[1] AIR 2001 SC 142 (Investigation – Lapses)

(State of UP Vs. Hari Mohan and others)

The defective Investigation cannot be made basis for acquitting the accused, if despite such defects and failures of the investigation, a case is made out against all the accused or anyone of them.

[2] AIR 2001 SC 164 (Interested Witness)

(Surendra Pratap Chauhan Vs. Ram Naik and others)

Merely because the relation between the accused persons and the complainant were strained leading to groupism in the village, the testimony of eye-witnesses who were fellows of complainant is not to be discarded, though it needs to be scrutinized with caution so as to eliminate the possibility of any false implication.

[3] AIR 2001 SC 330 (Hostile-Declaration Effect)

(Gura Singh Vs. State of Rajasthan)

Permission for Court examination in terms of Sec. 154 of the Evidence Act cannot and should not be granted at the mere asking of the party calling the witness.

It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. In appropriate cases, the Court can rely upon the part of testimony of such witness, if that part of the deposition is found to be creditworthy.

[4] AIR 2001 SC 656 (SC) (Precise Order-Judgment)

(Amina Ahmed Dossa and others Vs. State of Maharashtra)

Brevity of orders on application of mind and not the length of the order is the criterion for adjudication the rights of the parties which are otherwise subject to the decision of a Civil Court. It would be appreciated that the Designated Courts which are otherwise over burdened shall refrain themselves from writing unnecessary lengthy judgments and pass appropriate brief orders, surely dealing with all points, while adjudicating claims of all the parties.

[5] AIR 2001 SC 746 (Confession-Guidelines)

(Lal Singh Vs. State of Gujarat and anr.)

Despite the suggestion made by the Court in Kartar Singh's case (1994 Cr.L.J. 3139) the said guidelines with regard to confession are neither incorporated in the Act or the Rules by the Parliament. Therefore, it would be difficult to accept the contention that as the said guidelines are not followed, confessional statements, even is admissible in evidence, should not be relied upon for convicting the accused.

[6] AIR 2001 SC 979 (Discovery)

(Sanjay @ Kaka Vs. State (NCT, Delhi)

The mere use of words ' looted property' in relation to the articles seized which were found to be taken away after the commission of the crime of murder and robbery would not change the nature of the statement. The words do not implicate the accused with the commission of the crime but

refer only to the nature of the property hidden by them which were ultimately recovered consequence upon their disclosure statements. Hyper-technical approach, as projected by the defence counsel would defect the ends of justice and have disastrous effect.

[7] **AIR 2001 SC 1158** **(Evidence-Admissibility-Objection)**

(Bipin Kantilal Panchal Vs. State of Gujarat)

Whenever an objection is raised during evidence taking stage, regarding admissibility of any material or item of the oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the Case (or record the objected part of the oral evidence) subject to such objecting to be decided at the last stage in the final judgment.

[8] **AIR 2001 SC 1188** **(TI Parade-Purpose)**

(Dayasinh Vs. State of Haryana)

TTP: The purpose of T I parade is to have corroboration to the evidence of the eye-witnesses in the form of earlier, identification and that substantive evidence of a witness is the evidence in the Court. If that evidence is found to be reliable then absence of corroboration by T I parade would not be in any way material.

Memory: Power of perception and memorizing differs from man to man and also depends upon situation. It also depends upon capacity to recapitulate what has been seen earlier. But that would depend upon the strength or

trustworthiness of the witnesses who have identified the accused in the Court earlier.

[9] AIR 2001 SC 1324 (D.D. Stove – Kerosene)

(Pawankumar Vs. State of Haryana)

In dying declaration story of kerosene in stove got finished and while filling kerosene in stove, clothes of deceased caught fire is not believable, because absence of kerosene would put off the ignition of stove and therefore, flow of fire would not be available.

[10] AIR 2001 SC 1760 (Confession -Corroboration)

(Lokeman Shah and anr. Vs. State of W.B.)

The test of discerning whether a statement recorded by Judicial Magistrate u/s 164 of Cri.Pro.Code, from an accused is confessional or non-confessional is not by dissecting the statement into different sentences and then to pick out some not inculpative. The statement must be read as a whole and then only, the Court should decide whether it contains admissions of his incriminatory involvement in the offence. If the result of that test is positive then the statement is confessional, otherwise not.

Way back in 1957, the Supreme Court has laid down the law in explicit terms that confession, if true and reliable, can form basis of conviction.

[11] AIR 2001 SC 1903 (Life Imprisonment- Period)

(Subhash Chander Vs. Krishanlal and others)

Unless the life imprisonment is commuted or remitted by appropriate authority under the relevant provisions of law

applicable in the case, a prisoner sentenced to life imprisonment is bound in law or serve the life term in prison. Accused kishanlal shall not be entitled to any commutation or premature release u/s 401 of Cri. Pro. Code or Prisoners Act, Jail Manual or any other Acts or Rules and shall remain in prison for the rest of his life.

[12] AIR 2001 SC 2124 (Oral D.D. - Burn Injury)

(Arvind Singh Vs. State of Bihar)

Deceased alleged to have made declaration to her mother just before few minutes of her death naming her in-laws along with husband who poured kerosene to burn her alive. The doctor has opined that the death may take place at once and within ten minutes by reason of the extensive nature of the burn and the deceased cannot have survived beyond ten minutes. Therefore, uncorroborated testimony of mother about declaration cannot be accepted.

[13] AIR 2001 SC 2328 (Number of Witnesses)

(Takhaji Hiraji Vs. State of Gujarat)

If already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such witnesses may not be material.

[14] AIR 2001 SC 2231 (Sentence-Hearing)

(Ram Deo Chauhan Vs. State of Assam)

The legal position regarding necessity to afford opportunity for hearing the accused on the question of sentence u/s 235(2) of Cr. P.C, is as follows:

(1) If the Session Judge does not propose to impose death penalty, there is no necessity to hear the accused for awarding minimum sentence i.e. life imprisonment.

(2) In all other cases, the accused must be given sufficient opportunity of hearing on the question of sentence.

(3) The normal rule is that after pronouncing the verdict of guilty, the hearing should be made on the same day and sentence shall also be pronounced on the same day.

(4) In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence, the provision of Sec. 309(2) is not a bar for affording such time.

(5) In such a situation, the person convicted is required to be sent to jail till final decision.

[15] AIR 2001 SC 2503 **(Use of Case Diary)**

(Mahabir Singh Vs. State of Haryana)

The power conferred on the Court for perusal of the case diary u/s 172 of Cri. Pro. Code, is not intended for explaining a contradiction which the defense has winched to the fore through the channel permitted by law.

[16] AIR 2001 SC 2521 **(Powers u/s.319)**

(Rakesh Vs. State of Haryana)

It cannot be said that the term 'evidence' as used in Sec. 319 of the Cr.Pro.Code, would mean evidence which is

tested by cross-examination. Statement of prosecution witness recorded by the Court can be prima facie material to enable the Court to decide whether person not arraigned before it, is involved in crime or not.

[17] AIR 2001 SC 2637 (FIR-Phone-Telegram)

(T.T.Antony Vs. State of Kerala)

Apart from vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of police station is the First Information Report.

There can be no second FIR, in respect of same cognizable offence, same incident or occurrence.

[18] AIR 2001 SC 2778 (Retracted Confession)

(State of Tamil Nadu Vs. Kutty @ Lakshmi Narsinhan)

Confession: It is not the law that once a confession was retracted, the Court should presume that the confession is tainted. Non retracted confession is a rarity in criminal cases. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin test of a confession is to ascertain whether it was voluntary and true. Once those tests are found to be positive, the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of the confession is not the ground to throw the confession overboard.

Articles: Judicial confession would not become bad by reason of the fact that articles belonging to the victims were recovered prior to the making of confession.

Magistrate Aware: A very frail point has been raised that the Magistrate did not inform the accused at the initial stage that he was a Magistrate. Record shows that the accused was well aware that he was in the Court of Magistrate. On perusal of record, there is no scope for any contention that accused was unaware that the person who recorded the confession was a Magistrate.

[19] AIR 2001 SC 2828 **(Dowry-Meaning)**

(Satvir Singh and others Vs. State of Punjab)

Word 'dowry' in Sec. 304-B should be any property or valuable given or agreed to be given in connection with the marriage. Customary payments in connection with birth of child or other ceremonies are not enveloped within ambit of 'dowry'.

See 306 renders person who abets commission of suicide punishable for which condition precedent is suicide should necessarily have been committed. Sec. 306 does not penalize an abetment to the offence of mere attempt to commit suicide. There cannot be an offence u/s 116 IPC read with Sec. 306 I.P.Code. Accused cannot be convicted u/s 511 I.P.Code also.

[20] AIR 2001 SC 3031 (Inquest Panchnama)

(Munshi Prasad & others Vs. State of Bihar)

Preparation of inquest report is a part of investigation within the meaning of Cri. Pro. Code and neither the inquest report nor the P.M. Report can be termed to be a basic evidence or substantive evidence and discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance, which would warrant a benefit to the accused and the resultant dismissal of the prosecution case.

[21] AIR 2001 SC 3031 (Witnesses – Nearby area)

(Munshi Prasad and others Vs. State of Bihar)

Area: Non-examination of independent witnesses from nearby residential area is not material, when evidence on record is satisfactory and trustworthy in nature.

Numbers: Increase in number of witnesses cannot be termed to be a requirement in such case.

[22] AIR 2001 SC 3173 (FIR-Dispatch-Delay)

(Anil Rai Vs. State of Bihar)

Delay in dispatch of FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety.

[23] AIR 2001 SC 3853 (Charge Sec. 34)

(Ramji singh and anr. Vs. State of Bihar)

Even in absence of the charge u/s 34 of the I.P. Code, the conviction could be maintained.

[24] AIR 2001 SC 4024 (Solitary Eye-witness)

(Chandra Shekhar Bind and others Vs. State of Bihar)

When the size of the unlawful assembly is quite large and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting.

[25] AIR 2002 SC 16 (Discovery - Open Space)

(State of Maharashtra Vs. Bharat Fakira Dhiwar)

There is nothing in Section-27 of the Evidence Act which renders the statement of the accused inadmissible, if recovery of the articles was made from any place which is "open or accessible to others." It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section-27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is, until discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

In the present case the grinding stone was found in tall grass. The pant and underwear were buried. They were out of visibility of others in normal circumstances.

[26] AIR 2002 SC 312 (Quality-Solitary Witness)

(Japsa Kabri and ors. Vs. State of Bihar)

There is no bar in basing conviction on the testimony of solitary witness so long as the said witness is reliable and trustworthy.

[27] AIR 2002 SC 382 (Contradictions-Secs. 145 – 155)

(Majid Vs. State of Haryana)

It is method recognized by law under Section 155(3) that the credit of the witness can be impeached by proof of former statement inconsistent with any part of his evidence which is liable to be contradicted. If the former statement was in writing or was reduced to writing, Section 145 of the Act requires that attention of the witness must be called to those parts of it which are used for the purpose of contradicting him.

[28] AIR 2002 SC 409 (Discovery-Press Conference)

(State of Maharashtra Vs. Chhaganlal Raghani and others)

Fact that the seized weapons were displayed by police in Press Conference, is not a ground to disbelieve the factum of recovery.

[29] AIR 2002 SC 491 (Discovery-License-Receipt)

(Limbaji and others Vs. State of Maharashtra)

The fact that the shopkeeper had not given any receipt and taken the signatures of the accused or that he was not having license to sell or purchase the gold ornaments are not factors which go to discredit the evidence of P.W.5 in whose shop the ear-ring was found.

[30] AIR 2002 SC 1051 (Investigation – Lapses)

(Allarakha K. Mansuri Vs. State of Gujarat)

Lapses: Defective investigation by itself cannot be made a ground for acquitting the accused.

Two views: In criminal case, the golden thread running through the web of administration of justice is that if two views are possible on evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to accused should be adopted.

Miscarriage: A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent.

[31] AIR 2002 SC 1412 (FIR – Inquest Panchnama)

(Rajesh @ Raju Chandulal Gandhi and anr.Vs. State of Gujarat)

Merely non-mentioning of number of crime registered upon FIR or names of prosecution witnesses in inquest panchnama would not lead the Court to believe that the FIR had been ante-timed.

[32] AIR 2002 SC 1621 (FIR- Names of Witnesses)

(Bhagwan Singh and others Vs. State of M.P)

F.I.R: There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the Criminal Law in motion.

Relatives: Merely because the witnesses happened to be the relations of the deceased, cannot be a ground to discard their evidence.

Common object: Generally no direct evidence is available regarding the existence of common object which in each case, has to be ascertained from the attending facts and circumstances. When a concerted attack is made on the victim by a large number of persons armed with deadly weapons, it is often difficult to determine actual part played by each offender and easy to hold that such persons attacking the victim had the common object for an offence which was known to be likely to be committed in prosecution of such an object.

[33] AIR 2002 SC 1644 (Further Investigation)

(C.B.I. Vs. R.S.Pal and others)

The scheme of Sec. 173(8) makes it abundantly clear that even after the chargee-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then, there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot any prejudice to the accused.

[34] AIR 2002 SC 1661 (Confession-Voluntariness)

(Devendrer Pal Singh Vs. State of NCT Delhi)

Confession: A confession cannot be used against an accused person unless the Court is satisfied that it was voluntary. At that stage question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt.

Corroboration: Confession of accused can be relied upon for the purpose of conviction, and no further corroboration is necessary, if it relates to the accused himself.

Computer: Merely because the confessional statement was recorded in a computer, cannot be a ground for holding that the confessional statement was not voluntary.

Certificate: Where police officer had given certificate as required by Rule-15 in typing when requirement under Rule-15 was that the certificate has to be ' under his own land', it would not be illegal.

Presumption: Mere statement that requisite procedures and safeguards were not observed or that statement was recorded under duress or coercion is of no consequence. Presumption that a person acts honestly applies as much in favour of police officer as of other persons.

[35] AIR 2002 SC 1965 (Confession-Names of Co-accused)

(Krishna Mochi and others Vs. State of Bihar)

Confession: Participation of accused persons would not become doubtful on ground of non-disclosure of their names in such Confessional Statement of co-accused. There may be various reasons for such non-disclosure e.g. they might not be fully known to the confessing accused or for reasons best known to him, with an oblique motive, to save those accused their names might not have been disclosed.

Discrepancies: Normal discrepancies in evidence are those which are due to normal errors to observation, normal errors of memory due to lapse of time, due to mental disposition, such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be.

Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which discrepancies do not corrode, the credibility of a party's case, material discrepancies do so.

[36] AIR 2002 SC 1965 (Recovery – Quality)

(Krishna Mochi and ors. Vs. State of Bihar)

Recovery: Where participation of accused in incident is proved by unimpeachable evidence, recovery of no incriminating material from the said accused, cannot alone be a ground for acquittal.

Quality: It is a well settled principle in law that evidence is to be considered on the basis of its quality and not the

quantity. In Masalti's case, the desirability to have at least two witnesses has been stated to be a matter of prudence. Such a requirement can never be said to be inviolable.

[37] AIR 2002 SC 1998 (Sec. 306 – ' go & die')

(Sanju @ Sanjay Singh Sengar Vs. State of M.P.)

Even if we accept the prosecution story that the appellant did tell the deceased " to go and die", that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional.

