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SUBJECT-INDEX**APPEAL:**

Appeal against acquittal – Scope of – Held: Powers of appellate court in appeal against acquittal are extensive and plenary to review and reconsider the evidence and interfere with acquittal – But such interference should be on the basis of absolute assurance of guilt, and not on the basis that another possible view or different view could be taken.

(Also see under: Penal Code, 1860)

Shivasharanappa and Ors. v. State of Karnataka 1104

CONSTITUTION OF INDIA, 1950:

(1) Arts. 19, 20 and 21.

(See under: Investigation) 1166

(2) Art. 21.

(See under: Crime Against Women) 1144

(3) Art. 72 – Murder – Accused-appellant convicted and sentenced to death – Mercy petition to President and prayer for commutation of death sentence into life imprisonment – Rejected after 12 years – Held: Not proper – 12 years delay in disposal of the mercy petition sufficient for commutation of sentence of death into life imprisonment – Sentence of death awarded to appellant accordingly commuted into life imprisonment – Sentence/Sentencing – Commutation of sentence.

Mahendra Nath Dasv. Union of India and Ors. 1053

CRIMES AGAINST WOMEN:

(1) Rape – Held: Rape is one of the most heinous crimes against women, which violates her right to life guaranteed under Art. 21 of the constitution – Constitution of India, 1950 – Art. 21.

State of Haryana v. Janak Singh & etc. 1144

(2) (See under: Penal Code, 1860) 1013

CRIMINAL JURISPRUDENCE:

Proving of prosecution case – Held: Prosecution must stand or fall on its own – If it has not proved its case beyond reasonable doubt, it cannot draw support from weakness of the defence case.

(Also see under: Penal Code, 1860)

Sunil Kundu and Anr. v. State of Jharkhand 924

CRIMINAL TRIAL:

(See under: Evidence) 924

EVIDENCE:

Direct evidence and medical evidence – Inconsistency between – Effect of – Held: Where eye-witness is cogent, medical evidence recedes in background – But when eye-witness account is totally inconsistent with medical evidence, there is reason to believe that improvements are made in court to bring the prosecution case in conformity with post-mortem report – In the instant case, eye-witness account is inconsistent with medical evidence as regards firearm injury, therefore, not credible.

(Also see under: Penal Code, 1860)

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EVIDENCE ACT, 1872:

(1) s.32 – Multiple dying declarations – Appreciation of – Held: It is not the plurality of dying declarations but reliability thereof that adds weight to prosecution case – If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration but the statement should be consistent throughout – However, if some inconsistencies are noticed between one dying declaration and the other, court has to examine the nature of inconsistencies – On facts, there are not only material contradictions in both the dying declarations but also inter-se discrepancies in depositions of witnesses as well – Due to discrepancies and contradictions between the two dying declarations and also in the absence of any other reliable evidence, High Court was justified in reversing the conviction of accused-respondents which calls for no interference.

State of Rajasthan v. Shravan Ram & Anr. 1076

(2) ss.40 to 43 – Simultaneous proceedings in criminal as well as civil court between same parties and in respect of same property – Stay of the proceedings in civil court, during pendency of trial – Held: Grant of stay was not correct – Even in case of conflicting decisions in civil and criminal courts, such an eventuality cannot be taken as a relevant consideration – Besides, there is no likelihood of any embarrassment to defendants and outcome of civil court will also not prejudice their defence in criminal case.

Guru Granth Saheb Sthan Meerghat Vanaras v. Ved Prakash and Ors. 1042

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(3) Dying Declaration – Acceptance of – Plea that in view of 92% burn injuries, dying declaration of deceased not acceptable – Held: There is no thumb rule that a person sustaining a particular percentage of burn injuries would not be in a position to give dying declaration – In the instant case, evidence proves that deceased was in a fit state of mind while making dying declaration, therefore, declaration is acceptable.

