the High Court was of the view that Manoj, knowing that the articles were stolen property, dishonestly retained them.

While affirming the conviction and sentence of Kallu, the learned Judge referred to the fact that the complainant was known to Kallu and he was working as her driver and that Rs.3,000.00 was recovered from his house based on the disclosure statement.

Submissions of The Parties

12. Learned counsel appearing on behalf of Manoj submitted that the courts below erred in recording the conviction under Section 411, IPC. The main submissions advanced by him to have the conviction reversed are as follows:

a) All four independent witnesses (PW-5, PW-6, PW-11, and PW-16) who were shown to be present during the seizure/recovery of the articles from Manoj's house turned hostile and failed to support the prosecution's case of seizure. Surprisingly, the courts below completely ignored this aspect of the matter.

b) There were serious procedural lapses in conducting the identification process in respect of the articles. The prescribed procedure in respect of seizure of a property was not followed, and a procedural flaw is established from the testimonies of the complainant and PW 19. The recovery of the ornaments from the possession of Manoj does not establish them to be that of the complainant. Therefore, the presumption under Section 114, Evidence Act was erroneously drawn as the very identification process suffers from serious lapses.

c) The Trial Court recorded the statement of Manoj under Section 313, Cr. PC in a very casual manner, as if it were completing a formality in law. It miserably failed to put any adverse circumstance appearing in the evidence against Manoj for eliciting his explanation. This is one other procedural lapse, and a grave one, which has rendered the trial vitiated qua Manoj.

d) Manoj has been framed in the case due to the animosity between him and the police as the police used to "often harass [Manoj] for going here and there and getting the jewellery weighed, identification etc.". This statement of Manoj, given at the end of his examination under Section 313, Cr. PC was brushed aside by the courts below without assigning any reason, far less cogent reason.

e) Significant contradictions exist between the testimonies of police witnesses and seizure witnesses. The Trial Court predominantly relied on the statements of the police witnesses, overlooking the presence of additional testimonies of independent seizure witnesses available in the records, who subsequently turned hostile.

13. Finally, it was submitted that there was absolutely no material to convict Manoj under Section 411, IPC. Hence, the conviction and sentence of Manoj ought to be set aside and consequently, the appeal be allowed.

14. Learned counsel appearing for the respondent/State submitted that both the courts below delved deep into the materials on record and, upon meticulous

consideration of evidence, did not find any material contradiction in the testimonies of the prosecution witnesses.

The procedural flaws pointed out by his adversary did not result in any failure of justice and, therefore, there is no reason to interfere with the judgment and order passed by the Trial Court, which has since been affirmed by the High Court. Supporting the conviction and sentence of Manoj, the learned counsel urged this Court to dismiss the appeal.

15. Learned counsel appearing on behalf of Kallu challenged the correctness of the impugned judgment and advanced the following submissions:

a) No evidence was presented to substantiate the alleged conspiracy on the part of Kallu to commit any crime as alleged by the complainant. In other words, the necessary elements of the offence under Section 120- A, IPC, punishable under Section 120-B, IPC were not established.

b) The Trial Court convicted the other accused persons primarily relying on the statements and information provided by the complainant. However, the complainant did not make any statement or allegation against Kallu. His conviction was based solely on two factual aspects: first, that Rs.3,000.00 was recovered from him during the investigation based on information provided by the accused Jaihind and, secondly, that Kallu used to be the complainant's driver one year ago. Apart from these circumstances, the prosecution failed to present any additional evidence to substantiate the charge under Section 120-B, IPC; the conviction and sentence, therefore, cannot sustain merely on these grounds.

c) Suresh Chandra Bahri vs. State of Bihar1 was placed to support the contention that the essential elements of an agreement between Kallu and the other co-accused persons to commit the offence are lacking, which is a necessary component to bring home the charge of criminal conspiracy.

Additionally, Ram Sharan Chaturvedi vs. State of Madhya Pradesh2 was relied upon to emphasize the requirement for some kind of physical manifestation of agreement in order to establish the offence of criminal conspiracy. Topandas vs. State of Bombay3 was placed for supporting the contention that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself.

It was pointed out that in the present case, Kallu is the only person convicted under Section 120-B, IPC, while no other accused has been convicted under the same provision, inviting thereby serious doubts about the validity of Kallu's conviction.

d) The courts below have overlooked significant material contradictions, improvements, and omissions in the statements of prosecution witnesses.

16. It was, accordingly, prayed by the learned counsel that the appeal be allowed, and the conviction recorded and sentence imposed on Kallu be set aside.

17. Learned counsel appearing on behalf of the respondent/State supported the impugned judgment and order of the High Court. It was submitted by him that the Trial Court has carefully considered all the materials placed on record and arrived at a just conclusion. No case for interference having been set up by appellant Kallu, learned counsel prayed for dismissal of the appeal.

Analysis and Findings

18. We have considered the submissions advanced by learned counsel for the parties and have also perused the materials on record.

19. There can be no two opinions that the quality of evidence led by the prosecution in the present case to nail Manoj and Kallu was wholly untrustworthy for convicting them and the Trial Court as well as the High Court erred in not acquitting them.

Disclosure Statements

20. The facts of the case reveal that all the accused persons made disclosure statements to the I.O. whereupon recovery of money, jewellery, etc. was effected. Although it is quite unusual that all five accused, after being arrested, would lead the I.O. to the places for effecting recovery of the stolen articles, we do not propose to disbelieve the prosecution plea only on this score. Manoj's involvement was primarily based on the disclosure statements made by co-accused Suleman and Jaihind where they admitted to selling the stolen articles to him and a similar statement made by Manoj himself which led to recovery under Section 27, Evidence Act.

Similarly, both the courts below, in convicting Kallu, largely relied upon the disclosure statement made by Kallu himself as well as co-accused Jaihind, who confessed to giving Rs.3,000.00 to Kallu from the stolen money and storing a country-made pistol along with three cartridges at his house/tapra.