[38] AIR 2002 SC 2137 (Sec. 149 – Common object)

(Madhu Yadav and others Vs. State of Bihar)

The genesis of the incident commenced with the first accused entering the field of the deceased and uprooting stealthily some of the standing crops and only when he was caught and a tussle ensued and ' hullas' were raised they brought other accused suddenly into the scene.

There is absolutely no evidence whatsoever to attribute any common object or such a thing having activated all of them to join in furtherance of the object either before arrival or during the course of occurrence as such. Hence, the charge under Section 149 of I.P. Code has to fail.

[39] AIR 2002 SC 2235 **(FIR – Rape – Delay)**

(State of Rajasthan Vs. Om Prakash)

The reputation and prestige of family and carrier or life of victim was involved in the case. Therefore, it was not at all unnatural for the family members to await the arrival of the elders in the family. The delay in reporting the matter to the police therefore, can be said to be fully explained.

[40] AIR 2002 SC 2390 **(Confession – TADA)**

(Gurprit Singh @ Bittu Vs. State of Panjab)

Any confession made to a police officer is inadmissible in evidence as for the offences under the I.P.Code and hence, the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for the offences under TADA as well.

[41] AIR 2002 SC 2461 **(Police Witnesses)**

(Ravindra Santaram Sawant Vs. State of Maharashtra)

The police party was the victim of assault launched by the accused. Three of police witnesses are also injured. They cannot, therefore, be described as official witnesses interested in the success of the investigation or prosecution. In fact the testimony of such witnesses, does not require independent corroboration, if otherwise their evidence is found to be truthful and reliable.

[42] AIR 2002 SC 2775 (Eye Witnesses-Group)

(Gujula Venkateshvara Rao and others Vs. State of A.P.)

Witnesses are natural witnesses and their presence is established by fact that they also received injuries at the hands of accused. Their evidence cannot be discarded, merely because they belong to the same party or they are connected with the victims.

[43] AIR 2002 SC 2973 (D.D. Certificate)

(Laxman Vs. State of Maharashtra)

Normally, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical evidence will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.

[44] AIR 2002 SC 3006 (Eye Witnesses-Consistent)

(Ram Anup Singh and others Vs. State of Bihar)

The case of prosecution cannot be disbelieved merely because the testimony of the eye-witnesses is consistent by raising a suspicion that they may be got up or tutored witnesses.

[45] AIR 2002 SC 3018 (Evaluation of Evidence)

(Hardeep Vs. State of Haryana and anr.)

In the criminal cases, the Court cannot proceed to consider the evidence of the prosecution witnesses in a

mechanical way. The broad features of the prosecution case, the probabilities and normal course of human conduct of a prudent person are some of the factors which are always kept in mind while evaluating the merit of the case.

[46] AIR 2002 SC 3040 (Sec. 34 Common Intention)

(Harjit Singh and others Vs. State of Punjab)

Mere participation in the crime with others is not sufficient to attribute common intention to one of others involved in the crime. One accused can be made vicariously liable for acts and deed of other co-accused only on proof of subjective element in common intention by objective test.

[47] AIR 2002 SC 3086 (Sec. 149 Common object)

(Bhima @ Bhimrao Sida and ors Vs. State of Maharashtra)

"When a large number of persons attacked deceased, were armed only with sticks or pelted stones which they could find any where either near the field or on their way and it was not established as to who specifically attacked whom, it is not clear as to whether the intention was to cause death of the deceased. In the circumstances inference could be drawn that the common object was to commit offences under Section-323 and 325 read with Section–147/149 and not under Section-302 read with Section-149 of I.P.Code.

[48] AIR 2002 SC 3151 (Sec. 149 Common object)

(Shiva Shankar Pandey and others Vs. State of Bihar)

Prosecution version that each of appellants were armed with weapons during second incident is doubtful,

more so, when witnesses are closely related and there is history of bitter enmity between parties. Common object of all appellants to kill the deceased cannot be said to have developed subsequently.

[49] AIR 2002 SC 3164 (Statement u/s. 161 – Delay)

(Bodh Raj @ Bodha and ors. Vs. State of J.K.)

It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination, is plausible and acceptable, prosecution case cannot be doubted.

[50] AIR 2002 SC 3206 (Suspicion – Proof)

(Ashish Batham Vs. State of M.P)

Mere suspicion, however, strong or probable it may be, is no effect substitute for the legal proof required to substantiate the charge of commission of a crime. Graver the charge, greater has to be the standard of proof. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between " may be true" and " must be true".

[51] AIR 2002 SC 3270 (Sec. 306 - Cruelty)

(Mohmad Hasan and anr. Vs. State of A.P.)

The continuous taunting or teasing the deceased by the husband and mother-in-law on one or other ground, amounted to mental cruelty drawing her to end her life. The accused did not try to save the deceased although they were

present when burn injuries were caused to her. Accused are liable to be convicted under Section- 306 and 498-A of the I.P. Code.

[52] AIR 2002 SC 3325 (T.I.Parade – Known Person)

(Dana Yadav @ Danu and others Vs. State of Bihar)

The previous identification in the T I parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law. In exceptional circumstance only, evidence of identification for the first time in Court, without the same being corroborated by previous identification in the T I parade or any other evidence, can form the basis of conviction.

It is well settled that no T I parade is called for and it would be waste of time to put him up for identification, if the victim mentions name of the accused in the FIR or he is known to the prosecution witnesses from before.

[53] AIR 2002 SC 3443 (Sec. 34 – Overt act)

(Nandu Rastogi @ Nandaji and anr. Vs. State of Bihar)

To attract Section 34 of I.P.Code, it is not necessary that each one of the accused must assault the deceased. It is enough, if it is shown that they shared a common intention to commit the offence and in furtherance thereof each one played his assigned role by doing separate acts, similar or diverse. The facts of this case are eloquent and the role played by appellant accused of preventing the prosecution witnesses from going to the rescue of the deceased was the

role played by him with a view to achieve the ultimate objective of killing the deceased. Therefore, conviction of accused for murder with aid of Section 34 cannot be interfered with.

[54] AIR 2003 SC 209 (D.D. Injuries to accused)

(Shanmugam @ Kulandaivelu Vs. State of T.N.)

The mere fact that victim did not make any reference to the injuries received by the accused is not a ground that merits rejection of dying declaration.

[55] AIR 2003 SC 282 (Statement u/s. 161)

(Alamgir Vs. State NCT Delhi)

Evidence if otherwise creditworthy cannot be discarded merely because it was not available in statement of witness under Section-161 of Cri.Pro.Code.

[56] AIR 2003 SC 539 (Sec. 149 – Overt act)

(Yunis @ Kariya etc. Vs. State of Madhya Pradesh)

Even if no overt act is imputed to a particular person, when the charge is under Section-149, IPC, the presence of the accused as part of unlawful assembly is sufficient for conviction.

[57] AIR 2003 SC 558 (D.D. Imminent Death)

(State of Haryana Vs. Mange Ram and ors.)

Under Indian Law, for dying declaration to be admissible in evidence, it is not necessary that the maker of the statement at the time of making the statement should be under shadow of death and should entertain the belief

that his death was imminent. The expectation of imminent death is not the requirement of law.

[58] AIR 2003 SC 638 (Muddamal Disposal)

(C.M.Mudaliar Vs. State of Gujarat)

Court should pass appropriate orders under Section-451 of Cr.Pro.Code immediately and muddamal articles should not be kept for a long time at the police station.

[59] AIR 2003 SC 660 (FIR – Time – Lapses)

(State of U.P. Vs. Jagdeo and ors.)

Time: Fact of alleged improper recording of time of lodging FIR is not sufficient to acquit the accused.

Lapses: Assuming that the investigation was faulty, for that alone, the accused person cannot be let off or acquitted. For the fault of the prosecution, the perpetrators of a ghastly crime cannot be allowed to go scot free.

[60] AIR 2003 SC 1074 (D.D. – Form)

(State of Karnataka Vs. Shariff)

Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker, the mere fact that it is not in question – answer form cannot be a ground against its acceptability or reliability.

[61] AIR 2003 SC 1164 (Inquest Panchnama- Details)

(Amar Singh Vs. Balwirder Singh and ors.)

The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely whether it is

suicidal, homicidal, accidental or by some machinery etc. Therefore, merely because the facts about the occurrence were not mentioned in the inquest report, it could not be said that at least by the time the report was prepared, the I.O. was not sure of the facts of the case.

[62] AIR 2003 SC 1311 (Police Witnesses)

(Karamjit Singh Vs. State of Delhi)

The testimony of police personal should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personal as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will depend upon the facts and circumstances of each case and no principle of general application can be laid down.

[63] AIR 2003 SC 1471 (Motive – Animosity)

(State of Punjab Vs. Sucha Singh and ors.)

When the basic foundation of the prosecution case crumbled down, the motive becomes inconsequential. At the same time, animosity is a double edged sword. It could be a ground for false implication, it could also be a ground for assault.

[64] AIR 2003 SC 2053 (Presence-Video-Conferencing)

(State of Maharashtra Vs. Praful B. Desai)

The term 'presence' in Sections-273 of Cri. Pro.Code, does not mean actual physical presence in Court. Section-273 contemplates constructive presence. The presence of pleader is thus deemed to be presence of the accused.

Evidence even in criminal matters can also be by way of electronic records. This would include video-conferencing.

[65] AIR 2003 SC 2141 (Interested Witness)

(State of Uttar Pradesh Vs. Ram Sewak and ors.)

Dying declaration given by the deceased cannot be held as tainted merely because he was carried by his relations or friends to the hospital.

[66] AIR 2003 SC 2669 (Failure to hold T.I. Parade)

(Malkhansingh and ors. Vs. State of Madhya Pradesh)

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.

[67] AIR 2003 SC 3191 (Sentence- Delay in trial)

(State of M.P. Vs. Ghanshyam Singh)

In view of the purpose for which a sentence is imposed, it cannot be laid down as a rule of universal application that long passage of time in all cases would justify minimal sentence.

[68] AIR 2003 SC 3590 (FIR-Names of Witnesses)

(Chittar Lal Vs. State of Rajasthan)

FIR: Evidence of the person whose name did not figure in the FIR as witness does perforce become suspect. There can be no hard and fast rule that the names of all witnesses more particularly eye-witnesses should be indicated in the FIR.

Solitary Witness: It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions.

[69] AIR 2003 SC 3617 (Partly Reliable Evidence)

(Sucha Singh and anr. Vs. State of Punjab)

Even if major portion of evidence of a witness is found to be deficient, in case residue is sufficient to prove guilt of an accused. Notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons.

[70] AIR 2003 SC 3901 (Common object – Intention)

(State of Maharashtra Vs. Kashirao and ors.)

'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting

of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations.

[71] AIR 2003 SC 3975 (FIR – Telephone Call)

(Thaman Kumar Vs. State of U.T.(Chandigad)

Telephonic massage about incident given by constable on night patrol duty cannot be treated as FIR.

[72] AIR 2003 SC 3975 (Motive – Absence)

(Thaman Kumar Vs. State of U.T. (Chandigarh)

There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded, even if the motive for the commission of the crime has not been proved.

[73] AIR 2002 SC 4089 (Cross Cases)

(State of M.P. Vs. Mishrilal and ors.)

The cross cases should be tried together by the same Court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident.

[74] AIR 2003 SC 4089 (Local Inspection)

(State of M.P. Vs. Mishrilal and ors.)

It was incumbent on the part of the ld. Judge to have recorded the memo of spot inspection for proper appreciation of the inspection.

[75] AIR 2003 SC 4259 (FIR - Details)

(Hem Raj and anr. Vs. State of Punjab)

It is not necessary that all details should be mentioned in the FIR about the manner of occurrence, the participants in the crime, the time and place of occurrence etc.

[76] AIR 2003 SC 4466 (D.D – Certificate)

(Sohan Lal @ Sohan Singh and ors. Vs. State of Punjab)

Absence of Doctor's certificate on D.D. itself and non examination of doctor who had given the certificate, does not make dying declaration unreliable.

[77] AIR 2003 SC 4664 (FIR-Names of Witnesses)

(Raj Kishore Jha. Vs. State of Bihar and ors.)

There is no requirement of mentioning the names of all witnesses in the first information report.

Credibility of witnesses cannot be doubted merely because their names do not appear in the F.I.R.

[78] AIR 2004 SC 77 (Medical-Ocular Evidence)

(Ramakant Rai. Vs. Madan Rai and ors.)

Medical Evidence: It is trite that where the eye witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eye witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

Doubt: A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is however, no absolute standard. What degree of probability amounts to ' proof ' is an exercise particular to each case.

Reasonable Doubt: Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to more vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

Probability: The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. Where the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.

[79] AIR 2004 SC 132 (Sec. 34 – Common Intention)

(Parasa Raja Manikyala Rao and anr. Vs. State of A.P.)

Section-34 really means that if two or more persons intentionally do a common thing jointly, it is just the same as

if each of them had done it individually. It is a well recognized canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In combination of this kind a mortal stroke, though given by one of the party, is deemed in the eye of law to have been given by every individual present and abetting. But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act.

[80] AIR 2004 SC 210 (Eye Witness-Details)

(Gyasuddin Khan Vs. State of Bihar)

The Court cannot expect the panic-stricken eye-witnesses to come forward with a vivid account of the distance from which each one of the shots was fired at.

[81] AIR 2004 SC 261 (Statement u/s 161 – Delay)

(Banti alias Guddu Vs. State of Madhya Pradesh)

Unless the Investigating Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage there-from. It cannot be laid down as a rule of universal application that if there is

any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason to interfere with the conclusion.

[82] AIR 2004 SC 313 (Interested Witness)

(Chaudhari Ramjibhai Narasangbhai Vs. State of Gujarat and ors.)

Interested: If the witness is otherwise reliable and trustworthy, the fact which is sought to be proved by that witness need not be further proved through other witnesses. Even if a witness is related to the deceased there is no reason to discard his evidence if he is reliable and trustworthy. What is required is the cautious and careful approach in appreciating the evidence because a part of the evidence might be tainted owing to the relationship and the witnesses might be exaggerating the facts. In such an event, the Court is to appreciate the evidence in the light of other evidence on record which may be either oral or documentary.

Contradictions: Section-145 of the Indian Evidence Act, 1872 applies when same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-à-vis statement of other witnesses. It is not open to Court to completely demolish evidence of one

witness by referring to the evidence of other witnesses. Witnesses can only be contradicted in terms of Section-145 of the Evidence Act by his own previous statement and not with the statement of any other witness.

[83] AIR 2004 SC 433 (Rape – Leniency)

(State of Karnataka Vs. Puttaraja)

Leniency in matters involving sexual offences is not only undesirable but also against public interest. Such types of offences are to be dealt with severity and with iron hands. Showing leniency in such matters would be really a case of misplaced sympathy.

[84] AIR 2004 SC 1253 (TI Parade – Absence)

(Ashfaq Vs. State of NCT of Delhi)

In the instant case among the accused one was already known to the inmates of house on account of having white-washed their house, accused have entered their house and was for quite some time present there holding them at ransom by directing and using threat to relieve them of the valuables on which they could lay their hands, in circumstances it would be too much to claim, in spite of all these, that the evidence of prosecution witnesses could not be either sufficient to properly identify the accused or relied upon against the accused in the absence of proper test identification parade.