(Also see under: Penal Code, 1860)

Jose S/o Edassery Thomas v. State of Kerala.... 1154

HIMACHAL PRADESH URBAN RENT CONTROL ACT, 1987:

s.14(3)(c) and 14(4) – Eviction order passed by Rent Controller – On ground that appellant-landlord bona fide required the tenanted building for purposes of addition and alteration or re-building – Eviction order maintained by High Court – Held: Once High Court maintained the order of eviction, the tenants were obliged to give vacant possession of the building to landlord and could only ask for reasonable time to deliver vacant possession to the landlord – s.14(3)(c) does not require that building plans should be sanctioned by local authorities as a condition precedent to entitlement of landlord for eviction of tenant – Direction of High Court that the order of eviction could only be executed on revised plan of building being approved clearly contrary to s.14(4) and the proviso thereto – Time granted to respondents to vacate the building – Respondents can apply for re-entry into the building in accordance with the proviso to clause (c) of s.14(3) of the Act introduced by

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Amendment Act, 2009.

Hari Dass Sharma v. Vikas Sood & Ors. 1029

INTEREST:

Interest on earnest money – Suits for specific performance of agreement – Decreed by trial court – Decree modified by High Court declining the relief of specific performance and granting alternative relief of refund of earnest money – Held: Vendor was liable to pay interest on earnest money from the date of its receipt – Vendor in order to avoid the liability to pay interest, should have deposited earnest money with trial court, instead of utilizing the same – Direction to vendor to refund earnest money alongwith interest at the rate of 9% from the date of receipt, till payment.

Smt. Sarita Dokania and Anr. etc. v. Smt. Krishna Dey and Anr. 1089

INTERIM RELIEF:

Entitlement – Housing Society resolution on 25.9.1966 for re-development of the area which was let out to 69 tenant members – As per resolution, after redevelopment, 230 tenements would be constructed out of which 161 were meant for allottee-members and 69 for the tenant-members – The resolution, when challenged by tenant-members u/s.91 of Co-operative Societies Act, attained finality in favour of the Society – The Society by its resolution dated 6.12.2009 gave effect to its earlier resolution dated 25.9.1966 – Consequential conveyance deed dated 7.12.2009 was executed – 15 out of the 69 tenant-members, then filed suits seeking direction to restrain the society from taking steps in furtherance of resolution

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dated 6.12.2009 and the consequential conveyance deed – Interim relief – Held: The tenant-members are not entitled to interim relief – By vacating the interim order no irreparable loss is caused to them – They being in minority balance of convenience is in favour of the majority and not the contesting tenant-members – The tenant-members are also not entitled to the interim relief as they do not have proprietary interest in the subject matter.

Margaret Almeida & Ors. etc. v. Bombay Catholic Co-Operative Housing Society Ltd. & Ors. 871

INTERPRETATION OF STATUTES:

Legislation by incorporation – Effect of – Provisions, of earlier Act incorporated in the later Act, become part and parcel of the later Act – The device of legislation by incorporation is adopted for the sake of convenience.

(Also see under: Urban Development)

New Okhla Industrial Development Authority v. Sarvpriya Sehkar Avas Samiti Ltd. and Anr. 945

INVESTIGATION:

(1) Defective investigation – Effect of – Held: Lapses and irregularities in investigation, if do not go to the root of the matter, if they do not dislodge the substratum of prosecution case, they can be ignored – In the instant case, lapses, being serious, cannot be ignored.

(Also see under: Penal Code, 1860)

Sunil Kundu and Anr. v. State of Jharkhand 924

(2) (i) Tainted investigation – Effect – Held: Tainted investigation leads to miscarriage of criminal

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justice, and thus deprives a man of his fundamental rights guaranteed under Art. 21 of the Constitution – Every investigation must be judicious, fair transparent and expeditious to ensure compliance with the rules of law as required under Arts. 19, 20 and 21 of the Constitution – Constitution of India, 1950 – Arts. 19, 20 and 21.