21. A doubt looms: can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of

evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt.

22. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be wellestablished. The decision of the Privy Council in Pulukuri Kotayya and others vs. King-Emperor4 holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:

The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

23. The law on the evidentiary value of disclosure statements of coaccused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in Emperor vs. Lalit Mohan Chuckerburty5, to "lend assurance to other evidence against a coaccused". In Haricharan Kurmi vs. State of Bihar6, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:

13. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

24. In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in Shiv Kumar vs. State of Madhya Pradesh7 overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:

24. the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has

also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles.

The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]

25. Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence.

The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.

26. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

27. This Court in Sanjeet Kumar Singh vs. State of Chhattisgarh8 held:

18. But if the Court has -

(i) to completely disregard the lack of corroboration of the testimony of police witnesses by independent witnesses; and

(ii) to turn a Nelson's eye to the independent witnesses turning hostile, then the story of the prosecution should be very convincing and the testimony of the official witnesses notably trustworthy. If independent witnesses come up with a

story which creates a gaping hole in the prosecution theory, about the very search and seizure, then the case of the prosecution should collapse like a pack of cards.

It is no doubt true that corroboration by independent witnesses is not always necessary. But once the prosecution comes up with a story that the search and seizure was conducted in the presence of independent witnesses and they also choose to examine them before Court, then the Court has to see whether the version of the independent witnesses who turned hostile is unbelievable and whether there is a possibility that they have become turncoats.

28. The testimony of the seizure witnesses, we are inclined to the view, is the only thread in the present case that could tie together the loose garland, and without it, the very seizure of stolen property stands falsified.

We cannot overlook the significance of the circumstance that all four independent seizure witnesses (PWs 5, 6, 11, and 16), who were allegedly present during the seizure/recovery of the stolen articles from Manoj's house, having turned hostile and not support the prosecution case, the standalone evidence of the I.O. on seizure cannot be deemed either conclusive or convincing; the recoveries made by him under Section 27, Evidence Act must, therefore, be rejected.

29. The material inconsistency in Kallu's case is the contradiction in the depositions of the I.O. and the complainant. The I.O. deposed that he, upon the disclosure by co-accused Jaihind, successfully recovered a sum of Rs. 3,000.00 (comprised of three one-thousand-rupee notes), seized the same in the presence of witnesses, and prepared a seizure panchnama; however, when one looks at the complainant's version, it is wholly inconsistent.

She stated in her deposition that the accused persons did not take away any one-thousand-rupee note from her house. It does not escape our attention that the conviction of Kallu entirely hinges on the alleged recovery of Rs. 3,000.00 and both the courts below heavily relied on this aspect to convict him of criminal conspiracy.

However, it does not appear from a perusal of the Trial Court's judgment as to who exactly the seizure witnesses were in whose presence Rs. 3,000.00 was recovered although it does seem that none of the several prosecution witnesses, who were witnesses of arrest and seizure, had supported the prosecution case. Although there could be evidence aliunde to establish the guilt of the co-accused Jaihind, Arif and Suleman, there was absolutely no evidence worthy of consideration which could have been relied on to convict Manoj and Kallu.

30. It is clear as crystal that the sole connecting evidence against Manoj and Kallu was the recovery based on their disclosure statements, along with those of the other co-accused but this evidence, in our opinion, is not sufficient to qualify as "fact discovered" within the meaning of Section 27. Having regard to such nature of evidence, we view the same as wholly untrustworthy.

Statements under Section 313, Cr.PC

31. Another glaring flaw in Manoj's case revolves around his examination under Section 313, Cr.PC. The manner in which the Trial Court framed questions for answer by Manoj left a lot to be desired. We need not reiterate the exposition of law by this Court in multiple decisions on Section 313, Cr.PC, wherein trial courts have been cautioned against recording statements in a casual and cursory manner. What holds importance is not the mere quantity of questions posed to the accused but rather the content and manner in which they are framed.

32. Upon reading the questions put to Manoj under Section 313, Cr.PC, it becomes evident that the Trial Court treated this process as an empty formality. None of the material circumstances forming the basis of his conviction were put to him. Astonishingly, not even a single question regarding the stolen articles was posed to him.

Instead, irrelevant and abstract questions about the main incident of robbery that took place on 14th April, 2010 were asked, even though his alleged involvement occurred much later when the robbed items were allegedly sold to him by the co accused. The prosecution's entire case is premised on the disclosure statements made by the co-accused, but Manoj was never given the opportunity to explain the circumstances.

Conviction of Manoj under Section 411, IPC

33. Manoj has been convicted under Section 411, IPC which is reproduced below:

Dishonestly receiving stolen property.- Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

34. The Trial Court convicted Manoj based on a presumption under Section 114(a), Evidence Act, asserting that his possession of stolen articles shortly after the theft, with knowledge of its stolen nature, was adequate enough to hold him guilty under Section 411, IPC. As a result, he was held liable for the offence

under the said provision. Illustration (a) of Section 114, Evidence Act has been noted above but the entire provision reads as follows:

"114. Court may presume existence of certain facts. -

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The Court may presume-

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. ***"

35. The Trial Court erred in drawing such a presumption of fact without considering other factors. What could be those factors has been explained by this Court in A Devendran vs. State of Tamil Nadu9 in the following words:

20. Whether a presumption under Section 114, Illustration (a) of the Evidence Act should be drawn in a given situation is a matter which depends on the evidence and the circumstances of the cases. The nature of the stolen articles, the nature of its identification by the owner, the place and the circumstances of its recovery, the intervening period between the date of occurrence and the date of recovery, the explanation of the persons concerned from whom the recovery is made are all factors which are to be taken into consideration in arriving at a decision.

36. A presumption of fact under Section 114(a), Evidence Act must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in isolation. The present case serves as a perfect example of why such a presumption should have been avoided by the Trial Court. Manoj's conviction, solely relying on the disclosure statements made by himself and the other co-accused, does not suffice to warrant a presumption under Section 411, IPC.