[85] AIR 2004 SC 1280 (Sec. 357 – Compensation)

(Mangilal Vs. State of Madhya Pradesh)

The power of the Court to award compensation to victims under Section-357 is not ancillary to other sentences but is in addition thereto.

The basic difference between sub-sections (1) and (3) is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even in the absence thereof empowers the Court to direct payment of compensation. Such power is available to be exercised by a appellate Court or by the High Court or Court of Session when exercising revisional powers.

[86] AIR 2004 SC 1517 (Sentence-Factors)

(State of U.P. Vs. Virendra Prasad)

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times on account of misplaced sympathies to the perpetrator of crime leaving the victim or his family into oblivion. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the gravity of the crime uniformly

disproportionate punishment has some very undesirable practical consequences.

[87] AIR 2004 SC 1677 (Sec. 34 – Intention-Proof)

(Raju Pandurang Mahale Vs. State of Maharashtra and anr.)

Section-34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section-34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.

[88] AIR 2004 SC 1812 (Interested Witness)

(R.Prakash Vs. State of Karnataka)

It is fairly well settled position in law that the evidence of a witness who is related to either the deceased or the injured is not to be automatically rejected, notwithstanding the fact that it is cogent, credible and trustworthy.

Mere cryptic observation of general nature that it appears to be suspicious is without any material to support the conclusion and is indefensible.

[89] AIR 2004 SC 1920 (Interested Witness -Lapses)

(Dhanaj Singh @ Shera and ors. Vs. State of Punjab)

Interested: It is fairly settled position in law that when witnesses are branded as partisan or inimical, their evidence has to be analyzed with care and scrutiny.

Lapses: If the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the Courts, otherwise the designed mischief would be perpetuated and justice would be dented to the complainant party.

[90] AIR 2004 SC 2174 (Opinion-Text book-Expert)

(State of Madhya Pradesh Vs. Sanjay Rai.)

Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case.

Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given.

[91] AIR 2004 SC 2282 (Illegal Search/Seizure)

(State Rep. Inspector of Police and ors. Vs. N.M.T. Joy Immaculate)

The admissibility or otherwise of a piece of evidence has to be judged having regard to the provisions of the Evidence Act. The Evidence Act or the Code of Criminal Procedure or for that matter any other law in India does not exclude relevant evidence on the ground that it was obtained under an illegal search and seizure.

[92] AIR 2004 SC 2294 (Sec. 34 – Overt act)

(Anil Sharma and ors. Vs. State of Jharkhand)

Section-34 does not say the common intention of all, nor does it say and intention common to all. Under the provisions of Section-34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section- 34, when an accused is convicted under Section-302 read with Section-34 in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. Section-34 is applicable even if no injury has been caused by the particular accused himself. For applying Section- 34 it is

not necessary to show some overt act on the part of the accused.

[93] AIR 2004 SC 2329 (Ocular – Medical Evidence)

(Ram Bali Vs. State of Uttar Pradesh)

Hypothetical answers given to hypothetical questions, and mere hypothetical and abstract opinions by textbook writers, on assumed facts, cannot dilute evidentiary value of ocular evidence if it is credible and cogent. The time taken normally for digesting of food would also depend upon the quality and quantity of food as well, besides others. It was required to be factually proved as to the quantum of food that was taken, atmospheric conditions and such other relevant factors to throw doubt about the correctness of time of occurrence as stated by the witnesses. Only when the ocular evidence is wholly inconsistent with the medical evidence the Court has to consider the effect thereof.

[94] AIR 2004 SC 3508 (Investigation-Lapses-Sec.149)

(Sahdeo and ors. Vs. State of U.P.)

Lapses: At the outset we must observe that the investigation of this case was hopelessly conducted. The Investigating Officer did not prepare a proper scene 'mahzar' and as the occurrence happened inside the bus, the bus itself should have been seized by the police to prove the prosecution case. Some of the witnesses were questioned by the police after a long lapse of time. Many of the relevant facts were not noted by the Investigating Officer. We are also surprised to note that the first information that is said to

have been recorded on 12/1/2000 reached the Magistrate only on 18/1/2000.

Though the investigation conducted by the prosecution was highly unsatisfactory, there is convincing evidence to prove that these appellants were responsible for causing the death of eight persons.

Sec.149: As regards the nature of the unlawful assembly, there is clear evidence to the effect that all of them came in a group by using cars and a motor-cycle and intercepted the bus. Knowing fully well that the deceased persons were travelling in that bus, the appellants entered the bus and without giving any opportunity to the deceased persons to escape from the bus, killed them on the spot. The common object of the unlawful assembly is clearly spelt out from the nature and circumstances of the evidence.

[95] AIR 2004 SC 3566 (Rape-Penetration)

(Sakshi Vs. Union of India and ors.)

Only sexual intercourse, namely, heterosexual intercourse involving penetration of the vagina by the penis coupled with the explanation that penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape comes within the purview of Section-375, IPC.

[96] AIR 2004 SC 3690 (Human behaviour-Reactions)

(State of Uttar Pradesh Vs. Devendra Singh)

Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and

circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

[97] AIR 2004 SC 4197 (Retracted Confession)

(Parmananda Pegu Vs. State of Assam)

A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the Court has to take into consideration not only the reasons given for

making the confession or retracting it but the attending facts, and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially.

[98] AIR 2004 SC 4412 (Sec. 34 Common Intention)

(State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and ors.)

For establishing common intention in every case it is not required for the prosecution to prove a prearranged plot or prior concert. As has been proved by the prosecution witnesses on the dispute on cleaning of drain which took place in the early hours on the date of alleged incident, the accused party which constitute members of one family barged into the house of the complainant, man-handled her inside and dragged her out where she was beaten repeatedly. The act alleged against the accused clearly makes out a case of common intention against them in committing offence of house trespass and causing hurt to the complainant.

The defence of false implication due to alleged incident of the complainant having not been able to purchase some property in competition with the accused party had not taken place in the immediate past. It could not be ground to falsely implicate the accused after such a long period. Such defence plea based on alleged motive of the complainant is also unacceptable when the specific defence taken through

deposition of DW-1 was involvement of complainant in the chit fund business and alleged grudge over it with the accused party.

[99] AIR 2004 SC 5050 (Eye Witness-Criminal background)

(State of Utta Pradesh Vs. Farid Khan and ors.)

Background: Of course, the evidence of a witness, who has got a criminal background, is to be viewed with caution. But if such an evidence gets sufficient corroboration from the evidence of other witnesses, there is nothing wrong in accepting such evidence. Whether this witness was really an eye-witness or not is the crucial question. If his presence could not be doubted and if he deposed that he had seen the incident, the Court shall not feel shy of accepting his evidence.

Area: In order to earn their livelihood, people go to different places depending upon their choices and preferences. On the sole ground that the witness in question belonged to a different area and had no business to be near the place occurrence, his evidence should not have been disbelieved.

[100] AIR 2004 SC 5064 (Sentence-Factors)

(Adu Ram Vs.Mukna and ors.)

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in such case, presumably to permit sentences that reflect more subtle considerations of culpability that are

raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet, in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radial departure from the principle of proportionally has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. Imposition of sentences without considering its effect on the social order in many cases may be in really a futile exercise. The social impact of the crime e.g. where it

relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

[101] AIR 2004 SC 5068 **(Exaggerations)**

(Parsuram Pandey and ors. Vs. State of Bihar)

Exaggerated story put up by the prosecution would not wash away the entire incident, which has been proved by the witnesses who were present on the spot. The incident might have commenced somewhat in different manner but the fact of the commission of the offence, when proved by the witnesses, the prosecution's case cannot be thrown out only on the basis that prosecution has put inflated version of the commencement of incident.

[102] AIR 2005 SC 44 **(Ocular & Medical Evidence)**

(State of Madhya Pradesh Vs. Dharkole alias Govind Singh and ors.)

Medical Evidence: It would be erroneous to accord undue primary to the hypothetical answers of medical witnesses to

exclude the eye-witnesses account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. It is trite that where the eye-witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Eye-witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

Doubt: A person has, no doubt, a profound right not be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Doubts would be called reasonable if they are free from a zest for abstract speculation, or free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

F.I.R: There is no requirement of mentioning the names of all witnesses in the first information report.

Non-Examination: It is not necessary for prosecution to examine somebody as a witness even though the witness was not likely to support the prosecution version. Non-

examination of some persons per se does not corrode vitiality of prosecution version, particularly when the witnesses examined have withstood incisive cross-examination and pointed to the respondents as the perpetrators of the crime.

[103] AIR 2005 SC 97 (D.D.More than one)

(State of Maharashtra Vs. Sanjay D. Rajhans)

It is not the plurality of the dying declaration that adds weight to the prosecution case, but their qualitative worth is what matters. It has been repeatedly pointed out that the dying declaration should be of such nature as to inspire full confidence of the Court in its truthfulness and correctness.

[104] AIR 2005 SC 128 (Conspiracy-Accomplice)

(K.Hasim Vs. State of Tamil Nadu)

Conspiracy: The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. Offence of criminal conspiracy consists not merely in the intention of two or more, but in the agreement of two or

more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable, when two agreed to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, acts contra capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

Accomplice: Section-133 expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this section has to be read along with Section-114, Illustration (b). The latter section empowers the Court to presume the existence of certain facts and the illustration elucidates what the Court may presume and makes clear by means of examples as to what facts the Court shall have regard in considering whether or not maxims illustrated apply to a given case. Illustration (b) in express terms says that accomplice is unworthy of credit unless he is corroborated in material particulars. The Statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) to Section-114 strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a

matter of prudence except when it is safe to dispense with such corroboration, must be clearly present in the mind of the Judge.

Although Section-114, illustration (b) provides that the Court 'may' presume that the evidence of an accomplice is unworthy of credit unless corroborated, 'may' is 'not' must and no decision of Court can make it must. The Court is not obliged to hold that he is unworthy of credit. It ultimately depends upon the Court's view as to the credibility of evidence tendered by an accomplice.

[105] AIR 2005 SC 203 (Rape-Consent-Submission)

(Dilip Singh alias Dilip Kumar Vs. State of Bihar)

Penal Code does not define ' consent' in positive terms but what cannot be regarded as consent under the Code is explained by Section-90. Consent given firstly, under fear of injury and secondly, under a misconception of fact is not 'consent' at all. That is what is enjoined by the first part of section-90. These two grounds specified in Section-90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in the first part of Section-90 are from the point of view of the victim. The second part of Section-90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or

misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the Court should also be satisfied that the person doing the act i.e. alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section-90 which is couched in negative terminology. Section-90 cannot, however, be construed as an exhaustive definition of consent for the purposes of the Penal Code. The normal connotation and concept of 'consent' is not intended to be excluded.

Also, 'there is a difference between consent and submission and every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent.'

In the instant case, not at the first instance, but afterwards the accused obtained consent of victim girl to sexual intercourse on the basis of promise to marry which was not acted upon. But at the first instance also, she was not subjected to rape against her will. The predominant reason which weighed with her in agreeing for sexual intimacy with the accused was the hope generated in her about prospect of marriage with the accused. That she came

to the decision to have a sexual affair only after being convinced that the accused would marry her, is quite clear from the evidence which is in tune with her earliest version in the first information report. There is nothing in her evidence to demonstrate that without any scope for deliberation, she succumbed to the psychological pressure exerted or allurements made by the accused in a weak moment. Nor does her evidence indicate that she was incapable of understanding the nature and implications of the act which she consented to. Another statement of significance is that she tried to resist the talk of marriage by telling the accused that marriage was not possible because they belonged to different castes. However, she agreed to marry him after she was raped and under the impression that he would marry, she did not complain to anybody. These statements do indicate that she was fully aware of the moral quality of the act and the inherent risk involved and that she considered the pros and cons of the act. The prospect of the marriage proposal not materializing had also entered her mind. Thus, her own evidence reveals that she took a conscious decision after active application of mind to the things that were happening. Incidentally, the awareness of the prosecutrix that the marriage may not take place at all in view of the caste barrier was an important factor for holding that her participation in the sexual act was voluntary and deliberate. In the aforesaid circumstances, it cannot be said that the accused with the fraudulent intention of

inducting her to sexual intercourse, made a false promise to marry. No doubt the accused did not hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. But there is no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, accused cannot be convicted.

[106] AIR 2005 SC 249 **(Interested Witness)**

(Israr Vs. State of U.P.)

Interested: Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

Partialy Reliable: Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact the evidence has been found to be deficient to prove guilt of

other accused persons. Falsity of particular material witness or material particular could not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar.

[107] AIR 2005 SC 335 (Witness – Enmity)

(Rama Shish Rai Vs. Jagdish Singh)

It is well settled principle of law that enmity is a double edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence.

[108] AIR 2005 SC 359 (Sec. 91 – Production – Charge)

(State of Orrissa Vs. Debendra Nath Padhi)

No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial. The material as produced by the prosecution alone is to be considered and not the one produced by the accused.

[109] AIR 2005 SC 418 (Sec. 306 – Instigation)

(Ranganayaki Vs. State by Inspector of Police)

Law does not require instigation to be in a particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not is a question to be decided on the facts of each case. It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was

instigation and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation.

[110] AIR 2005 SC 733 (Illegal Search-Seizure)

(State of M.P. through CBI Vs. Paltan Mallah and ors.)

In India, the evidence obtained under illegal search is not completely excluded unless it has caused serious prejudice to the accused. The discretion has always been given to the Court to decide whether such evidence is to be accepted or not.

Evidence regarding seizure cannot be discarded merely because witness accompanying search and seizure was not from same locality.

[111] AIR 2005 SC 1000 (Statement u/s. 161 – Delay)

(State of U.P. Vs. Satish)

It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason to interfere with the conclusion.

[112] AIR 2005 SC 1014 **(Homicidal or Suicidal)**

(State of Karnataka Vs. K.Gopalakrishna)

If the evidence of the doctor (PW-6) is fairly read, it will appear that in his opinion the death was on account of asphyxia caused by throttling. This conclusion was supported by the fact that there was fracture of the cornea of the hyoid bone. It is well accepted in medical jurisprudence that hyoid bone can be fractured only if it is pressed with great force or hit by hard substance with great force. Otherwise the hyoid bone is not a bone which can be easily fractured. Moreover the absence of carbon particles and fumes in the trachea and bronchus lead to the irresistible conclusion that the deceased must have died before she was set on fire. Some amount of carbon particles and fumes would have certainly been found in the trachea and bronchus if she were alive when set on fire.

[113] AIR 2005 SC 1029 **(FIR – Delay)**

(Ravi Kumar Vs. State of Punjab)

The sequence of events as is evident from the record shows that there was no unreasonable delay in lodging the FIR as the first effort of his brothers was to take the deceased to different hospitals for medical aid. As has been rightly observed by the Courts below the first priority of the family members was to save the life of the deceased. Similarly, there is no unexplained delay in sending the special report because of special magistrate, as the distance

between the Police Station and the place where the Illaqa Magistrate was stationed was not small.

[114] AIR 2005 SC 1983 (Sec. 96 – Private Defence)

(V.Subramani and anr. Vs. State of Tamil Nadu)

Section-96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence.' It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record.

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

[115] AIR 2005 SC 2132 (Joinder of Charges)

(Kamalanantha and ors. Vs. State of Tamil Nadu)

Section-218 is under the heading – 'joinder of charges.' Therefore, if joinder of charges is in contravention of procedure prescribed under Section-218, it would be misjoinder of charges and curable under Section-464 and 465. Cr.P.C., provided no failure of justice has in fact been occasioned thereby.