(ii) Tainted investigation – Effect of – On prosecution case – Held: Every discrepancy in investigation does not result in acquittal unless proved that it was dishonest or guided investigation or seriously prejudiced the defence of accused.

(Also see under: Penal Code, 1860)

Karan Singh v. State of Haryana and Anr. 1166

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

s.20 – Applicability – Scope of – Held: As regards proceedings pending against a juvenile on the date the Act came into force, court can record a finding regarding culpability of accused, but cannot pass order on sentence – For passing the sentence, the case should be referred to Juvenile Board.

(Also see under: Penal Code, 1860)

Bharat Bhushan v. State of Himachal Pradesh 1013

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007:

rr.12 and 98.

(See under: Penal Code, 1860) 1013

LEGISLATION:

(See under: Interpretation of Statutes) 945

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MOTOR VEHICLES ACT, 1988:

(1) (i) s.166 – Fatal accident – Compensation – Grant of – Addition to actual income of the deceased towards future prospects – Norms laid down with regard to salaried persons in Sarla Verma case – Further explained in Santosh Devi case, and also made applicable to self-employed and persons on fixed wages – Clarification now given in regard to self-employed and persons on fixed wages with reference to their age – Held: In case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects – Addition should be 30% in case the deceased was in the age group of 40 to 50 years – Since in case of those self-employed or on fixed wages, there is normally no age of superannuation, it will only be just and equitable to provide an addition of 15% in the case where the victim was between the age group of 50 to 60 years – There should normally be no addition thereafter.

(ii) s.166 – Fatal accident – Grant of compensation – Loss of consortium to the spouse – Held: The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately – On facts, it would only be just and reasonable that the courts award at least Rs. 1 lakh for loss of consortium and further Rs.1 lakh towards loss of care and guidance for minor children.

(iii) s.166 – Fatal accident – Grant of compensation – ‘Funeral Expenses’ – Held: Tribunals have been quite frugal with regard to award of compensation

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under the head 'Funeral Expenses' – 'Price Index' has gone up in that regard also – On facts, it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/.

(iv) s.166 – Fatal accident – Deceased aged 33 years – Compensation – Grant of – Held: 50% salary added as future prospects – 1/4th deducted as personal expenses of the deceased – Multiplier of 16 applied – Total compensation awarded amounting to Rs.22,81,320/-.

(v) s. 166 – Just compensation – Meaning of – Held: 'Just Compensation' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation.

(vi) s.166 – Compensation – Duty of the court – To fix just compensation, irrespective of the claim – Held: Court should not succumb to niceties or technicalities, in matters relating to compensation – Attempt should be to equate, as far as possible, the misery on account of the accident with compensation so that injured/dependants should not face vagaries of life on account of discontinuance of income earned by victim – Tribunal/Court has a duty to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

Rajesh & Ors. v. Rajbir Singh & Ors. 961

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(2) ss.168 and 173 – Just Compensation – Grant of – Towards future medical expenses – Appellant, aged about 36 years, hit by motorcycle driven by respondent no.1 – Admitted in Hospital, and treated by Orthopaedic Surgeon – Serious physical impairment in left leg of appellant – Claim petition by appellant for compensation of Rs.3,50,000/- – Held: Tribunal is required to determine the amount of compensation 'which appears to it to be just' – Compensation should, to the extent possible fully and adequately restore the claimant to the position prior to the accident – High Court lost sight of the statement of Orthopaedic Surgeon that to minimize persistent disablement, the appellant needed to undergo femoral head excision and Bipolar Hemiarthroplasty – Corroborative evidence accepted, and amount as reflected in his evidence added – Rs.3,50,000/- fully allowed as claimed.

Smt. V. Sudha v. P. Ganapathi Bhat & Anr. 1093

PENAL CODE, 1860:

(1) ss. 143,147,448,302 and 201 r/w. s. 149 – Prosecution under – Acquittal by trial court – High Court convicted all the accused – Held: Trial court rightly disbelieved evidence of witnesses treating their conduct as unnatural – There were no compelling circumstances requiring a reversal of judgment of acquittal – Conviction order passed by High Court set aside.