It would not be unreasonable to presume that a goldsmith, who has to deal in ornaments and jewelleries on a day-to-day basis, would obviously be in possession of a significant quantity of ornaments at his shop. Given the circumstances, such a presumption drawn under Section 114(a) stands vitiated.

37. At this juncture, even if we assume the veracity of the claim that the items sold to Manoj were indeed stolen articles, it would not be sufficient to attract Section 411, IPC; what was further necessary to be proved is continued retention of such articles with a dishonest intent and knowledge or belief that the items

were stolen. No evidence worthy of consideration was adduced by the prosecution to prove that Manoj had retained the articles either with dishonest intent and with knowledge or belief of the same being stolen property.

Conviction of Kallu under Section 120-B, IPC

38. It is intriguing that among all five accused persons, only Kallu has been convicted for criminal conspiracy under Section 120-B, IPC. At this stage, we cannot help but wonder: can a single individual conspire with oneself? We cannot but disagree.

It logically follows that one person alone can never be held guilty of criminal conspiracy because one cannot conspire with oneself. As per Black's Law Dictionary (8th Edn), 'conspiracy' is an "agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and action or conduct that furthers the agreement".

The wordings of Section 120-A, IPC make it abundantly clear-the offence of criminal conspiracy is committed only when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. The position in English law too is wellsettled. In The King vs. Plummer10, the King's Bench, speaking through Lord Justice Bruce, held:

It logically follows from the nature of the offence of conspiracy that, where two or more persons are charged in the same indictment with conspiracy with one another, and the indictment contains no charge of their conspiring with other persons not named in the indictment, then, if all but one of the persons named in the indictment are acquitted, no valid judgment can be passed upon the one remaining person. (page 343)

39. In I.G. Singleton v. King-Emperor11, the Calcutta High Court further clarified the law related to criminal conspiracy:

The rule of English law that is now well settled is that where two persons are indicted for conspiring together and they are tried together, both must be acquitted, or both convicted. (page 265)

40. The decision of this Court in Topandas (supra) affirmed the aforesaid position and held: 14. on the charge as it was framed against the Accused 1, 2, 3 and 4 in this case, the Accused 1 could not be convicted of the offence under Section 120-B of the Indian Penal Code when his alleged co-conspirators Accused 2, 3 and 4 were acquitted of that offence.

41. Having regard to the position of law as aforesaid, the conviction of Kallu under Section 120-B, IPC stands completely vitiated because of the simple reason that one cannot alone conspire. There is no evidence to even remotely suggest that there existed any agreement between Kallu and the co-accused while none of the others, except Kallu, has been convicted for criminal conspiracy.

Conclusion

42. What could have more aptly summarise the entire prosecution case, especially the flawed investigation in the matter at hand, than the words of Daniel J. Boorstin, the American historian: "The greatest obstacle to true discovery is not ignorance, but rather the illusion of knowledge".

43. Against this background, to say that the convictions of Manoj and Kallu can still sustain, appears far-fetched; their convictions cannot be justified solely on the basis of illusory knowledge regarding their involvement in the crime.

44. For all the foregoing reasons, Manoj and Kallu are acquitted and set free. Consequently, conviction of Manoj and Kallu as recorded by the Trial Court and the sentence imposed upon them, since affirmed by the High Court, stand set aside. Manoj and Kallu, reportedly, have been enlarged on bail pending decision on their respective appeals; hence, they shall stand discharged of their bail bonds.

45. The appeals are, accordingly, allowed. No costs.

.....J. (S. Ravindra Bhat)

.....J. (Dipankar Datta)

New Delhi;

11th August, 2023.

1 (1995) Supp (1) SCC 80

2 (2022) SCC OnLine SC 1080

3 (1955) 2 SCR 881

4 1946 SCC OnLine PC 47; AIR 1947 PC 67

5 (1911) ILR 38 Cal 559, page 588

6 AIR 1964 SC 1184

7 (2022) 9 SCC 676

8 2022 SCC OnLine SC 1117

9 (1997) 11 SCC 720

10 (1902) 2 KB 339

11 (1924-25) 29 CWN 260: AIR 1925 Cal 501

C. Legal Article

Need and application of Handbook on Gender Stereotypes

Introduction

The impact of gender stereotypes inside legal frameworks has long been a silent disruptor in the area of justice and fairness, tainting the impartiality of judicial judgements. It is crucial to identify and eliminate these deeply established prejudices that have the power to tip the balance of justice as nations work toward equality. The Supreme Court Handbook on Gender Stereotypes is a key instrument that has arisen to combat these biases. This article delves into the urgent necessity to confront gender stereotypes in legal situations.

It is impossible to understate the influence of gender stereotypes on judicial procedures. In courtroom discussions, gender-based stereotypes about how people should act or what roles they should play might infiltrate, influencing decisions and sustaining injustice. The repercussions extend beyond the courts and have an impact on society as a whole, cementing discriminatory attitudes and obstructing the advancement of gender parity.

Understanding Gender Stereotypes in Law

The unbiased nature that should underlie court judgements has been distorted by gender stereotypes, ingrained cultural presumptions about how people of various genders should act. These preconceptions, which frequently based on preconceived ideas of masculinity and femininity, can indirectly influence court cases, perpetuating inequity. Gender biases may take many forms in the legal system. These biases have the potential to skew judges' views, affecting how they perceive the evidence and determine the reliability of witnesses in instances involving everything from domestic violence to job discrimination. For instance, gendered expectations may cause people to doubt the veracity of a woman's testimony or to be forgiving of some crimes perpetrated by males.