[116] AIR 2005 SC 3440 (Life Imprisonment - Period)

(Md.Munna Vs. Union of India and ors.)

Imprisonment for life is a class of punishment different from ordinary imprisonment which could be of two descriptions, namely, 'rigorous' or 'simple.' It was unnecessary for the Legislature to specifically mention that the imprisonment for life would be rigorous imprisonment for life as it is imposed as punishment for grave offences.

Life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years.

There is no provision either in the Indian Penal Code or in the Code of Criminal Procedure whereby life imprisonment could be treated as fourteen years or twenty years without there being a formal remission by the appropriate Government. Section-57 of Penal Code providing that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years is applicable for the purpose of remission when the matter is considered by the Govt. under the appropriate provisions.

[117] AIR 2005 SC 4352 (Case Diary – Suppliance)

(Sidharth etc. Vs. State of Bihar)

The confidentiality is always kept in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused. In the instant case, we have noticed that the entire case diary was given to the accused and the investigating officer was extensively cross-examined on many facts which were not very much relevant for the purpose of the case. The learned Sessions Judge should have been careful in seeing that the trial of the case was conducted in accordance with the provisions of the Cr.P.C.

[118] AIR 2006 SC 302 (Sec. 149 – Meeting)

(Bishna @ Bhiswadeb Mahanto and ors. Vs. State of W.B.)

For the purpose of attracting Section-149 of the IPC, it is not necessary that there should be a pre-concert by way of a meeting of the persons of the unlawful assembly as to the common object. If a common object is adopted by all the persons and shared by them, it would serve the purpose.

[119] AIR 2006 SC 381 (Rape – Corroboration)

(State of Himachal Pradesh Vs. Asha Ram)

Conviction for rape can be founded on the testimony of the prosexutrix alone, unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony

of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

[120] AIR 2006 SC 508 (Rape-Birth Certificate)

(Vishnu Vs. State of Maharashtra)

In the present case, the father and the mother categorically stated that prosecutrix was below 16 years of age which is supported by the unimpeachable documents, viz, Birth register of Municipal Corporation and register of Hospital where prosecutrix was born. These are the statements of facts. If the statements of facts are pitted against the so called expert opinion of the doctor with regard to the determination of age based on ossification test scientifically conducted, the evidence of facts of the former will prevail over the expert opinion based on the basis of ossification test. Even as per the doctor's opinion in the ossification test for determination of age, the age varies.

Therefore, the ossification test cannot form the basis for determination of the age of the prosecutrix on the face of witness of facts tendered by father and mother supported by unimpeachable documents.

[121] AIR 2006 SC 653 (Discovery – Ownership)

(Shivakumar Vs. State by Inspector of Police)

The ownership of the air gun was not necessary to be proved. Recovery of the said air gun was made at the instance of the accused in terms of Section-27 of the Indian Penal Code. When the possession of the air gun and recovery thereof had been proved, in our opinion, ownership takes a back seat.

[122] AIR 2006 SC 831 (Sec. 149 – Witnesses – Details)

(Kullu alias Masih and ors. Vs. The State of Madhya Pradesh)

It is not necessary that all eye-witnesses should specifically refer to the distinct acts of each member of an unlawful assembly.

When the evidence clearly shows that more than five persons armed with swords, spears etc. had come to the house of Sadruddin with the common object of causing injury, and injured him, the mere fact that several accused were acquitted and only four are convicted, does not enable the four who are found guilty to contend that Section-149 is inapplicable.

[123] AIR 2006 SC 887 (FIR – Copy to Magistrate)

(Rabindra Mahto & anr. Vs. State of Jharkhand)

There cannot be any manner of doubt that Section-157 of Criminal Procedure Code requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated, if the prosecution had produced the reliable evidence to prove the guilt of the accused persons.

[124] AIR 2006 SC 951 (Inquest Panchnama – Details)

(Radha Mohand Singh @ Lal Saheb and ors. Vs. State of U.P.)

Section-174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section-175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who

assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section-174. Neither in practice nor in law, it is necessary for the person holding the inquest to mention all these details.

[125] AIR 2006 SC 1367 (Role of Judge)

(Zahira Habibullah Sheikh and anr. Vs. State of Gujarat and ors.)

If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators.

[126] AIR 2006 SC 1410 (FIR – Copy to Magistrate)

(State of Jammu & Kashmir Vs. Mohan Singh and anr.)

In our view, copy of the first information report was sent to the Magistrate at the earliest on the next day in the Court and there was no delay, much less inordinate one, in sending the same to the Magistrate. In any view of the

matter, it is well settled that mere delay in sending the first information report to a Magistrate cannot be a ground to throw out the prosecution case, if the evidence adduced is otherwise found to be credible and trustworthy.

[127] AIR 2006 SC 1746 (Rape – School Register Entry)

(State of Chhatisgarh Vs. Lekhram)

It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix.

[128] AIR 2006 SC 1892 (Sec. 319 – Stage/Evidence etc.)

(Lok Ram Vs. Nihal Singh and anr.)

The trial Court under Section-319 has undoubted jurisdiction to add any person not being accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge-sheeted, can also be added to face the trial. The trial Court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do

not constitute evidence. The position of an accused who has been discharged, however, stands on a different footing.

Power under Section-319 of the Code can be exercised by the Court suo moto or on an application by someone including accused already before it. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case.

[129] AIR 2006 SC 2002 (FIR – Suicide – Delay)

(Sahebrao and anr. Vs. State of Maharashtra)

The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory.

It has come in evidence that when the father reached Village Babukheda at about 1.00 p.m. on 08-09-1990, he found his daughter dead and nobody was present in the house. When the police came and made inquiries, he said that he was shocked and was not mentally fit to lodge the complaint and would do so later on. After finding her newly wedded daughter's dead body in her matrimonial home where he had left her just before day of incident, it was very natural for a father to lose his tranquility of mind. Hence, if such grief-stricken father had told the police that he would

give the complaint afterwards, it was not unnatural or unusual.

[130] AIR 2006 SC 2535 (D.D – Name of Witness)

(Heeralal Yadav Vs. State of M.P. and ors.)

Presence or non-presence of PW-3 at the scene of occurrence or for that matter non-mentioning of the name of PW-3 in the dying declaration has no connection with ascertainment of the veracity and creditworthiness of the dying declaration.

[131] AIR 2006 SC 2716 (Interested Witness – FIR)

(S.Sudershan Reddy & ors. Vs. State of Andhra Pradesh)

Interested Witness: Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

FIR Details: Non mention in the FIR about the source of light is really non consequential. It is well settled that FIR is not an encyclopedia of the facts concerning the crime. Merely because of minutest details of occurrence were not mentioned in the FIR, the same cannot make the prosecution case doubtful. It is not necessary that minutest details should be stated in the FIR. It is sufficient if a broad picture is presented and the FIR contains the broad features. For lodging FIR, in a criminal case and more particularly in a

murder case, the stress must be on prompt lodging of the FIR. Therefore, mere absence of indication about the source of light does not in any way affect the prosecution version.

[132] AIR 2006 SC 2908 (Solitary Witness)

(Syed Ibrahim Vs. State of Andhra Pradesh)

Merely because he was the solitary witness who claimed to have seen the occurrence, that cannot be a ground to discard his evidence, in the background of what has been stated in Section-134 of the Evidence Act, 1872.

No particular number of witnesses are required for the proof of any fact, material evidence and not number of witnesses has to be taken note of by the Courts to ascertain the truth of the allegations made. Therefore, if the evidence of PW-1 is accepted as cogent and credible, then the prosecution is to succeed.

[133] AIR 2006 SC 3010 (Interested Witness)

(Pulicherla Nagaraju alias Nagaraja Reddy Vs. State of Andhra Pradesh)

Evidence of witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely

implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.

[134] AIR 2006 SC 3084 **(FIR- Rape – Delay)**

(Didar Singh Vs. State of Punjab)

In normal course of human conduct an unmarried girl who is victim of sexual offence would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report.

In the instant case, the girl was a minor below the age of 16 years. She was studying in Class VIII and the accused was the drawing teacher of that class. It is no doubt true that the prosecutrix did not report the incident to anyone either on the first occasion or on the second. Ultimately, a stage was reached when she could not keep it a secret since her mother discovered that she was pregnant. In these circumstances, she was compelled to disclose the true facts. Having regard to the facts and circumstances of the case, delay could not be treated as fatal to prosecution case.

[135] AIR 2006 SC 3221 **(D.D – Form)**

(Balbir Singh and anr. Vs. State of Punjab)

The law does not provide that a dying declaration should be made in any prescribed manner or in the form of questions and answers. Only because a dying declaration was not recorded by a Magistrate, the same by itself, in our view, may not be a ground to disbelieve the entire prosecution case. When a statement of an injured is recorded, in the event of her death, the same may also be treated to be a First Information Report.

[136] AIR 2007 SC 107 **(Sec. 306 – Cruelty – Soon before)**

(Kailesh Vs. State of M.P.)

No presumption under Section-113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter.

It cannot be said that the term "soon before" is synonymous with the term "immediately before". The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link.

[137] AIR 2007 SC 155 (FIR – Delay – Factors)

(Ramdas and ors. Vs. State of Maharashtra)

It is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the Court must take notice.

The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. In the case of sexual offences there is another consideration which may weight in the mind of the Court i.e. initial hesitation of the victim to report the matter to the police which may affect her family life and family reputation.

In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the Court must consider the delay in the background of the facts and circumstances of each case.

[138] AIR 2007 SC 363 (Sec. 96 Private Defence)

(Naveen Chandra Vs. State of Uttaranchal)

The right of private defence is essentially a defensive right circumscribed by the governing statue i.e. I.P.C.

available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in I.P.C. not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.

[139] AIR 2007 SC 420 (Sec. 164 Confession – Oath)

(Babubhai Udesinh Parmar Vs. State of Gujarat)

Taking of a statement of an accused on oath is prohibited. It may or may not be of much significance.

Section-164 provides for safeguards for an accused. The provisions contained therein are required to be strictly complied with. But, it does not envisage compliance of the statutory provisions in a routine or mechanical manner.

[140] AIR 2007 SC 432 (Contradiction/Omissions)

(B.K.Channappa Vs. State of Karnataka)

The occurrence took place on 05/07/1995 and the witnesses were examined in the Court after about a gap of almost five years. The evidence on record further shows that the injured witnesses had been subjected to searching lengthy cross-examination and in such type of cross-examination, some improvements, contradictions, and omissions are bound to occur in their evidence, which cannot

be treated very serious, vital and significant so as to disbelieve and discard the substratum of the prosecution case.

[141] AIR 2007 SC 624 (Witness – Clothes - Blood stains)

(Mohammed Arshad Vs. State of Gujarat)

Testimony of witness who reached spot immediately after occurrence and helped deceased to sit on motorcycle, cannot be rejected on ground that his clothes did not become blood-stained.

[142] AIR 2007 SC 697 (Plea of Drunkenness)

(Babu @ Mubarik Hussain Vs. State of Rajasthan)

The defence of drunkenness can be availed only when intoxication produces such a condition as the accused loses the requisite intention for the offence. The onus of proof about reason of intoxication due to which the accused had become incapable of having particular knowledge in forming the particular intension is on the accused.

In the present case, the plea of drunkenness can never be an excuse for the brutal, diabolic acts of accused.

[143] AIR 2007 SC 848 (Sec. 313 F.S – Value)

(Bishnu Prasad Sinha & anr. Vs. State of Assam)

It is well settled that statements under Section-313 of the Code of Criminal Procedure, cannot form the sole basis of conviction; but the effect thereof may be considered in the light of other evidences brought on record.

[144] AIR 2007 SC 971 (Rape – TI parade – Absence)

(Jameel Vs. State of Maharashtra)

Having regard to the fact that the appellant was known to the prosecutrix and her family members and she having identified him before lodging of the F.I.R., it would have been futile to hold a test identification parade. Even otherwise, the substantive evidence is the evidence of identification in Court.

[145] AIR 2007 SC 1003 (Stay of Conviction)

(Navjot Singh Sidhu Vs. State of Punjab)

The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.

[146] AIR 2007 SC 1019 (Time of death – Opinion)

(Baso Prasad and ors. Vs. State of Bihar)

The exact time of death cannot be established scientifically and precisely, only because of presence of rigor mortis or in the absence of it.

[147] AIR 2007 SC 1135 (Sec. 161 – Statement – Gist)

(State of NCT of Delhi Vs. Ravi Kant Sharma and ors.)

Statement of witnesses recorded during investigation does not include interpretation of Investigating Officer of the statements or gist of statements recorded under Section-172. Direction to supply 'gist', if it constitutes statement recorded under Section-161, is unsustainable.

[148] AIR 2007 SC 1218 (Sec. 164 –Confession–Threat etc.)

(Ram Singh Vs. Sonia and ors.)

It is evident from the certificate appended to the confessional statement by PW-62 that the confessional statement was made by the accused voluntarily. Of course, he failed to record the question that was put by him to the accused whether there was any pressure on her to give a statement, but PW-62 having stated in his evidence before the Court that he had asked the accused orally whether she was under any pressure, threat or fear and he was satisfied that A-1 was not under any pressure from any corner, that in the room in which the said confessional statement was recorded it was only he and PW-32 who were present and none else and that no police officer was available even within the precincts of the hospital, the said defect, in our view, is cured by Section-463 as the mandatory requirement provided under Section-164(2), namely, explaining to the accused that he was not bound to make a statement and if a statement is made the same might be used against him has been complied with and the same is established from

the certificate appended to the statement and from the evidence of PW-62.

[149] AIR 2007 SC 1299 (Interested Witness – Separable)

(Kalegura Padma Rao and anr. Vs. State of A.P.)

Interested: In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

Partly reliable: Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end.

[150] AIR 2007 SC 1355 (Circumstantial Evidence)

(Geejaganda Somaiah Vs.State of Karnataka)

The conditions precedent before conviction could be based on circumstantial evidence must be fully established. They are:

The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established; the fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved; and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

[151] AIR 2007 SC 1729 (TI Parade – Absence)

(Ravi @ Ravichandran Vs. State Rep.by Inspector of Police)

TI Parade: It is no doubt true that the substantive evidence of identification of an accused is the one made in the Court. A judgment of conviction can be arrived at even if no test identification parade has been held. But when a First Information Report has been lodged against unknown persons, a test identification parade in terms of Section-9 is

held for the purpose of testing the veracity of the witness in regard to his capability of identifying who were unknown to him. Such test identification parade is required to be held as early as possible so as to exclude the possibility of the accused being identified either at the police station or at some other place by the concerned witnesses or with reference to the photographs published in the newspaper.

Where the manner in which occurrence took place as well as conduct of prosecution witnesses do not lead to an inference that the accused has been properly identified, the conviction is not sustainable and the accused is at least entitled to benefit of doubt.

Inquest: The purpose of preparing the inquest report is only to notice as to whether the murder committed was homicidal in nature or not and not for making a note in regard to identification marks of the accused.