Shivasharanappa and Ors. v. State of Karnataka 1104

(2) ss.302/34 and 392/34 – Prosecution for murder and robbery – By 4 accused including the appellant-accused – Conviction of all the accused by trial

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court – High Court convicting appellant-accused while acquitting the others – Held: Prosecution case proved by evidence of eye-witnesses supported by medical evidence and recoveries made at the instance of accused – Conviction of appellant-accused upheld.

Palwinder Singh v. State of Punjab 1120

(3) s.302 – Murder – Conviction by courts below – Held: Consistent versions by material witnesses regarding motive for murder – Prosecution case also supported by independent witness – There was no reason to falsely implicate the accused who was an influential person – Conviction upheld.

Karan Singh v. State of Haryana and Anr. 1166

(4) s.302 – Murder of wife – By setting her on fire, while she was sleeping – Circumstantial evidence – Conviction by courts below – Held: The cumulative effect of evidence viz., conduct of accused, dying declaration and motive proves the guilt of accused – The chain of circumstances exclusively leads towards accused and none else – Conviction upheld.

Jose S/o Edassery Thomas v. State of Kerala 1154

(5) s. 302/34 – Murder – Prosecution for – Conviction by courts below – Held: In view of serious lapses in the case, prosecution case not proved beyond reasonable doubt – Accused are entitled to be acquitted.

(Also see under: Evidence)

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(6) s.307 – Conviction under – Trial court sentenced two accused to 5 years RI and another two accused to 3 years RI – High Court in appeal upheld the conviction, but reduced the sentence to the period already undergone – Held: conviction upheld – Reduction of sentence by High Court without appreciating the nature of offence, grievous injuries of witnesses/victims, is unsustainable.

Hazara Singh v. Raj Kumar and Ors. 979

(7) s.376 – Rape of 11 years old girl – Acquittal by trial court – Conviction by High Court – Sentence of 5 years and fine – Held: Conviction by High Court is justified – But since accused was a juvenile under Juvenile Justice Act, 2000, High Court was not right in awarding sentence – High Court should have referred the case to Juvenile Justice Board for sentence – However, in view of the on date accused being 36 years old, having family and has already undergone 3 years sentence, it would not be appropriate to refer the case to Juvenile Justice Board – Therefore, direction issued to release the accused from custody – Juvenile Justice (Care and Protection of Children) Act, 2000 – ss.2(k), 2(l), 7-A, 20 and 49 – Juvenile Justice (Care and Protection of Children) Rules, 2007 – rr.12 and 98.

Bharat Bhushan v. State of Himachal Pradesh 1013

(8) s.376(1).

(See under: Sentence/Sentencing) 1144

RENT CONTROL AND EVICTION:

(1) (See under: Himachal Pradesh Urban Rent Control Act, 1987) 1029

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(2) (See under: West Bengal Premises Tenancy Act, 1956) 1131

SENTENCE/SENTENCING:

(1) Commutation of sentence.
(See under: Constitution of India, 1950) 1053

(2) Rape case – Punishment for – High Court in appeal, maintaining the conviction of accused persons, but reduced the sentence of imprisonment of accused to period already undergone – Held: Sentence bargaining is impermissible in a serious offence like rape – Minimum sentence for rape is 7 years as provided u/s 376(1) IPC – The minimum sentence can be reduced only after assigning adequate and special reasons – The reasons must contain extenuating circumstances which prompted the court to reduce the sentence below the prescribed minimum – The courts are required to strictly abide by this legislative command – In the instant case, High Court heard appeals in slipshod manner – Even if accused did not press appeals, it was duty of High Court to consider propriety of conviction – High Court could have reduced the sentence below the minimum prescribed only when it gave reasons containing extenuating circumstance – High Court did not give any reason for reducing the sentence and such a course is against the mandate of s. 376(1) IPC, and, as such, legally unsustainable – Matter remanded to High Court for disposal afresh – Penal Code, 1860 – s.376(1).