Such prejudices put the concepts of justice at jeopardy by fostering a climate where fairness is compromised. The effects extend beyond those immediately affected; they reverberate across society, influencing attitudes and conventions. We may start to undo the pernicious consequences of gender stereotypes by identifying the ways in which they permeate legal systems. A key resource in this effort is the Supreme Court Handbook on Gender Stereotypes, which provides analysis and counterarguments to these prejudices. It's a significant step

toward a judicial system free of bias, promoting a more just and equal society for all.

The Birth of the Supreme Court Handbook

The urgent need to address structural inequalities in judicial systems led to the development of the Supreme Court Handbook on gender stereotypes. There has been an increasing need to address this problem thoroughly as societies have become more aware of the widespread impact of gender stereotypes on court judgments. The guidebook was created via rigorous collaboration amongst legal scholars, gender advocates, and specialists, all driven by the quest of just and equitable justice.

The goal of this joint project was to combine legal knowledge with sociological and psychological viewpoints to pool multidisciplinary views. The manual aimed to provide a comprehensive method for recognizing and combating gender prejudices in judicial procedures by combining several points of view. During the development process, judges, attorneys, professors, and representatives from organizations that focus on gender were consulted. In addition to recognizing the issue, the handbook's construction aimed to offer workable remedies. Offering practical solutions, case analyses, and examples to help legal practitioners recognize and combat gender stereotypes, it distills the collective expertise of those engaged. By working together, the Supreme Court Handbook on gender stereotypes became a useful tool that personifies the dedication to promoting more equitable and just judicial systems all around the world.

Key Contents and Objectives

The Supreme Court Handbook on gender stereotypes contains a wide range of information designed to make the judicial system more impartial and fair. Its main goal is to provide attorneys the resources they need to recognize, combat, and eventually eliminate gender prejudices in the legal system. The handbook's topics cover a wide spectrum, from theoretical explanations of the causes and consequences of gender stereotypes in legal situations to implementation-specific practical advice. It methodically lays out tactics that judges, attorneys, and activists might use when facing gender-based biases during trials. The detrimental effects of these prejudices are vividly illustrated by case studies and instances from the real world, highlighting how urgent reform is.

The suggested methods place a strong emphasis on the value of awareness, instruction, and introspection for legal practitioners. The manual promotes an atmosphere where fair and impartial judgements can flourish by fostering a

critical assessment of presumptions and prejudices. Overall, the handbook's aims and contents align to equip lawyers to promote gender equality within their practices, transforming courtroom dynamics to be more inclusive and fair.

Real-World Implications

Often leading to unfair rulings and sustaining systemic disparities, gender stereotypes have real and harmful consequences on legal results. According to research, these prejudices can color judges' perceptions, resulting in skewed readings of the evidence, unfair punishment, and a lack of access to the judicial system for those who are disadvantaged.

Take a situation where a female victim's credibility is compromised because people tend to view women as less trustworthy witnesses. Verdicts in incidents of harassment, assault, or discrimination may be impacted by this prejudice. The division of parental rights or alimony may also be affected by gender expectations, which can reinforce conventional gender norms.

The Supreme Court's guide on gender stereotypes deals with these topics and their application in the actual world. It drives home the need of eliminating these prejudices inside the legal system with the use of interesting case studies and illustrations. The manual offers verifiable proof for the importance of implementing its tactics by outlining cases in which gender stereotypes have affected decisions or judicial procedures. These practical ramifications ultimately emphasize the handbook's contribution to redressing injustices and promoting a more equal legal environment.

Empowering Legal Professionals

The Supreme Court Handbook on gender stereotypes is a valuable tool for equipping lawyers to address and eliminate gender prejudices in their practice. The guidebook provides judges, attorneys, and other legal practitioners with the knowledge and skills necessary to identify and successfully combat these prejudices. The manual offers tips for spotting small examples of gender stereotypes that could affect judgments. By challenging presumptions made about witnesses or defendants based on their gender, it provides legal practitioners with useful strategies for addressing unconscious prejudices during trials.

The handbook's use has the ability to considerably improve the caliber and fairness of judicial judgements. Legal professionals are better equipped to render fair judgments by encouraging a greater grasp of how gender stereotypes can skew justice. As a result, this empowerment helps create a legal climate where

cases are judged on their merits rather than being affected by gender stereotypes. Because of this, the handbook's tools not only promote equality but also improve the general integrity of judicial procedures.

Breaking Down Barriers to Equality

For the judicial system to be free of gender-based impediments, the Supreme Court Handbook on Gender Stereotypes must be used. The manual promotes a more inclusive and fair court environment by arming legal practitioners with techniques to identify and eliminate prejudices. This thus contributes to leveling the playing field for everyone, regardless of gender, and makes sure that fairness and justice, rather than prejudicial preconceptions, are the driving forces behind legal processes. The handbook's goal of fostering gender equality has far-reaching effects that go beyond the legal sphere. As lawyers accept its tenets, they help to change cultural expectations and views of gender roles. The manual contributes to a cultural transformation that tackles larger gender gaps, ranging from economic prospects to societal expectations, by confronting and correcting gender preconceptions.

The manual also acts as a guide for enacting policies that reflect an egalitarian viewpoint and as a lighthouse for legal change. In the end, its implementation demonstrates a dedication to a more just society where each person's rights are valued and preserved. The guidebook serves as a catalyst for tearing down gender-based obstacles and furthering the cause of gender equality because of its twofold influence on society and the legal system.

Conclusion

In essence, the Supreme Court Handbook on gender stereotypes is a crucial instrument for reshaping courtroom arguments and society viewpoints. The Handbook has the potential to promote a more fair and equitable legal system by giving legal practitioners the tools to identify and combat gender prejudices. Its effective implementation depends on broad integration and continual adjustment to evolving standards. In the end, the Handbook's impact extends beyond of the courtroom and helps to create a society that is more diverse and progressive.

2. Study Material-G.K.

British Expansion in India

Growth of the English East India Company

In 1599, an English company was formed by a group of merchants to trade with the east, known as Merchant Adventurers. It was given the permission and exclusive rights to trade with the east, by the queen in 1600.