[152] AIR 2007 SC 1893 (Contradictions – Omissions)

(Vikram and ors. Vs. State of Maharashtra)

The purported omissions related only to the details of the occurrence, but the fact that P.Ws. 2, 3, 4 and 6 were eye witnesses to the occurrence does not stand thereby disproved in any manner whatsoever. The occurrence took place on 22/1/1997. They were examined in Court two and a half years later. If there occurred some contradictions or even assuming they had omitted to state the incident in great details, the same by itself would not lead to a

conclusion that the appellants had been falsely implicated in the case.

[153] AIR 2007 SC 2045 (Sec.306–Disputes –Harassment)

(Bhagwan Das Vs. Kartar Singh and ors.)

It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by he husband or her in-laws. This, however, in our opinion would not by itself and without something more, attract Section-306 IPC read with Section-107 IPC.

[154] AIR 2007 SC 2154 (Sec. 306 –Cruelty-Soon before)

(Raja Lal Singh Vs. State of Jharkhand)

It may be mentioned that the words "soon before her death" do not necessarily mean immediately before her death.

This phrase is an elastic expression and can refer to period either immediately before death of the deceased or within a few days or few weeks before death. In other words, there should be a perceptible nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her.

[155] AIR 2007 SC 2188 (Sec.313- FS-Questions)

(Ajay Singh Vs. State of Maharashtra)

The importance of observing faithfully and fairly the provisions of Section-313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each

material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstances should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

[156] AIR 2007 SC 2257 (Solitary Witness)

(State of Rajasthan Vs. Om Prakash)

Solitary Witness: Evidence of solitary witness can be basis for conviction, even if he is related to deceased. Corroboration is not a must.

Contradictions: Irrelevant details which do no in any way corrode the credibility of a witness cannot be labeled as omissions or contradictions.

[157] AIR 2007 SC 2274 (Sec. 34- Intention-Proof etc.)

(Manik Das and ors. Vs. State of Assam)

Section-34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section-34 if such criminal act is done in furtherance of a common

intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section-34, be it prearranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true content of the Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.

The Section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section-34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section-34, when an accused is convicted under Section-302 read with Section-34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of

a party who act in furtherance of the common intention of all to prove exactly what part was taken by each of them.

[158] AIR 2007 SC 2425 (TI Parade- Absence)

(Heera and anr. Vs. State of Rajasthan)

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 Sections-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.

[159] AIR 2007 SC 2430 (Sec.149–Common object-Factors)

(State of Punjab Vs. Sanjiv Kumar and ors.)

Section-149 has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section-141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section-149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section-141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have

understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section-141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all.

A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section-149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section-149, IPC may be different on different members of the same assembly.

Common object is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instanti. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the results there-from.

The distinction between the two parts of Section-149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed

falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part.

In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object.

[160] AIR 2007 SC 2531 (Sentence – Factors)

(Swamy Shaddananda @ Murali Manohar Mishra Vs. State of Karnataka)

There is a clear and discernible necessity of caution to set the maximum punishment in an offence. And also by implication there must be intensive and exhaustive inquiry into accused related parameters before employing the maximum sentence by a Court of law. Therefore, discretion to the judiciary in this respect (to declare the maximum punishment) is of utmost critical and seminal value. Reasons must be detailed setting clearly why any punishment other than the maximum punishment will not suffice. This is a

general and age old rule of sentencing which has been statutorily recognized under Section-354(3).

Also it is to be realized that in criminal cases character of accused is immaterial by the mandate of sections-53 and 54 of Indian Evidence Act. The same should not factor in the discussions at the sentencing stage. If that be so, bad character of the accused by itself should not be a determinative factor.

[161] AIR 2007 SC 2594 (FIR – Contradictions)

(Asharam and anr. Vs. State of M.P.)

It is well settled that an FIR is not a substantive piece of evidence. It cannot contradict the testimony of the eye witnesses even though it may contradict its maker.

[162] AIR 2007 SC 3015 (Cross Examination-Questions)

(Jasu Asir Singh & ors. Vs. State)

The question put in the cross examination to a great extent probablise the prosecution version. Though questions put in cross-examination are not always determinative in finding an accused guilty, they are certainly relevant.

[163] AIR 2007 SC 3029 (Sec. 311 – Duty of Court)

(Iddar and ors. Vs. Aabida and anr.)

Section-311 is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with

regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. The Section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. The Court is not empowered to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the Section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not, must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

[164] AIR 2007 SC 3059 (Rape-Marriage-Consent)

(Pradeep Kumar Verma Vs. State of Bihar and anr.)

A representation deliberately made by the accused with a view to elicit the assent of the victim without having the

intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying victim and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section-375 clause second.

[165] AIR 2007 SC 3106 **(Police Witnesses)**

(Girja Prasad (Dead) by L.Rs. Vs. State of M.P.)

It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of law may not base conviction solely on the evidence of complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

[166] AIR 2007 SC 3225 **(Sentence – Factors)**

(State of Karnataka Vs. Raju)

The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the Courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner stone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his 'Law in Changing Society' stated that, "State of criminal law continues to be - as it should be – a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with merely where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons

used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

[167] AIR 2007 SC 3228 (Contradiction – Omissions)

(Kulesh Mondal Vs. State of West Bengal)

Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

[168] AIR 2007 SC 3234 (FIR – Delay – Explanation)

(Dilawar Singh Vs. State of Delhi)

Mere statement that, the matter was reported to the police but the police did not take any action, such statement can hardly be taken to have explained the delay in making complaint. It is the simplest of things to contend that the

police, though report had been lodged with it, had not taken any steps. It has to be established by calling for the necessary records from the police to substantiate that in fact a report with the police had been lodged and that the police failed to take up the case.

It would be appropriate to note that Courts while dealing with accused persons during trial, when they are not represented by counsel, to keep in view the mandate of Section-304, Cr.P.C.

[169] AIR 2008 SC 10 (Last Seen together-Wife)

(State of Rajasthan Vs. Parthu)

It is not disputed that the deceased and the appellant were living separately from their family. It has also not been disputed that at the time when the incident occurred, the respondent was in his house together with the deceased. It is furthermore not in dispute that after the incident took place, the respondent was not to be found. He was arrested only on 20/6/1995. If the deceased and the respondent were together in their house at the time when the incident took place which was at about 10 0'clock in the night, it was for the respondent to show as to how the death of the deceased took place.

[170] AIR 2008 SC 78 (Further Investigation)

(Dinesh Dalmia Vs. C.B.I.)

A charge sheet is a final report within the meaning of Section-173(2). It is filed so as to enable the Court concerned to apply its mind as to whether cognizance of the offence

thereupon should be taken or not. The report is ordinarily filed in the form prescribed there-for. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding law does not require that filing of the charge sheet must await the arrest of the accused.

The power of the investigating officer to make a prayer for making further investigation in terms of sub-section (8) of Section-173 is not taken away only because a charge sheet under sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

[171] AIR 2008 SC 161 (Witness - Enmity)

(Manilal Hiraman Chaudhry Vs. State of Maharashtra)

Fact that witness was inimical towards accused persons as he had filed complaint against accused that they attempted to kill him, same by itself not valid ground to discredit said witness who was otherwise trustworthy.

[172] AIR 2008 SC 175 (Interested Witness)

(Bhagga and ors. Vs. State of Madhya Pradesh)

The mere fact that all the eye-witnesses belong to one family cannot be a reason to disbelieve their evidence, since they were all on the spot or nearly the spot when the incident occurred.

[173] AIR 2008 SC 178 (FIR-Preliminary Inquiry)

(Rajinder Singh Katoch Vs. Chandigarh Administration and ors.)

Although the officer in charge of police station is legally bound to register a first information report in terms of Section-154 if the allegations made gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case in order to find out as to whether the first information sought to be lodged had any substance or not.

[174] AIR 2008 SC 233 (Sec. 306 – Dowry – Scooter etc.)

(Kishan Singh and anr. Vs. State of Punjab)

In the present case, there was sufficient evidence in the form of sworn testimony of PW.2 - Sudershana Rani, PW.4 - Gopal Singh and PW.7- Dharminder Singh that there was a demand of dowry by accused and deceased Reeta Kumari had made such complaint immediately after marriage which was repeated and reiterated. The deceased used to inform about such demand by the accused to her parents. It is,

therefore, totally irrelevant whether accused possessed motorcycle or scooter.

[175] AIR 2008 SC 441 (Invetigation – Lapses)

(Paramjit Singh @ Mithu Singh Vs. State of Punjab)

A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation.

[176] AIR 2008 SC 515 (FIR-Copy-Sec. 149 Overt act)

(Mahmmod and anr. Vs. State of U.P.)

F.I.R: It is not possible to lay down any universal rule as to within what time the special report is required to be dispatched by the Station House officer after recording the FIR. Each case turns on its own facts.

Sec.149: Once a membership of an unlawful assembly is established. It is not incumbent on the prosecution to establish any specific overt act to any of the accused for fastening of liability with the aid of section-149 of the IPC. Commission of overt act by each member of the unlawful assembly is not necessary. The common object of the unlawful assembly of the accused in the present case is evident from the fact that some of them were armed with deadly weapons. None of them were curious onlookers or spectators to the macabre drama that was enacted on 19/2/1977 at 3.30 p.m. at galiyara, village Badipur.

[177] AIR 2008 SC 780 (Fire arm – Ballistic Report)

(Veenitkumar Chauhan Vs. State of U.P.)

It cannot be laid down as a general proposition that in every case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a Ballistic Expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by post mortem notes is consistent with the direct evidence, the examination of Ballistic Expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence.

[178] AIR 2008 SC 890 (Sec. 306 – Pregnant Woman)

(Rameshwar Dass Vs. State of Punjab and anr.)

A pregnant woman ordinarily would not commit suicide unless relationship with her husband comes to such a pass that the she would be compelled to do so.

[179] AIR 2008 SC 920 (D.D – F.I.R)

(Dharam Pal and ors. Vs. State of U.P.)

The report of occurrence was dictated by the deceased himself and the same was read over to him after which he had put his thumb impression on the same. This report is

admissible under Section-32 of the Evidence Act as a dying declaration.

[180] AIR 2008 SC 927 (Solitary Witness)

(Ramesh Krishna Madhusudan Nayar Vs. State of Maharashtra)

On the basis of a solitary evidence conviction can be maintained. Section-134 clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of a single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the Court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained.

[181] AIR 2008 SC 982 (Sec. 306 – Real Cause)

(State of Rajasthan Vs. Jaggu Ram)

The conduct of the accused and his family members in not informing the parents of the deceased about the injuries caused on her head and consequential death and the fact that the cremation of the dead body was conducted in the wee hours of 30/3/1993 without informing the parents or giving an intimation to the Police so as to enable it to get the post-mortem of the dead body conducted go a long way to show that the accused had deliberately concocted the story that Shanti @ Gokul was suffering from epilepsy and she suffered injuries on her head by colliding against the door bar during the bout of fits. The disposal of dead body in a

hush-hush manner clearly establish that the accused had done so with the sole object of concealing the real cause of the death of Shanti @ Gokul.

[182] AIR 2008 SC 1052 (Further Investigation)

(State of A.P. Vs. A.S.Peter)

Carrying out of a further investigation even after filling of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and re-investigation. Whereas re-investigation without prior permission is necessarily forbidden, further investigation is not.

[183] AIR 2008 SC 1091 (Injury to accused)

(Shaikh Maid and anr. Vs. State of Maharashtra)

Injury to accused: It is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature.

Single blow: It cannot be said that whenever a single blow is given, that would not attract Section-302, I.P.C.

[184] AIR 2008 SC 1198 (Injured Witness)

(Vijay Shankar Shinde and ors. Vs. State of Maharashtra)

As a matter of fact, the evidence of injured person who is examined as a witness lends more credence, because normally he would not falsely implicate a person thereby protecting the actual assailant.

[185] AIR 2008 SC 1260 (Injury to accused)

(Babu Ram and ors. Vs. State of Punjab)

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

[186] AIR 2008 SC 1414 (Impounding of a passport)

(Suresh Nanda Vs. C.B.I.)

While the police may have the power to seize a passport under Section-102(1). Cr.P.C., it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section-10(3) of the Passports Act, 1967. Even the Court cannot impound a passport. Though, Section-104, Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding passport is provided for in

Section-10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law.

There is difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document.

[187] AIR 2008 SC 1426 **(D.D. Certificate)**

(Sher Singh and anr. Vs. State of Punjab)

Normally, the Court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable.

The first dying declaration exonerating the accused persons made immediately after she was admitted in the hospital was under threat and duress that she would be admitted in the hospital only if she would give a statement in favour of the accused persons in order to save her in-laws

and husband. The first dying declaration does not appear to be coming from a person with free mind without there being any threat. The second dying declaration was more probable and looks natural to us. Although it does not contain the certificate of the doctor that she was in a fit state of mind to give the dying declaration but the Magistrate who recorded the statement had certified that she was in a conscious state of mind and in a position to make the statement to him. Mere fact that it was contrary to the first declaration would not make it untrue.

[188] AIR 2008 SC 1537 (Circumstantial Evidence)

(Liyakat Vs. State of Uttaranchal)

For a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. When a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when

all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

[189] AIR 2008 SC 1603 (F.I.R – Telephone Call - Details)

(Animireddy Venkata Ramana and ors. Vs. Public Prosecutor, H.C. of A.P.)

F.I.R: When an information is received by an officer in-charge of a police station, he in terms of the provisions of the Code was expected to reach the place of occurrence as early as possible. It was not necessary for him to take that step only on the basis of a First Information Report. An information received in regard to commission of a cognizable offence is not required to be preceded by a First Information Report.

Phone: In the aforementioned situation, it cannot be said that the information received by the Investigation Officer on the telephone was of such a nature and contained such details which would amount to a First Information report so as to attract the provisions of Section-162 of the Code.

Details: A First information Report is not meant to be encyclopedic. While considering the effect of some omissions in the First Information Report on the part of the informant, a Court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the Court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the

correctness of the contents of the report, the Court applies certain well-know principles of caution.

[190] AIR 2008 SC 1661 (Offence – Intention)

(Nishan Singh Vs. State of Punjab)

If a person snatches a weapon carried by someone else and brutally kills another, it cannot be said that he did not have any intention to cause death. Whether the accused had any intention to kill the deceased must be judged upon taking into consideration the fact situation obtaining in each case.

[191] AIR 2008 SC 1747 (Ocular & Medical Evidence)

(Ram Swaroop Vs. State of Rajasthan)

Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the

testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice.

[192] AIR 2008 SC 1842 **(Child Witness)**

(Golla Yelugu Govindu Vs. State of A.P.)

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notice his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial Court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a word of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced, easily, shaped and molded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

[193] AIR 2008 SC 1860 **(Contradictions etc.)**

(Shivappa and ors. Vs. State of Karnataka)

Minor discrepancies or some improvements also, in our opinion, would not justify rejection of the testimonies of the

eye-witnesses, if they are otherwise reliable. Some discrepancies are bound to occur because of the sociological background of the witnesses, as also the time gap between the date of occurrence and the date on which they give their depositions in Court.

[194] AIR 2008 SC 1903 **(Charge – Materials)**

(Hem Chand Vs. State of Jarkhand)

The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court.

The refusal by Court to look into documents filed by the accused along with his application for discharge is proper.

[195] AIR 2008 SC 1943 **(Role of Judge)**

(Himanshu Singh Sabharwal Vs. State of M.P. and ors.)

If a criminal Court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if

a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators.