State of Haryana v. Janak Singh & etc. 1144

(3) Sentencing policy – Held: It is duty of court to

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consider all relevant factors to impose an appropriate sentence – Punishment awarded should be directly proportionate to the nature and magnitude of the offence – Undue sympathy to impose inadequate sentence would do more harm to the Justice system and undermine public confidence in efficacy of law.

(Also see under: Penal Code, 1860)

Hazara Singh v. Raj Kumar and Ors. 979

SERVICE LAW:

Annual Confidential Report (ACR) – Communication of – To Public servant (other than military service) – Held: The view taken in Dev Dutt case is legally sound and thus approved – Therefore, every entry in ACR whether it be poor, fair, average, good or very good, must be communicated to public servant within a reasonable period.

Sukhdev Singh v. Union of India and Ors. 1004

URBAN DEVELOPMENT:

Land purchased by co-operative housing societies – Subsequently declared as industrial development area under Industrial Area Development Act – High Court held that the societies are entitled to suitable alternative developed land on the basis of recommendations in Khodaiji Committee Report and as per the order dated 22.10.2002 passed by the State under Urban Planning and Development Act – Held: Recommendations in Khodaiji Committee Report, on facts would not enure to the benefit of the societies – Order dated 12.10.2002 is also not applicable to appellant-Authority.

(Also see under: Uttar Pradesh Urban Planning

and Development Act, 1973; and Interpretation of statutes)

New Okhla Industrial Development Authority v. Sarvpriya Sehkar Avas Samiti Ltd. and Anr. 945

UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973:

s.41 – Provision under – Incorporated in Uttar Pradesh Industrial Area Development Act, 1976 by virtue of s.12 thereof – Order passed under s.41 of 1973 Act, whether applicable to the authorities under 1976 Act – Held: Power exercised u/s.41 shall not be applicable to the authorities under 1976 Act merely because s.41 was included in 1976 Act by incorporation – The decision taken by one administrative department, shall not apply to the authorities within administrative control of another department, unless conscious decision is taken to apply the same to both the categories of authorities.

(Also see under: Urban Development)

New Okhla Industrial Development Authority v. Sarvpriya Sehkar Avas Samiti Ltd. and Anr. 945

WEST BENGAL PREMISES TENANCY ACT, 1956:

s. 13(4) – Suit for eviction of tenanted premises – On the ground of bona fide requirement – Trial court as well as first appellate court decreed the suit – High Court remitted the matter to trial court to consider whether partial eviction of tenant could have satisfied requirement of landlady – Held: In view of the findings by trial court and first appellate court that landlady required the entire premises, High Court committed grave error in holding that partial eviction should have been considered –

Consideration of extent of requirement by courts, would be sufficient compliance of provision of the Act.

Anamika Roy v. Jatindra Chowrasiya and Ors. 1131

WITNESSES:

(1) (i) Child witness – Held: Testimony of child witness, if credible, truthful and corroborated, can form basis for conviction – However, corroboration is not mandatory, but should be followed as a rule of prudence.

(ii) Behaviour of witness – Relevance of – Held: Behaviour of witnesses or their reactions differ from situation to situation and individual to individual – But if the behaviour is absolutely unnatural, testimony of witness may not deserve credence and acceptance.

(Also see under: Penal Code, 1860)

Shivasharanappa and Ors. v. State of Karnataka 1104

(2) Interested witness – Evidentiary value – Held: Evidence of interested witness, if consistent, can be relied upon and not to be mechanically overlooked – In the instant case, interested witnesses, not being truthful, their presence itself being doubtful, cannot be relied upon.

(Also see under: Penal Code, 1860)

Sunil Kundu and Anr. v. State of Jharkhand 924

WORDS AND PHRASES:

‘Consortium’ – Meaning of.

Rajesh & Ors. v. Rajbir Singh & Ors. 961