Mughal emperor, Jahangir, gave captain Hawkins the royal *farman* to set up factories on the western coast. Later, Sir Thomas Roe obtained the *farman* to establish factories in all parts of the Mughal empire.

Bombay passed into the British hands as dowry given by the Portuguese. The British conflicts with the Dutch were settled by giving up all claims to Indonesia.

The conditions in the south were apt for the English. They started from Madras, by building a fort there, called **Fort St. George**. The problems broke out when the English sacked Hugli and declared war on the emperor. They failed miserably. This was the first lesson they learnt. From then on, they relied on flattery and humble entreaties, waiting for their chance. In 1698, Fort William was built and Calcutta was founded. Madras, Bombay and Calcutta soon grew up to be flourishing centres of trade.

The French, under Dupleix, who had come to India by then had already started interfering in the affairs of the local princes using their well-equipped army. In 1742, a war had broken out in Europe between France and England.

Following the death of the nizam in 1748, his son Nasir Jung took over the crown. He was challenged by Muzaffar Jung, a grandson of the nizam. Similar situations were in the Carnatic, where Chanda Sahib was conspiring against the nawab Anwarudeen. The French took the sides of both the rebels, and won both of their claims for them, killing Anwarudeen and Nasir Jung. The English, naturally took the side of the fallen, under Muhammad Ali, a son of Anwarudeen. The wars were then won by the English side under the able generalship and cunning of Robert Clive. Finally, the French recalled Dupleix from India, according to their treaty in 1754. Later, in 1760, the French were completely destroyed at the battle of Wandiwash. Thus, the English remained the sole masters of India.

The *farman* granted to the British by the emperor enabled them to conduct free trade in Bengal. Neither did they have to pay *dastaks* for the movement of such goods. However, these were misused by the company's servants and this meant the loss of revenue for Bengal. In 1756, the grandson of Alivardi Khan, Siraj-ud-Daulah came to the throne, he demanded the English that they should trade on the same basis as the Indian merchants. Matters took a turn for the worse when the English refused and strengthened their fortifications. This led to the Battle of Plassey in 1757, in which Siraj-ud-Daulah was treacherously defeated by the cheating by Mir Jaffar and Rai Durlabh. This brought the British immense prestige and revenue.

Later, when Mir Jaffar couldn't keep up with the tribute promised to the British, they installed Mir Qasim on the throne. He was clever and knew that both revenue and an army was required to stand against the British. And finally, he abolished all the duties on internal trade. This angered the British, and they defeated Mir Qasim in the Battle of Buxar in 1764.

How did the British who came to India for trade become the rulers of territories?

- In 1600, the East India Company acquired a charter from the ruler of England, Queen Elizabeth I, granting it the sole right to trade with the East. Then onwards no other trading group in England could compete with the East India Company.
- However, the royal charter didn't prevent other European powers from entering the Eastern markets.
- The Portuguese had already established their presence on the western coast of India and had their base in The Dutch too were exploring the possibilities of trade in the Indian Ocean. Soon the French traders arrived on the scene.
- The problem was that all the companies were interested in buying the same things. So the only way the trading companies could flourish was by eliminating rival competitors. The urge to secure markets, therefore, led to fierce battles between the trading companies.
- Trade was carried on with arms and trading posts were protected through fortification.

East India Company begins to trade in Bengal

- The first English factory was set up on the banks of the river Hugli in 1651.

- By 1696 it began building a fort around the settlement near the factory where merchants and traders
- The company persuaded the Mughal emperor Aurangzeb to issue a farman granting the Company the right to trade duty-free.
- Aurangzeb's farman had granted only the Company the right to trade duty-free. The officials of the Company, who were carrying on private trade on the side, were expected to pay duty. However, they did private trades without paying taxes, causing an enormous loss of revenue for Bengal.
- This behaviour led to a protest by the Nawab of Bengal, Murshid Quli Khan.

How the trade led to battles?

- After the death of Aurangzeb, the Bengal nawabs asserted their power and autonomy, as other regional powers were doing at that time.
- Nawabs refused to grant the Company concessions, demanded large tributes for the Company's right to trade, denied it any right to mint coins, and stopped it from extending its fortifications.
- The Company on its part declared that the trade could flourish only if the duties were removed. It was also convinced that to expand trade it had to enlarge its settlements, buy up villages, and rebuild its forts.
- The conflicts led to confrontations and finally culminated in the famous Battle of Plassey.

Battle of Plassey

- Sirajuddaulah, then Nawab of Bengal, with his force, captured the English factory at Kassimbazar and then went to Calcutta to establish control over the Company's fort.
- Company officials in Madras sent forces under the command of Robert Clive, reinforced by naval fleets. Prolonged negotiations with the Nawab followed.
- Finally, in 1757, Robert Clive led the Company's army against Sirajuddaulah at Plassey.
- Clive had managed to secure the support of one of Sirajuddaulah's commanders named Mir Jafar by promising to make him Nawab after crushing Sirajuddaulah.
- The Battle of Plassey became famous because it was the first major victory for the English East India Company in India.
- The Company was still unwilling to take over the responsibility of the administration. Its prime objective was the expansion of trade.

- But Mir Jafar protested with the British on administrative matters. He was replaced by Mir Mir Qasim. He too had conflicts with the East India company. The Company defeated him in the Battle of Buxar (1764).
- East India company now started to shift from their primary objective from trade to expansion of territories.
- In 1765 the Mughal emperor appointed the Company as the Diwan of the provinces of Bengal. The Diwani allowed the Company to use the vast revenue resources of Bengal.
- Now revenues from India could finance Company expenses. These revenues could be used to purchase cotton and silk textiles in India, maintain Company troops, and meet the cost of building the Company fort and offices at Calcutta.