The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section-311 of the Code and Section-165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all

concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz, whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal 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 violated 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 stage managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

[196] AIR 2008 SC 2006 (Sec. 96 – Private Defence)

(Narain Singh and ors. Vs. State of Haryana)

In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to this safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step

with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.

[197] AIR 2008 SC 2108 (Sec. 306 – Investigation)

(Sohan Raj Sharma Vs. State of Haryana)

Abetment involves a mental process of instigating person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under Section-306 of IPC.

[198] AIR 2008 SC 2205 (Sniffer Dog Evidence)

(Dinesh Borthakur Vs. State of Assam)

While the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused.

[199] AIR 2008 SC 2323 (F.I.R – Delay)

(Chandrappa and ors. Vs. State of Karnataka)

It is true that prima facie there appears to be some delay in the lodging of the FIR at 10.45 p.m. in the light of the fact that incident had happened at 4.30 p.m. on 1st August 1993. However, as three of the accused have put up a counter version the effect of the delay in the FIR is somewhat reduced. We are also of the opinion that the delay

in the lodging of the FIR has been substantially explained as the incident had happened in a remote village some distance from the Police Station and as PW3 had also sustained a serious injury, the first anxiety of the family would have been to look after him the more so as all the brothers of the deceased and PW3 were themselves the assailants and there was nobody else in the family to have taken the injured PW3 to the hospital. It is also significant that the FIR could not have been recorded earlier as the entire family was involved either on one side or the other and it had ultimately been left to a hapless widow, completely isolated from the rest of the family, to lodge the FIR. It is in this background we find that a delay of a couple of hours cannot be said to be unreasonable.

[200] AIR 2008 SC 2343 (TI Parade – Absence)

(Mahabir Vs. State of Delhi)

Identification tests do not constitute substantive evidence. They are primarily 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.

The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses.

It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused.

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 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.

[201] AIR 2008 SC 2377 (Sec. 306 - Dowry – Meaning)

(Narayanmurthy Vs. State of Karnataka and anr.)

Gifts given at the time of performing customary thread changing ceremony in connection with birth of girl child, are not enveloped within the ambit of "dowry".

[202] AIR 2008 SC 2389 (Identification – Dark night)

(Dalbir Singh Vs. State of Haryana)

The stand of the appellant that in dark night recognition would not have been possible from voice is clearly untenable. In a dark night ocular identification may be difficult in some cases but if a person is acquainted and closely related to another, from the manner of speech, gait and voice identification is possible.

[203] AIR 2008 SC 2436 (F.I.R – Delay – Explanation)

(Ashok Kumar Chaudhary and ors. Vs. State of Bihar)

It is trite that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the Court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the F.I.R. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case.

[204] AIR 2008 SC 2666 (Sec. 498-A -Cruelty-Jurisdiction)

(Bhura Ram and ors. Vs. State of Rajasthan)

The facts stated in the complaint disclose that the complainant left the place where she was residing with her husband and in-laws and came to the city of Sri Ganganagar, State of Rajasthan and that all the alleged acts as per the complaint had taken place in the State of Punjab. The Court at Rajasthan does not have the jurisdiction to deal with the matter.

[205] AIR 2008 SC 2692 (Sec. 149 – Object – Factors)

(State of Karnataka Vs. Chikkahottappa @ Varade Gowda and ors.)

The pivotal question is applicability of Section-149 IPC. Said provision has its foundation on constructive liability

which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section-141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section-149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section-141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of such an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section-141. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it.

Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section-149 have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section-149, IPC may be different on different members of the same assembly.

'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the

members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section-141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instate.

Section-149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may

yet fall under Section-141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result there-from. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at the time of or before or after the occurrence. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the

first part. The distinction between the two parts of section-149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object would also be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object.

[206] AIR 2008 SC 2965 (Sec. 344 – False evidence)

(Mahila Vinod Kumari Vs. State of Madhya Pradesh)

For exercising the powers under Section-344 the Court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the Court must come to the conclusion that in the interests of justice the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions are mandatory.

[207] AIR 2008 SC 3040 (Life Imprisonment – Period)

(Swami Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka)

When a murder convict comes to Supreme Court carrying a death sentence awarded by the trial Court and confirmed by the High Court, the Court may find that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment which, subject to remission, normally works out to a term of 14 years would be grossly disproportionate and inadequate. If in such cases the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court. i.e. the vast hiatus between 14 years' imprisonment and death. The Court, therefore, can substitute a death sentence by life imprisonment for rest of life of convict or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be.

[208] AIR 2008 SC 3102 (Further Investigation)

(Ramachandran Vs. R.Udayakumar and ors.)

Even after completion of investigation under sub-section (2) of Section-173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or re-investigation.

[209] AIR 2008 SC 3209 (Interested Witness)

(Ponnam Chandraiah Vs. State of A.P.)

In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

[210] AIR 2008 SC 3212 (Sec. 306 – Presumption)

(Rajbabu and ors. Vs. State of M.P.)

The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the

Court is whether the alleged cruelty was of such a nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

[211] AIR 2008 SC 3227 (F.I.R–Despatch–Delay/Sentence)

(Bhathula Nagamalleswar Rao and ors. Vs. State, Rep. by Public Prosecutor)

F.I.R: In the present case there was a delay of about 16 hours in sending the FIR (Ex.P5) to the Magistrate, but the explanation as recorded by the trial Court that the majority of the police personnel were deputed in village Uddandarayunipalem for maintaining the law and order situation which was too tense in view of the murder of three men of the village on the same evening, we do not find any cogent and convincing reason for doubting the correctness and truthfulness of the FIR which was promptly lodged in the Police Station at 9.00 p.m. in relation to the murder of deceased No.1 and deceased No.2 at about 7.30 p.m.

Sentence-Age: Lastly, it was urged by Mr. Patwalia that the case of B.Seshaiah (A-10) is an extremely hard case, who is now aged about 87 years and is suffering from Parkinson's disease Hypertension. Diabetes with severe Calcific AV Stenosis, Mild AR, Moderate MR and Anemia of some degree. This apart, A-10 has already undergone jail suffering for about three years and, therefore, taking all these factors into consideration, his sentence may be reduced to the period already undergone by him. We are afraid to accept this submission of the learned counsel, because A-10 has been

held guilty for being a member of unlawful assembly and sharing common intention with A-1, A-2, A-10, A-11 and A-12 to commit the murder of deceased No.2.

[212] AIR 2008 SC 3276 **(Interested Witness)**

(Vinay Kumar Rai and Anr. Vs. State of Bihar)

The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also.

[213] AIR 2009 SC 1 **(Interested Witness)**

(Rajesh Kumar Vs. State of H.P.)

There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that

the witnesses had reason to shield actual culprit and falsely implicate the accused.

[214] AIR 2009 SC 56 (Sentence – Factors)

(Shivaji @ Dadta Shankar Alhat Vs. State of Maharashtra)

Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft-modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organized crime or mass murders of innocent people would call for imposition of death sentence as deterrence.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long

endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. Imposition of sentence without considering its effect on the social order in many cases may be in reality be a futile exercise. The social impact of the crime, i.e., where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

The plea that in a case based on circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. In fact

in most of the cases where death sentence are awarded for rape and murder and the like, there is practically no scope for having an eye-witness. They are not committed in the public view. But very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect.

[215] AIR 2009 SC 69 **(Sec. 311 – Powers)**

(Hanuman Ram Vs. State of Rajasthan and ors.)

The object underlying Section-311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section-311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this

Code." It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wide the power the greater is the necessity for application of judicial mind.

[216] AIR 2009 SC 87 (Murder – Culpable Homicide)

(Budhi Lal Vs. State of Uttarakhand)

In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called. 'culpable homicide of the first degree.' This is the gravest form of culpable homicide, which is defined in Section-300 is 'murder'. The second may be termed as 'culpable homicide of the second degree.' This is punishable under the first part of Section-304. Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishment provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section-304.

The distinction lies between bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of

nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit if this clause.

The difference between clause (b) of Section-299 and clause (3) of Section-300 is one of the degree of probability of death resulting from the intended bodily injury. The word 'likely' in clause(b) of section-299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury ..... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature. Under clause thirdly of Section-300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e., (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury: and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

Clause(4) of Section-300 would be applicable where the knowledge of the offender as to the probability of

death of a person or persons in general as distinguished from a particular person or persons – being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

[217] AIR 2009 SC 152 (Contradictions – Omissions)

(State Rep.by Inspector of Police Vs.Saravanan and anr.)

While appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the Court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial Court upon appreciation of evidence forms an opinion about the credibility thereof.

It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the Court to reject the evidence on minor variations and discrepancies.

[218] AIR 2009 SC 157 (Partly Reliable)

(Bur Singh and anr. Vs. State of Punjab)

In essence the prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is

sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end.

[219] AIR 2009 SC 210 (Ocular & Medical Evidence)

(Sunil Dattatraya Vaskar and anr. Vs. State of Maharashtra)

Where the eye-witness account is found to be credible and trustworthy, the medical opinion suggesting an alternate possibility is not accepted to be conclusive.

[220] AIR 2009 SC 214 (Identification – Street light)

(Ravi Vs. State Rep.by Inspector of Police)

So far as the identification aspect is concerned PW-1 has categorically stated that there was light in the nearby church and the street lights near Primary School were burning at the time of occurrence and he could see the occurrence in that light. The trial Court and the High Court referred to the presence of street lights in Exh.P-20, the rough sketch. Therefore the plea of identification being not possible has no substance. Further the accused persons were known to the witness. That is also a relevant factor.

[221] AIR 2009 SC 378 (Last Seen Together)

(Chattarsingh and anr. Vs. State of Haryana)_

The last-seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the Courts should look for some corroboration.

[222] AIR 2009 SC 417 (Sec. 149 – Knowledge)

(Shivjee Singh and ors. Vs. State of Bihar)

The word 'knew' used in the second branch of the Section-149 implies something more than a possibility and it cannot be made to bear the sense of 'might have been known.' Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section-149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part.

However, there may be cases which would be within first part, but offences committed in prosecution of the common object would be generally, if not always, be within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object.

[223] AIR 2009 SC 818 **(F.I.R – Delay)**

(Shankaraya Naik and Ors. Vs. State of Karnataka)

There is absolutely no delay in the lodging of the FIR in the facts of the case. The incident had happened at 6.30 p.m. on 25th August, 1995, the injured had reached the hospital by 8 p.m. and the FIR had been lodged at the police station by an injured eye witness eight hours later. Taking into account normal human conduct and the fact that many persons had sustained injuries, one of whom had subsequently died, a delay of eight hours can, by no stretch of imagination, be dubbed as inordinate.

[224] AIR 2009 SC 885 **(Rape-Name of Victim)**

(S.Ramakrishna Vs. State)

Disclosure of name of victim in offences against women i.e. rape etc, is prohibited in view of newly added Section-228-A of the Penal Code.

[225] AIR 2009 SC 958 **(F.I.R – Delay)**

(Jagat Singh Vs. State of U.P.)

The occurrence took place at about 8.30 p.m. near village in which the accused allegedly fired gun shots at deceased and FIR of occurrence was lodged at about 6.15 a.m. on the following morning at Police Station which is

situated at a distance of about 15 km. from place of occurrence. The father of deceased has given explanation that due to fear from the accused and non-availability of conveyance, he could not promptly go to the police station to lodge FIR of the occurrence. He stated that after the murder of deceased, he with the help of his co-villagers took the dead body of his son from the place of occurrence to his house and since they were all wailing and grief stricken he got the report of the occurrence scribed by his second son at about 3.00 a.m. on the following morning and then at about 4.00 a.m. he proceeded to the police station, and handed over the written report to the police official present there. In these circumstances, the explanation offered by the informant for not lodging the FIR soon after the occurrence, was quite satisfactory and convincing and there was no deliberate delay on his part in the crime to police. Therefore, FIR would not be liable to be rejected on ground of delay in lodging.

[226] AIR 2009 SC 1019 (Rape – Healthy Woman)

(State of Orrissa Vs. Sukru Gouda)

It cannot be accepted that it is not possible for a single man to commit sexual intercourse with a healthy adult female in full possession of her senses against her will.

[227] AIR 2009 SC 1066 **(Reasonable Doubt)**

(State of Goa Vs. Pandurang Mohite)

A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.

A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

[228] AIR 2009 SC 1110 **(Solitary Witness)**

(Vithal Pundalik Zendge Vs. State of Maharashtra)

On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, 1872, the following propositions may be safely stated as firmly established;

(1) As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statue, Courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down and much depends upon the judicial discretion of the Judge before whom the case comes.

[229] AIR 2009 SC 1189 (Interested Witness)

(The State of Tamil Nadu rep. by Secretary to Government Vs. Subair @ Mohamed Subair and ors.)

It is seen that PWs-1 and 2 stated that they had left the injured in lurch and had disappeared from the scene making deceased to cringe an auto driver to make him to hospital. Would any close friend of a person involved in the movement allow such a thing to happen to him is the question looming large and there is no explanation for it. Further, it is curious to note that both PWs-1 and 2 have stated that they did not inform about the occurrence to anybody till they were asked by the police in the midnight of the date of occurrence. The conduct of PWs-1 and 2 is un-natural and unbelievable and their presence at the time of occurrence is doubtful and the testimonies of PWs-1 and 2 cannot be accepted.

[230] AIR 2009 SC 1223 (Sec. 96 – Private defence)

(Raghbir Singh and ors. Vs. State of Haryana)

In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had

time to have recourse to public authorities are all relevant factors to be considered.

[231] AIR 2009 SC 1242 (Sec. 306 – Dowry – Soon before)

(Prem Kanwar Vs. State of Rajasthan)

"Dowry" definition is to be interpreted with the other provisions of the Act including Section-3, which refers to giving or taking dowry and Section-4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

The expression 'soon before her death' used in the substantive Section-304-B, I.P.C. and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined.

The expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned. It would be of no consequence.

[232] AIR 2009 SC 1262 (F.I.R – Telephone Call)

(Ravishwar Manjhi and ors. Vs. State of Jharkhand)

A mere information received on phone by a Police Officer without any details as regards the identity of the accused or the nature of injuries caused to the victims as well as the name of the culprits may not be treated as FIR.

[233] AIR 2009 SC 1307 (Circumstantial Evidence)

(Mohd. Azad @ Samin Vs. State of West Bengal)

Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted.

[234] AIR 2009 SC 1426 (Sec. 34 – Overt act)

(Daya Shankar Vs. State of M.P.)

Section-34 is applicable even if no injury has been caused by the particular accused himself. For applying Section-34 it is not necessary to show some overt act on the part of the accused.

[235] AIR 2009 SC 1461 (Contradictions – Omissions)

(Babasaheb Apparao Patil Vs. State of Maharashtra)

The discrepancies which do not shake the basic version of the prosecution case may be discarded. Similarly, the discrepancies which are due to normal errors of perception or observation should not be given importance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record

as a whole and should not disbelieve the evidence of a witness altogether, if it is otherwise trustworthy.

[236] AIR 2009 SC 1487 (D.D – Principles)

(Varikuppal Srinivas Vs. State of A.P.)

This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt.Paniben v. State of Gujarat (AIR 1992 SC 1817).

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. V. The State of Madhya Pradesh (1976) 2 SCR 764)].

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416) and Ramavati Devi v. State of Bihar (AIR 1983 SC 164)].