Company Rule Expands

- After the Battle of Buxar (1764), the Company appointed Residents in Indian states.
- Through the Residents, the Company officials began interfering in the internal affairs of Indian states.
- Sometimes the Company forced the states into a "subsidiary alliance". According to the terms of this alliance, Indian rulers were not allowed to have their independent armed forces. They will be protected by the Company but had to pay for the "subsidiary forces" that the Company maintain for the purpose of this protection. If the Indian rulers failed to make the payment, then part of their territory was taken away as a penalty.

Conflict with Tipu Sultan

- Mysore controlled the profitable trade of the Malabar coast where the Company purchased pepper and cardamom. In 1785 Tipu Sultan stopped the export of these substances through the ports of his kingdom and disallowed local merchants from trading with the Company.
- He also established a close relationship with the French in India and modernised his army with their help. All these made the British furious.
- Four wars were fought with Mysore (1767- 69, 1780-84, 1790-92 and 1799). Only in the last – the Battle of Seringapatam – did the Company ultimately got a victory.
- Mysore was later placed under the former ruling dynasty of the Wodeyars and a subsidiary alliance was imposed on the state.

Conflict with the Marathas

- With their defeat in the Third Battle of Panipat in 1761, the Marathas' dream of ruling from Delhi came to an end.
- The Marathas were subdued in a series of wars. In the first war that ended in 1782 with the Treaty of Salbai, there was no clear winner.
- The Second Anglo-Maratha War (1803-05) was fought on different fronts, resulting in the British gaining Orissa and the territories north of the Yamuna river including Agra and Delhi.
- The Third Anglo-Maratha War of 1817-19 crushed the Maratha power.
- The Company now had complete control over the territories south of the Vindhyas.

The claim to paramountcy

- Under Lord Hastings (Governor-General from 1813 to 1823) a new policy of "paramountcy" was initiated. Now the Company claimed that its authority was paramount or supreme, so it was justified in annexing or threatening to annex any Indian kingdom.
- This view continued to guide later British policies.
- These periods saw the British shifting the control the north-west because of Russian invasion fear.
- British fought a prolonged war with Afghanistan between 1838 and 1842 and established indirect Company rule there. Sind was taken over. In 1849, Punjab was annexed.

The Doctrine of Lapse

- The final wave of annexations occurred under Lord Dalhousie who was the Governor-General from 1848 to 1856 using Doctrine of Lapse policy.
- The doctrine declared that if an Indian ruler died without a male heir his kingdom would "lapse", that is, become part of Company territory. Many kingdoms were annexed simply by applying this doctrine: Examples – Satara (1848), Sambalpur (1850), Udaipur (1852), Nagpur (1853) and Jhansi (1854).
- Finally, in 1856, the Company also took over Awadh. Now this time the British mentioned that they took over Awadh in order to free the people from the "misgovernment" of the Nawab, which enraged by the Nawab who was deposed. The people of Awadh later joined the great revolt that broke out in 1857.

Setting up a New Administration

- Warren Hastings (Governor-General 1773 to 1785) played a significant role in the expansion of Company power.
- By his time the Company had acquired power not only in Bengal but also in Bombay and Madras and these were considered as administrative units called Presidencies.
- Each was ruled by a Governor. The supreme head of the administration was the Governor-General.
- Warren Hastings, the first Governor-General, introduced several administrative reforms, notably in the sphere of justice.
- Under the Regulating Act of 1773, a new Supreme Court was established, while a court of appeal – the Sadar Nizamat Adalat – was also set up at Calcutta.
- The principal figure in an Indian district was the Collector whose main job was to collect revenue and taxes and maintain law and order in his district with the help of judges, police officers etc.

Role of Governor Generals in the British conquests

Robert Clive

Robert Clive (1765-72) introduced a system known as 'dual administration' in Bengal. The company already had the power to collect its own taxes. Thus it was the *diwan*. Now, with the say in the appointment of the deputy subahdar, the company got the de-facto ownership of the *nizamat* too. Thus, in effect, the company had power without responsibility.

It was also during Clive's time that the taxation in Bengal became so favourable to the British that they stopped bringing money from England to buy Indian goods. Instead, they invested the revenue they received from Bengal in buying Indian goods itself. Then they sold it in foreign countries. These were called the 'investments' of the company in India.

Warren Hastings

The next was **Warren Hastings (1772-85)**, who had 'war' in his name itself. The interference in others' territories continued. Initially, he fought Mysore with the help of the Nizam, and later intervened in the internal politics of the Marathas, by siding with Raghunath Rao, against the infant Peshwa Madhav Rao 2, who was represented by Nana Phadnis. This long Anglo-Maratha war lasted from 1775 to 1782. It was at this time that he had to face the combined

forces of the Marathas, the Nizam, and Mysore. But through tactics and turning one ruler against another, he fought his way through. In the first Anglo-Maratha war, the British couldn't do much. In the end, the treaty of Salbai was signed which maintained the status quo and gave them ample time to recover. This enabled them to fight with Hyder, in which they were helped by the Marathas.

War with Haider Ali started in 1780. Though Haider won initially, Hastings' cunning tactics helped the British in choking out deals with Nizam and the Marathas through the cessation of territories. In 1781, Haider Ali was defeated by Eyre Coot and later died in 1782. His son Tipu carried on the fight from 1789 but was defeated in 1792. Half of his treaties were ceded by the treaty of Seringapatanam.

Wellesley

Wellesley (1798-1805) was the next important Governor-General. By 1797, Mysore and Marathas were weakened in power. He knew it was the ripe time for rapid expansion. He followed the policy of 'Subsidiary alliances', outright wars, and assumption of territories of previously subordinated rulers. You know what the theory of a subsidiary alliance is. It was described as "a system of fattening allies as we fatten oxen, till they were worthy of being devoured". The first was the Nizam in 1798 and 1800. Then came the Nawab of Awadh in 1801.

All this time, Tipu was strengthening himself. He had also asked for French help. But in 1799, before the French help could reach him, he fought a fierce war and died.

At this time, the Marathas were a confederacy of five factions namely the Peshwa (Poona), Gaekwad (Baroda), Sindhia (Gwalior), Holkar (Indore), and Bhonsle (Nagpur). Though Peshwa was the nominal head, these factions were constantly at war. When Peshwa Baji Rao 2 was defeated by Holkar, he took the treaty of Subsidiary alliance. Even then, it would have been really difficult for the British to defeat them, only if they stood together. But even in the face of imminent danger, they didn't unite. Thus, one or more factions stood and watched when another one fought the British and were defeated one by one.

However, the expansionist policy of Wellesley was proving too costly to the government. Hence, he was recalled from India.

Hastings

The next Governor-General was **Hastings (1813-1823)**. The Marathas decided to push one last time. They united to form a small group, but by now, it was too

late. They were easily defeated. The Peshwas territories were annexed to the Bombay presidency. To satisfy them, a small kingdom of Satara was given to Shivaji's descendant who ruled it under the British.

Thus, by 1818, the entire subcontinent, except Punjab and Sind was under the British. They completed this task by 1857. The growing Anglo-Russian rivalry in Europe and Asia caused the fear of a Russian attack from the North-West. Sind was a friendly state to the British. Still, in 1843, Charles Napier conquered it. He later wrote, "We have no right to seize Sind, yet we shall do so, and a very advantageous, useful humane piece of rascality it will be".

Dalhousie

Dalhousie (1848-1856) was the next Governor-General. He introduced the Doctrine of lapse, by which he annexed many small states like Satara in 1848, Nagpur and Jhansi in 1854, etc. This was a major cause of the Great revolt of 1857. He also wanted to conquer Awadh, but his doctrine wouldn't work there because the Nawab had many heirs. Thus, he accused him of having misgoverned the state, and annexed it on that pretext, in 1856. Thereafter, Britishers expanded in whole of India.

3. Study Material-Language

RULES OF TRANSLATION

1. Read through your piece carefully before you start

Before you start translating anything, make sure you read through the piece a couple of times and understand first, exactly what the writer is trying to say, and second, exactly how they're trying to say it. Look at it almost as though you were writing a literary commentary on it: pay attention to every single word and phrase: to the purpose of your text, its register (style and pitch), and the sort of stylistic tricks the writer uses. Don't be afraid to scrawl all over your piece: make notes on anything that pops out at you as noteworthy, and highlight anything you think might be difficult to translate. Finally, if you're able to, research any idiomatic phrases or even just and get your other notes ready ideas in the passage that you don't fully understand.

2. Get your tools ready

A good bilingual dictionary is an essential tool for any translation. Even if you feel you know a direct translation of an important word, look it up and consider all the options, and think about which best matches the sense and style of the original.

Interestingly, the English language contains far more words than any of the Romance languages (for example French, Italian or Spanish). All this influences your job as a translator because it makes it harder simply to equate words between languages: there will often be many different options to choose from in English, and it's your task to make sure you pick the best. If you learn any new words in the process, write them down and store them in your vocabulary for later.

Similarly, before translating make sure you've got all the grammatical materials you need to ensure technical accuracy, making sure you get things like verb forms and endings, or syntax, spot on. Obviously, a good understanding of grammatical rules is essential for translation, but you can bolster your own knowledge with written tables, lists, and books. Eliminate little mistakes by checking everything carefully: in a really polished and good piece of work, spelling or grammar errors stand out a mile and mar the whole piece, so make sure you correct these so that your translation reads like a dream!

3. Translate the meaning, not the words

Some of the most comical translation mishaps occur when people offer literal renditions of the *words* in a sentence rather than its meaning – even when those words don't make sense in the language they're translating into. You must avoid it.

4. Be faithful to the register of the original

It sounds obvious but this is an area where students often slip up. If you're translating a text that sounds formal and clipped, mimic its tone and register: use appropriate words and a similar style. If you're translating something looser and more colloquial, equally, find words that capture the feel of the original.

5. Reread, and make it flow

After you've produced your first draft, take a break – the longer, the better. When you come back to your translation, read it through looking for little slips in spelling and grammar, but also with an eye to style.

6. Learn from your mistake

Nobody is great at written translation the first time they attempt it: it's one of the hardest parts of language learning, requiring that you're comfortable enough with the grammar of the language you're translating into, and that you have a wide enough vocabulary to get the basics down on the page.

4. Current Affairs

AUGUST 2023

S.N.	Question	Answer
1.	Rajya Sabha Chairman Jagdeep Dhankhar has nominated whom as a member of the Standing Committee on Home Affairs	P Chidambaram
2.	FIFA has lifted the ban from which country's football federation with immediate effect	Sri Lanka
3.	When is National Sports Day celebrated annually in India	29 August
4.	Who is the President of Zimbabwe who has been re-elected for a second five-year term	Emmerson Mnangagwa
5.	Which country has hosted the first 'Karnataka Cultural Festival'	Sri Lanka
6.	In which country Joint Military Exercise Bright Star-23 will be organized	Egypt
7.	'Shell India' has appointed whom as its new chairperson	Mansi Madan Tripathi
8.	India, in collaboration with whom will set up a climate change and health center in Delhi	Asian Development Bank
9.	Who has become the first Indian to win gold medal in World Athletics Championship	Neeraj Chopra
10.	Who won the Formula One Dutch Grand Prix 2023 award	Max Verstappen
11.	Which day has been announced to be celebrated as National Space Day	23 August
12.	Which country has set a new Asian record in the men's 4x400m relay team event at the World Athletics Championships	India
13.	Which Indian player won the bronze medal in the World Badminton Championship 2023	H. S. Prannoy
14.	Government of India has recently launched an invoice incentive scheme by the name of	Mera Bill Mera Adhikaar
15.	Who won the title of Chess World Cup 2023	R Praggnananda
16.	Which film won the Best Feature Film Award at the 69th National Film Awards	Rocketry
17.	Which city has got the first place in the 'population above 10 lakh' category of Clean Air Survey-2023	Indore
18.	Who won the title of Chess World Cup 2023	Magnus Carlsen