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. v. The Public Prosecutor (AIR 1976 SC 1994)].

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See

Rasheed Beg v. State of Madhya Pradesh (1974 (4) SCC 264)].

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See Kaka Singh v. State of M.P. (AIR 1982 SC 1021)].

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and Ors. v. State of U.P. (1981 (2) SCC 654)].

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617)].

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and Ors. v. State of Bihar (AIR 1979 SC 1505)].

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said

declaration cannot be acted upon. [See State of U.P.v. Madan Mohan and Ors. (AIR 1989 SC 1519)].

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangram Gehani v. State of Maharashtra (AIR 1982 SC 839) and Mohan Lal and Ors. V. State of Haryana (2007 (9) SCC 151)].

[237] AIR 2009 SC 1535 (Sentence – Delay in Trial)

(Mangal Singh and anr. Vs. Kishan Singh and ors.)

Any inordinate delay in conclusion of a criminal trial undoubtedly has highly deleterious effect on the society generally and particularly on the two sides to the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence. Thus, where accused were convicted of the offence of causing grievous hurt, reduction of custodial sentence to modest fine in absence of any indication that accused or prosecution were responsible for the delay in trial, would not be proper.

[238] AIR 2009 SC 1568 (Rape – School Register)

(Arjun Singh Vs. State of H.P.)

The register maintained in a school is admissible evidence to prove the date of birth of the person concerned in terms of Section-35 of the Indian Evidence Act, 1872. It may be true that the entry of the school register is not conclusive but it has evidentiary value.

[239] AIR 2009 SC 1636 (F.I.R – Delay)

(State of Maharashtra Vs. Prakash Sakha Vasave & ors.)

So far as the delay in lodging the First Information Report is concerned, it has been accepted that the informant went to the wrong police station and when he was directed to go to Navapur Police Station, he went there and lodged the FIR. That clearly explains the delay.

[240] AIR 2009 SC 1642 (Sentence – Factors)

(State of M.P. Vs. Kashiram and ors.)

The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal."

[241] AIR 2009 SC 1854 (Police Witnesses)

(Mukhtiar Singh & anr. Vs. State of Punjab)

PW-5, Gurdas Singh, SPO reached at the scene of the occurrence immediately after the occurrence and in fact he ran after and pursued the accused persons but was unable to catch them. While scrutinizing the evidence of PW-5, we find no reason to disbelieve the statement of the said officer. He was not an investigating officer nor has he any connection with the case apart from being a witness.

[242] AIR 2009 SC 1896 (F.I.R – Name of accused)

(Mohan Chand Vs. State of Uttarakhand)

In the instant case the accused is not personally known to the victim and therefore stating his name in the FIR did not arise.

[243] AIR 2009 SC 1912 (Identification – Dark Night)

(State of U.P. Vs. Sheo Lal and ors)

One of the prime reasons indicated by the High Court to discard the prosecution versions is that in a dark night the possibility of identification was not there. The source of light for identification was not mentioned in the FIR. It is significant to note that there were four of the witnesses and some of them were injured in the incidence.

So far as the High Court's conclusions that there was non mentioned of the source of light in the FIR it needs to be noted that the accused persons were not strangers to the witnesses. They were closely related.

[244] AIR 2009 SC 1966 (Sec. 313 – F.S. Questionnaire)

(State of Punjab Vs. Hari Singh and ors.)

If the Court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the Court to supply the questionnaire to his advocate (containing the questions which the Court might put to him under Section-313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for an answer). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the Court, he shall forfeit his right to seek personal exemption from Court during such questioning. The Court has also to ensure that the imaginative response of the counsel is intended to be availed to be a substitute for taking statement of accused.

In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section-313 of the Code.

[245] AIR 2009 SC 2163 (Sec. 174 – Inquest Panchnama)

(Satbir Singh and ors. Vs. State of U.P.)

The inquest report is prepared for the purposes mentioned in Section-174 of the Code of Criminal Procedure and not for corroborating the prosecution case.

In law, it is not necessary to mention names of the accused in the Inquest Report.

[246] AIR 2009 SC 2190 (F.I.R – Rape – Delay)

(Satyapal Vs. State of Haryana)

This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon.

[247] AIR 2009 SC 2298 (F.I.R-Delay)

(Mahtab Singh and anr. Vs. State of U.P.)

One of the main reasons given by the High Court in upsetting the judgment of acquittal is that FIR was lodged barely 45 minutes after the incident; the distance of police station being hardly one furlong from the place of occurrence. High Court, however, failed to consider a very material aspect that despite the fact that police station was situated close and visible from the place of incident, yet PW-1 did not go immediately to police station to report but he first went to Charan Singh to have a written report prepared and then went to the police station with written report. The first version of the incident could have been

reported at the police station within five minutes of its occurrence. The fact that PW-1 took 45 minutes in reporting the incident at the police station rather creates doubt about the truthfulness of the prosecution case and does not rule out false implication of the accused against whom Pw-1 had grudge due to some civil dispute between them.

[248] AIR 2009 SC 2395 (Sec.174 – Inquest Panchnama)

(State of U.P. Vs. Shobhanath and ors.)

So far as Inquest Report is concerned, the same is prepared by the police who are not experts like the doctors and, therefore, no such weightage could be given on the Inquest Report. It is also settled law that Inquest Report cannot be treated as a piece of admissible evidence.

[249] AIR 2009 SC 2490 (F.I.R – Details)

(Subhaskumar Vs. State of Uttarakhand)

FIR as is well known is not to be treated to be an encyclopedia. Although the effect of a statement made in the FIR at the earliest point of time should be given primacy, it would not probably be proper to accept that all particulars in regard to commission of offence in detail must be furnished.

[250] AIR 2009 SC 2513 (F.I.R – Details)

(Kirender Sarkar and ors. Vs. State of Assam)

The law is fairly well settled that FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minutest details of the events. When essentially material facts are disclosed in the FIR that is sufficient. FIR is not

substantive evidence and cannot be used for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting maker of the report. Though the importance of naming the accused persons in the FIR cannot be ignored, but names of the accused persons have to be named at the earliest possible opportunity. The question is whether a person was impleaded by way of afterthought or not must be judged having regard to the entire factual scenario in each case. Therefore, non naming of one or few of the accused persons in the FIR is no reason to disbelieve the testimony of crucial witnesses.

[251] AIR 2009 SC 2549 (Sec.164 – Confession)

(M.A.Antony @ Antappan Vs. State of Kerala)

There has been full compliance of provisions of Section-164(2) and the confessional statement made freely and voluntarily by accused on bail cannot be rejected merely because the Magistrate has used the expression 'evidence' instead of 'confession' while warning the accused.

[252] AIR 2009 SC 2609 (T.I Parade – Object)

(Ankush Maruti Shinde & ors. Vs. State of Maharashtra)

The object of conducting T.I.Prade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with

the said occurrence. T.I. Parades are not primarily meant for the Court. They are meant for investigation purposes.

[253] AIR 2009 SC 2661 (Charge – Defect)

(Anna Reddy Sambasiva Reddy & ors. Vs. State of Andhra Pradesh)

Defective Charge: In unmistakable terms, Section-464 specifies that a finding or sentence of a Court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been adversely affected thereby. If the ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned. A fair trial to the accused is a sine qua non in criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hyper-technicalities. Every case must depend on its own merits and no straight-jacket formula can be applied; the essential and important aspect to be kept in mind is : has omission to frame a specific charge resulted in prejudice to the accused.

Graphic Details: How could it be possible for any person to recount with meticulous exactitude the various individual acts done by each assailant ? Had they stated so, their

testimony would have been criticized as highly improbable and unnatural. The testimony of eye-witnesses carries with it the criticism of being tutored if they give graphic details of the incident and their evidence would be assailed as unspecific, vague and general if they fail to speak with precision. The golden principle is not to weigh such testimony in golden scales but to view it from the cogent standards that lend assurance about its trustfulness.

[254] AIR 2009 SC 2684 (Sec. 304-B –Dowry –Meaning)

(Koppisetti Subbarao @ Subramanniam Vs. State of A.P)

The definition of 'dowry' emphasizes that any money, property or valuable security given, as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry'. Under Section-4, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relative by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognized claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfillment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all.

Word "husband" in Section-498-A is not limited to cover only those persons who have entered into legally valid

marriage. The thrust of the offence under Section-498-A is subjecting of the woman to cruelty. Likewise, the thrust of the offence under Section-304-B is also the "Dowry Death". Consequently, the evil sought to be curbed are distinct and separate from the persons committing the offending acts and there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married but also any one who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabitate and exercise authority as such husband over another woman.

[255] AIR 2009 SC 2693(Sec.164–Confession–Requirement)

(State of Punjab Vs, Harjagdev Singh)

It is hardly necessary to emphasize that the act of recording confessions under Section-164 of the Code is a very solemn act and in discharging his duties in the said Section, the Magistrate is required to take care to see that the requirements of sub-section (3) of Section-164 of the Code are fully satisfied. It is necessary in every case to put questions as intended to be asked under Section-164(3).

[256] AIR 2009 SC 2797 (Sec. 161 – Statement – Delay)

(Abuthagir & ors. Vs. State Rep. by Inspector of Police, Madurai)

It is well settled that delay in examination of the prosecution witnesses by the police during the course of investigation ipso facto may not be a ground to create a

doubt regarding the veracity of the prosecution's case. So far as the delay in recording a statement of the witnesses is concerned no question was put to the Investigating Officer specifically as to why there was delay in recording the statement. Unless the Investigating Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage there-from. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for delayed examination is plausible and possible and the Court accepts the same as plausible is no reason to interfere with the conclusion.

It requires a courage in case of atrocity for a simple man to come forward and proclaim the truth unmindful of the consequences to himself. A witness is normally considered to be an independent witness unless he springs from the sources which are likely to be tainted such as enmity. Here again it would depend upon the facts of each case. In the instant case, as PWs 3 and 4 have no enmity with the accused, they are independent and natural witnesses. They are not under the control of the police and do not have in any sense any obligation to the police. Since they have revealed the truth after long time after seeing the photos of the accused persons, that cannot be a factor to discard their evidence.

PW-3 was a mason by profession and PW-4 was a petty seller of sarees. Their courage in coming forward to depose against the accused persons needs to be appreciated. Here are two persons from the lowest status of the society who had taken courage to stand up, picked and identified the accused persons. PW-2 and 3 have stated that they witnessed the incident from a place which is just near the Central Jail. In a bright day light the murder took place. Therefore, there is no infirmity in the identification.

[257] AIR 2009 SC 2847 **(F.I.R – Delay)**

(Ram Pal and ors Vs. State of Haryana)

If occurrence of the incident stands admitted, in our opinion, even if some delay has been caused in writing of the FIR, the same would not render the entire prosecution case suspicious.

[258] AIR 2009 SC 2959 **(Sec. 161 –Statement –Delay)**

(Mallappa Siddappa Alakanur and ors. Vs. State of Karnataka)

The delay in recording the statement is undoubtedly a circumstance which has to be taken into consideration, but at the same time, the Courts must be reasonable in this aspect also and should see as to whether the late recording of the statement in the dead of the night of a tender aged boy of 13 was possible and feasible. The further thing which has to be considered is as to whether such delay has affected his testimony or whether there was any real apprehension of the boy being influenced by any other

person or the police. In the absence of any such possibility, the evidence of the boy could not be thrown out, more particularly, when the boy had faced the ordeal of the cross examination in a very efficient manner.

[259] AIR 2009 SC 3265 (Interested Witness)

(Bhupendra Singh & ors. Vs. State of U.P.)

Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible.

[260] AIR 2010 SC 1 (Rape – Penetration)

(Wahid Khan Vs. State of Madhya Pradesh)

Even a slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial.

[261] AIR 2010 SC 85 (Re-Examination Purpose)

(Pannayar Vs.State of Tamil Nadu by Inspector of Police)

The purpose of the re-examination is only to get the clarifications of some doubts created in the cross examination. One cannot supplement the examination-in-chief by way of a re-examination and for the first time, start introducing totally new facts, which have no concern with the cross examination. The Trial Court has obviously faulted in allowing such a re-examination.

[262] AIR 2010 SC 278 **(Child Witness)**

(Balaji Vs. State, rep. by Inspector of Police)

Having regard to the fact that the discovery of the body was made at the instance of PW-2, Sundari, the child witness, and the post-mortem conducted on the dead body was in consonance with the case made out by the prosecution, viz., that the deceased had been strangulated and throttled to death, there can be no reason to disbelieve Sundari's evidence which has with stood the test of cross-examination.

[263] AIR 2010 SC 281 **(F.I.R – Details)**

(Moti Lal and ors. Vs. State of U.P.)

The first information report need not contain every minute detail about the occurrence. It is not a substantive piece of evidence. It is not necessary that name of every individual present at the scene of occurrence is required to be stated in the first information report.

[264] AIR 2010 SC 327 **(Sec. 306 – Instigation)**

(Gangula Mohan Reddy Vs. State of Andhra Pradesh)

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

The intention of the Legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section-306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or

direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.

Allegations of theft of ornaments on deceased and demand of advance paid at the time of his employment by the accused cannot be said sufficient to hold guilty under Section-306 IPC.

[265] AIR 2010 SC 420 (Life Imprisonment – Period)

(Ramraj Vs. State of Chhattisgarh)

Life imprisonment is not to be interpreted as being imprisonment for the whole of a convict's natural life within the scope of Section-45 of the I.P. Code.

On a conjoint reading of Sections-45 and 47 of the Indian Penal Code and Sections-432, 433 and 433A, Cr.P.C., it is now well established that a convict awarded life sentence has to undergo imprisonment for at least 14 years. While Sections-432 and 433 empowers the appropriate Government to suspend, remit or commute sentences, including a sentence of death and life imprisonment, a fetter has been imposed by the legislature on such powers by the introduction of Section-433A into the Code of Criminal Procedure by the Amending Act of 1978, which came into effect on and from 18th December, 1978. By virtue of the non-obstante clause used in Section 433A, the minimum term of imprisonment in respect of an offence where death is one of the punishments provided by laws or where a death sentence has been commuted to life sentence, has been

prescribed as 14 years. In the various decisions rendered after the decision in Godse's case (supra), "imprisonment for life" has been repeatedly held to mean imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned. But in no case, with the possible exception of the powers vested in the President under Article-72 of the Constitution and the power vested in the Governor under Article-161 of the Constitution, even with remissions earned, can a sentence of imprisonment for life be reduced to below 14 years.

[266] AIR 2010 SC 518 (Sec. 319 – Powers)

(Suman Vs. State of Rajasthan and anr.)

A person who is named in first information report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or file charge-sheet or drop the case, can be proceeded under Section-319, Cr. P.C. if from the evidence collect/produced in the course of any inquiry into or trial of an offence, the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused.

[267] AIR 2010 SC 566 (Sec. 172 – Case Diary)

(Md. Ankoos & ors. Vs. The Public Prosecutor, High Court of A.P.)

Court's power to consider the case diary is not unfettered. In light of the inhibitions contained in Section-

172(2) it is not open to the Court to place reliance on the case diary as a piece of evidence directly or indirectly. Therefore placing reliance upon the evidence of prosecution witness by High Court by verifying their statements recorded under Section-161 (3) of Cr.P.C. from case diary was not proper.