19.	United World Wrestling has recently suspended the Wrestling Association of which country	India
20.	Who is the project director of Chandrayaan-3 mission launched by ISRO	S Unnikrishnan Nair
21.	Which country has become the first country in the world to reach the South Pole of the Moon?	India
22.	ISSF World Championship 2023 Which shooter of India has won gold medal	Amanpreet Singh
23.	Who has been selected by the Election Commission of India as a National Icon	Sachin Tendulkar
24.	Khelo India Women's League has been renamed as	Asmita Women's League
25.	Who has been elected as the new Prime Minister of Thailand	Shretha Thavisin
26.	What name has ISRO given to the rover sent with Chandrayaan-3 mission	Jigyasha
27.	Who has been appointed as the new chairman of the National Green Tribunal	Justice Prakash Srivastava
28.	The 15th summit of the BRICS group is being organized under the chairmanship of which country	South Africa
29.	Where was the 20th ASEAN-India Economic Ministers' meeting organized	Indonesia
30.	Who has been appointed as the new Chief Justice of Nepal	Bishombhar Prasad Shrestha
31.	In which state has the Chief Minister's Learn-Earn scheme been launched	Madhya Pradesh
32.	Which country hosted the Malabar Exercise 2023	Australia
33.	The new variety of lotus flower 'Namoh 108' has been developed in which research institute	National Botanical Research Institute, Lucknow
34.	Which country has won the FIFA Women's World Cup 2023 title	Spain
35.	Which Indian won the gold medal in the under-17 category of the Asian Junior Squash Championship	Anahat Singh
36.	Which England cricket player has withdrawn his decision to retire from ODI cricket	Ben Stokes
37.	Who has been appointed as the new Managing	R Doraiswamy

	Director of Life Insurance Corporation of India	
38.	Where is the Youth 20 Summit being organized under the G20 Presidency of India	Varanasi
39.	President Draupadi Murmu inaugurated the warship 'INS Vindhyagiri' in which city	Kolkata
40.	Recently, the scientists of which institute of India have discovered a new star	Indian Institute of Astrophysics
41.	G20 Film Festival is being organized in which city	New Delhi
42.	What is the theme of Independence Day this year	Nation First Always First
43.	Which player holds the record for hitting most sixes for India in T20Is at the age of 20 or less	Tilak Verma
44.	Who has been elected as the acting Prime Minister of Pakistan	Anwarul Haq Kakar
45.	Which country won the title of Asian Hockey Champions Trophy 2023	India
46.	What is the name of the Indian mission sent by ISRO to study the Sun	Aditya-L1
47.	Which agritech start-up has recently received recognition from the United Nations	Farmers Fresh Zone
48.	Which app has been launched by the Gujarat government to track lions	'Sinh Suchna' app
49.	India's rank in Internet Resilience Index	6th
50.	Which Indian-American has been appointed as the new Chief Financial Officer of Tesla	Vaibhav Taneja
51.	Who has been appointed as the new Prime Minister of Cambodia	Hun Manet
52.	How many railway stations across the country will be modernized under the 'Amrit Bharat Station' scheme	508
53.	Which Indian has become the youngest world champion in archery	Aditi Swami
54.	How many railway stations in Uttar Pradesh will be modernized under the 'Amrit Bharat Station' scheme	55
55.	Who has become India's number 1 chess player	Gukesh D
56.	Which portal has been launched to monitor child care institutions across the country	Masi Portal
57.	Recently which Indian cricketer has	Manoj Tiwary

	announced his retirement	
58.	Who jointly launched the 'Study in India Portal'	S. Jaishankar and Dharmendra Pradhan
59.	Who has been made the captain of the Indian team for the T20 series against Ireland	Jasprit Bumrah
60.	When is World Lung Cancer Day celebrated annually	01 August
61.	Which Formula One player won the Belgian Grand Prix title for the 8th time in a row	Max Verstappen
62.	ISRO launched seven satellites of which country with PSLV-C56 rocket	Singapore
63.	In which city the G20 Empower Summit is being organized under the chairmanship of India	Gandhinagar
64.	Who has become the first cricketer in history to hit a six on the last ball of his career and take a wicket on the last ball of his bowling	Stuart Broad

5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING
FOR
HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation 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. Subjects;-

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 with special reference to newly added 9 Social Acts 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	

6. 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.

7. 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

8. 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. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

9. Library with Research wing

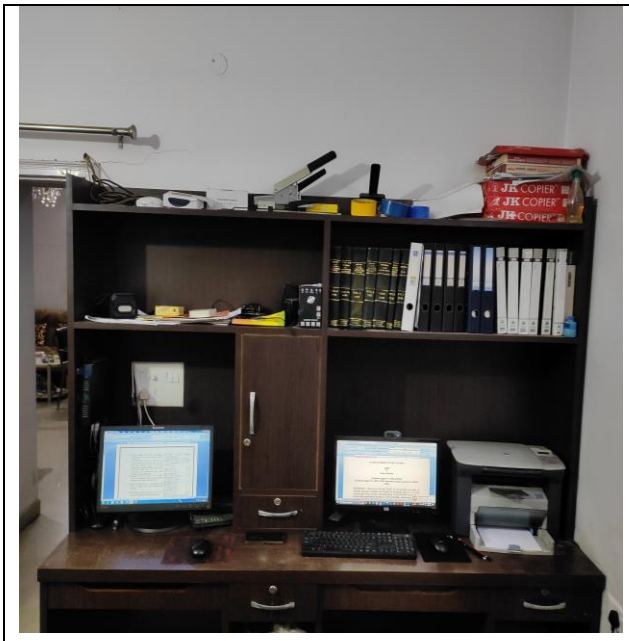
V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person 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