Where the appellants accused have been expressly charged for the offence punishable under Section-148 and have been acquitted there-under, they cannot be legally convicted for the offence punishable under Section-302 read with Section-149. It is so because the offence of rioting must occur when members are charged with murder as the common object of the unlawful assembly.

[268] AIR 2010 SC 762 (Admissibility – Relevancy)

(Musheer Khan @ Badshah Khan and anr. Vs. State of Madhya Pradesh)

It will be noticed that under the Indian Evidence Act, the word 'admissibility' has very rarely been used. The emphasis is on relevant facts. In a way relevancy and admissibility have been virtually equated under the Indian Evidence Act. But one thing is clear that evidence of finger print expert is not substantive evidence. Such evidence can only be used to corroborate some items of substantive evidence which are otherwise on record.

[269] AIR 2010 SC 773 (Sec. 174 – Inquest Panchnama)

(Aftab Ahmad Anasari Vs. State of Uttaranchal)

The basic purpose of holding inquest on the dead body is to ascertain prima facie the nature of death and to find out whether there are injuries on the dead body or not. The inquest panchnama cannot be treated as statement of the witness recorded under Section-161 of the Code of Criminal Procedure wherein he is supposed to narrate the facts seen by him. Therefore, it is not true to say that he had maintained silence and had not told the Investigating Officer at the time of holding of the inquest that he had seen the appellant running away from near the place where the dead body was lying. The so called silence on the part of this witness cannot be considered to be unnatural at all nor the same makes his testimony doubtful in any manner.

[270] AIR 2010 SC 806 (Expert's Evidence)

(Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. and ors.)

The law of evidence is designed to ensure that the Court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the Court's

knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

(i) that the expert must be within a recognized field of expertise

(ii) that the evidence must be based on reliable principles, and

(iii) that the expert must be qualified in that discipline.

Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

It is not the province of the expert to act as Judge or Jury.

The real function of the expert is to put before the Court all the materials, together with reasons which induce him to come to the conclusion, so that the Court, although not an expert, may form its own judgment by its own observation of those materials.

An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the

evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.

[271] AIR 2010 SC 849 (F.I.R – Details etc.)

(Alagarsamy and ors. Vs. State by Deputy Superintendent of Police)

Mere non production of FIR Book because of non-availability by itself would not invite suspicious glance from Court.

The FIR is not a be-all and end-all of the matter, though it is undoubtedly, a very important document. In most of the cases, the F.I.R. provides corroboration to the evidence of the maker thereof. It provides a direction to the Investigating Officer and the necessary clues about the crime and the perpetrator thereof. True it is that a concocted F.I.R., wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the Court and on the basis of the evidence led before the Court, the Court can weight the inconsistencies in the F.I.R. and the direct evidence led by the prosecution. It is not a universal rule that once F.I.R. is found to be with discrepancies, the

whole prosecution case, as a rule, has to be thrown. Such can never be the law.

[272] AIR 2010 SC 894 **(Rape – Enmity)**

(Jaswant Singh and ors. Vs. State of Punjab)

The learned counsel for the appellants made an attempt to contend that the appellants were falsely implicated in the present case due to enmity between the parents of prosecutrix and the appellants with regard to construction of a wall. The Courts below having considered the similar submission rejected the same and observed that the alleged dispute over a common wall was not of such a grave nature compelling the entire family of the prosecutrix to go to the extent of putting at stake its reputation and fair name of a young girl child to settle the scores with the accused. We find no merit in the submission. The defence set up in this regard is totally untenable and cannot be accepted.

[273] AIR 2010 SC 942 **(T I Parade – Delay)**

(Mulla and anr Vs. State of U.P.)

Now, let us consider the arguments of the learned amicus curiae on the delay in conducting the test identification parade. The evidence of test identification is admissible under Section-9 of the Indian Evidence Act. The Identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence

regarding identification is that which is given by witnesses in Court. There is no provision in the Cr.P.C. entitling the accused to demand that an identification parade should be held at or before the inquiry or the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroboration of the identification in Court.

Failure to hold test identification parade does not make the evidence of identification in Court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction.

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.

[274] AIR 2010 SC 965 (Tape-Records Speech)

(Tukaram S. Dighole Vs. Manikrao Shivaji Kokate)

It is well settled that tape-records of speeches are "documents" as defined in Section-3 of the Evidence Act and stand on no different footing than photographs. (See: Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdas Mehra and Ors.). There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium

though which a first hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and, therefore, such evidence has to be received with caution. Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasized that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence.

[275] AIR 2010 SC 979 (Prosecution Witness – Reliance)

(Javed Masood and anr. Vs. State of Rajasthan)

In the present case the prosecution never declared PWs 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence.

[276] AIR 2010 SC 1007 (Arrest – Custody)

(Vikram Singh and ors. Vs. State of Punjab)

Section-46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section-46 relates to a formal arrest whereas Section-27 of the Evidence Act talks about custody of a person accused of an offence. In present

case the appellants were undoubtedly put under formal arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused in an offence at the time of their apprehension on the 14th February 2005. Moreover in the light of the judgment of the Constitution Bench and the observation that the words in Section-27 "accused of any offence" are descriptive of the person making the statement, the submission that this Section would be operable only after formal arrest under Section-46(1) of the Code, cannot be accepted.

[277] AIR 2010 SC 1378 (Interested Witness)

(Dharamveer and ors. Vs. State of U.P.)

The evidence of an eye witness cannot be rejected only on the ground that enmity exists between the parties.

Why the appellants did not cause any injury to these witnesses cannot be explained by the prosecution. It will require entering into their mind. Human behaviour are sometimes strange. Merely the fact that these witnesses did not suffer any injury, will not make their evidence untrustworthy.

[278] AIR 2010 SC 1446 (Sec. 306 – Torture)

(Chitresh Kumar Chopra Vs. State (Govt.of NCT of Delhi)

In the present case, the charge against the appellants is that he along with other two accused "in furtherance of common intention", mentally tortured Jitendra Sharma (the

deceased) and abetted him to commit suicide by the said act of mental torture. It is trite words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and, therefore, clause firstly of Section-107 of the IPC was attracted.

[279] AIR 2010 SC 1453 (Charge – Conviction – Minor)

(Pandharinath Vs. State of Maharashtra)

It is well settled legal position that if an accused is charged of a major offence but is not found guilty there-under, he can be convicted of minor offence, if the facts established indicate that such minor offence has been committed.

It is true that there was no charge under Section-376 read with Section-511 IPC. However, under Section-222 of the Cr.P.C. when a person is charged for an offence he may

be convicted of an attempt to commit such offence although the attempt is not separately charged.

[280] AIR 2010 SC 1738 (D.D –Names –Statement u/s.161)

(State of U.P. Vs. Ram Sajivan and ors.)

D.D: A careful examination of the case in a proper perspective leads us to an entirely different conclusion. The High Court ought to have appreciated the mental frame of Jasodiya wherein she gave a statement which was construed as a dying declaration. The eight persons who were abducted and tied with rope and brought to river Ganges in the midstream and after their murder were thrown in the river one by one except Kallu PW-14 who escaped because he jumped into the river. In that fear psyche, naming the appellants would have meant risking her life and in that state of mind, the omission of mentioning the names of the appellants is not unnatural and her testimony cannot be discarded on that count.

Statement u/s.161: Similarly, the High Court has failed to appreciate the circumstances in which Kallu PW-14 has survived by jumping into the river and hiding at certain places. In a genocide and massacre which was witnessed by him, wherein all his seven close relatives including his wife were killed one after other in his presence and were thrown in the river Ganga, his escaping the death was a miracle. Hiding and saving his life from mighty cruel upper caste group was a normal human instinct. Any reasonable or prudent person would have behaved in the same manner.

Immediately after his escape, he tried to make a complaint but he did not succeed. Ultimately when he wrote to Smt. Indira Gandhi and Shri Jagjivan Ram, perhaps at the intervention of someone, the police seriously investigated the matter and he was brought to his village Lohari under police protection. The delay in giving his statement is fully explained and in the facts and circumstances of the case delay was quite natural. In a case of this nature, the witnesses turning hostile is not unusual particularly in a scenario where upper caste people have created such a great fear psyche. The instinct of survival is paramount and the witnesses cannot be faulted for not supporting the prosecution version. Even the evidence which is on record particularly of Jasodiya and Kallu PW-14 supported by the evidence of Head Constable Kashi Prasad Tiwari PW-27 is sufficient to bring home the guilt of the accused. The evidence of PW-14 and PW-27 lead to the only conclusion that the accused were squarely responsible for committing such a ghastly crime.

[281] AIR 2010 SC 1894 (Rape –F.I.R –Confession -Injury)

(Utpal Das and anr. Vs. State of West Bengal)

F.I.R/Confession: It is needless or restate that the First Information Report does not constitute substantive evidence. It can, however, only be used as previous statement for the purpose of either corroborating its maker or for contradicting him and in such a case the previous statement cannot be used unless the attention of witness has first been drawn to

those parts by which it is proposed to contradict the witness. In this case the attention of the witness (PW-14) has not been drawn to those parts of the FIR which according to appellants are not in conformity with her evidence. Likewise statement recorded under Section-164 Cr.P.C. can never be used as substantive evidence of truth of the facts but may be used for contradictions and corroboration of a witness who made it. The statement made under Section-164 Cr.P.C. can be used to cross examine the maker of it and the result may be to show that the evidence of the witness is false. It can be used to impeach the credibility of the prosecution witness. In the present case it was for the defence to invite the victim's attention as to what she stated in the first information report and statement made under Section-164 Cr.P.C. for the purpose of bringing out the contradictions, if any, in her evidence. In the absence of the same the Court cannot read 164 statement and compare the same with her evidence.

Injury: Victim Sita Rani Jha is a married grown up lady and blessed with two children and in such circumstances the absence of injuries on her private parts is not of much significance. The mere fact that no injuries were found on private parts of her body cannot be the ground to hold that she was not subjected to any sexual assault. The entire prosecution story cannot be disbelieved based on that singular assertion of the learned counsel. In this regard another submission was made by the learned counsel for the

appellants that the sexual intercourse, if any, was with the consent of the victim. According to him it was consensual sexual intercourse. This proposition canvassed for the first time across the bar is absolutely untenable and unsustainable. There is not even a suggestion made to the victim that she has consented to sexual intercourse.

[282] AIR 2010 SC 1974 (Narco – Brain Mapping)

(Smt. Selvi & ors. Vs. State of Karnataka)

Protection against self-incrimination is a broad protection that extents to stage of investigation. While there is a requirement of formal accusation for a person to invoke Article-20(3) it must be noted that the protection contemplated by Section 161(2), Cr.P.C is wider. Section-161(2) read with 161(1) protects 'any person supposed to be acquainted with the facts and circumstances of the case' in the course of examination by the police. Therefore, the 'right against self incrimination, protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated.

The test results of polygraph and BEAP/Brain fingerprinting test amount to testimonial compulsions and therefore bar of Art. 20(3) gets attracted to such tests.

The importance of personal autonomy in aspects such as the choice between remaining silent and speaking has to

be given due recognition. An individual's decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy, especially in circumstances where the person faces exposure to criminal charges or penalties. Therefore, subjecting a person to the Narco techniques in an involuntary manner violates the prescribed boundaries of privacy. Forcible inference with a person's mental processes is not provided for under any statute and it most certainly comes into conflict with the 'right against self-incrimination'.

[283] AIR 2010 SC 2119 (Investigation – Lapses)

(Abu Thakir & ors. Vs. State)

Even if the investigation is illegal or even suspicious, the rest of the evidence must be scrutinized independently of the impact of it. Otherwise, the criminal trial will plummet to the level of the Investigation Officers ruling the roost, ... Criminal justice should no be made a casualty for the wrongs committed by the Investigating Officers in the case. In other words, if the Court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the Investigating Officer's suspicious role in the case.

[284] AIR 2010 SC 2143 (T I Parade – Purpose)

(Ram Babu Vs. State of U.P.)

The purpose of test identification parade is to test and strengthen trustworthiness of the substantive evidence of a witness in Court. It is for this reason that test identification

parade is held under the supervision of a Magistrate to eliminate any suspicion or unfairness and to reduce the chances of testimonial error as Magistrate is expected to take all possible precautions.

[285] AIR 2010 SC 2247 (Rape – FIR – Delay)

(Santhosh Moolya & anr. Vs. State of Karnataka)

Though there was a delay of 42 days in lodging complaint to the police, PWs 1 and 2, in their evidence, explained that all their family members including themselves are uneducated, no male members in their family for their assistance and they settled in the present village to eke out their livelihood.

In a case of rape, particularly, the victims are illiterate, uneducated their statements have to be accepted in toto without further corroboration.

We are satisfied that though there was a delay of 42 days in lodging the complaint, the same was properly explained by the victims and the other witnesses.

[286] AIR 2010 SC 2352 (FIR–Sec.-161–207–313 CrPC)

(Sidhartha Vashist @ Manu Sharma Vs. State (NCT of Delhi)

F.I.R: Cryptic telephonic messages could not be treated as FIR as their object only is to get the police to the scene of offence and not to register the FIR. The said intention can also be clearly culled out from a bare reading of Section-154 of the Criminal Procedure Code which states that the information, if given orally, should be reduced in writing,

read over to the informant, signed by the informant and a copy of the same be given free of cost to the informant. In the case on hand, the object of persons sending the telephonic messages including PW-70 Rohit Bal was only to bring the police to the scene of offence and not to register the FIR.

Sec.-161-Delay: In any case, any defect by delay in examination of witnesses in the manner of investigation cannot be a ground to condemn the witness. Further Section-162, Cr.P.C. is very clear that it is not mandatory for the police to record every statement. In other words, law contemplates a situation where there might be witnesses who depose in Court but whose previous statements have not been recorded.

Sec.-207 Copies: As already noticed the provisions of Section-207 has a material bearing on this subject and makes an interesting reading. This provision not only require or mandate that the Court without delay and free of cost should furnish to the accused copies of the police report, first information report, statement, confessional statement of the persons recorded under Section-164 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or documents as contemplated under Section-173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub Section-(5) of Section173. In contradistinction to the provisions of Section-173, where the

Legislature has used the expression 'documents on which the prosecution relies' are not used under Section-207 of the Code, Therefore, the provisions of Section-207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section-173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section-170(2) of the Code.

Phone Call Evidence: The phone call details show that the accused were in touch with each other which resulted in destruction of evidence and harboring. Thus, the finding of the trial Court that in the absence of what they stated to each other is of no help to the prosecution is an incorrect appreciation of evidence on record. A close association is a very important piece of evidence in the case of circumstantial evidence. The evidence of phone calls is a very relevant and admissible piece of evidence. The details of the calls made by the various accused to one another are available in Ex. PW-66/B, PW-66/D and PW-66/C.

Sec.-313 – F.S.: While answer given by the accused to question put under Section-313 of the Code are not per se evidence because, firstly, it is not on oath and, secondly, the other party i.e. the prosecution does not get an opportunity to cross-examine the accused, it is nevertheless subject to consideration by the Court to the limited extent of drawing

an adverse inference against such accused for any false answers voluntarily offered by him and to provide an additional/missing link in the chain of circumstances.

Further, it is not necessary that the entire prosecution evidence need to be put to the accused and answers elicited from him/even if an omission to bring to the attention of the accused an inculpatory material has occurred that ipso facto does not vitiate the proceedings, the accused has to show failure of justice.

24/9/2010