O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2015

(*JULY*)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY
MONTHLY REVIEW OF CASES ON CIVIL, CRIMINAL & OTHER LAWS, 2015 (JULY)
I N D E X

SL. NO	CASE	SECTION / ISSUE	Date of Judgment	PAGE
1.	*Cover Page & Index*			***1-3***
	A. Criminal Laws			
	(i) Indian Penal Code			
2.	**Daya Ram and Ors. Vs. State of Haryana** IN THE SUPREME COURT OF INDIA	**Section 302 & 34**	**Date of Judgment- 02.07.2015**	***4-7***
3.	**State of U.P. Vs. Satveer & Ors.** IN THE SUPREME COURT OF INDIA	**Section 302/34**	**Date of Judgment- 01-07-2015**	***7-12***
4.	**Eshwarappa *Vs.* State of Karnataka** IN THE SUPREME COURT OF INDIA	**Section 302,498 A & 201**	**Date of Judgment- 24.07.2015**	***12-14***
5.	**Kamla Kant Dubey Vs. State Of U.P.& Ors** IN THE SUPREME COURT OF INDIA	**Section 302 /34**	**Date of Judgement - 01.07.2015**	***14-19***
6.	**Rabindra Sahoo Vs. State of Orissa.** IN THE HIGH COURT OF ORISSA, CUTTACK	**Section 341,506 & 376**	**Date of Judgment- 06.07.2015**	***19-21***
7.	**State Of M.P Vs. Keshar Singh** IN THE SUPREME COURT OF INDIA	**Section 376**	**Date of Judgment - 03.07.2015**	***21-25***
8.	**State of Madhya Pradesh Vs. Anoop Singh** IN THE SUPREME COURT OF INDIA	**Section 376**	**Date of Judgment- 03.07.2015**	***25-29***
	B. Other Laws			
	(i) Constitution of India			
9.	**Naliniprava Rout & Another Vs. Kanhu Charan Sahu.** IN THE HIGH COURT OF ORISSA, CUTTACK	***Articles 226 /227***	**Date of Judgment- 01.07.2015**	***30-32***
	***(ii)* Monopolies and Restrictive Trade Practices Act, 1969**			
10.	**Delhi Development Authority Vs. P.R. Samanta.** IN THE SUPREME COURT OF INDIA	**Section 55**	**Date of Judgment - 21 .07. 2015**	***33-36***

	(iii) Prevention of Corruption Act 1988			
11.	**Chaitanya Prakash Audichya Vs. CBI.** IN THE SUPREME COURT OF INDIA	**Sections 7 and 13(1)(d) and 13(2)**	**Date of Judgment - 01.07.2015**	***36-40***
	(iv) Industrial Disputes Act, 1947			
12.	**M/s. Gulf Oil Corporation Ltd. Vs. Sri Manoj Kumar Sahu** IN THE HIGH COURT OF ORISSA, CUTTACK	**Section 33 C (2)**	**Date of Judgment - 10.07.2015**	***40-42***
	(v)Hindu Marriage Act			
13.	**Sarat Kumar Mishra Vs. Smt. Sandhyarani Satapathy.** IN THE HIGH COURT OF ORISSA, CUTTACK	**Section 19 &13 Order 9 Rule-13 of C.P.C.**	**Date of Judgment-14.07.2015**	***43-46***
	(vi) Family Court Act			
14.	**Nirupama Mohapatra Vs. Sabyasachi Mohapatra.** IN THE HIGH COURT OF ORISSA, CUTTACK	**Section 19 (1)**	**Date of Judgment-01.07.2015**	***46-48***
	(vii) Land Acquisition Act & Odisha Resettlement and Rehabilitation Policy, 2006			
15.	**Indira Mohapatra vs. State of Odisha and others** IN THE HIGH COURT OF ORISSA, CUTTACK	**Category IV of Odisha Resettlement and Rehabilitation Policy ,2006**	**Date of Judgment-09.07.2015**	**48-50**

* * * * * * *

2. Section 302 & 34

Daya Ram and Ors. Vs. State of Haryana

Prafulla C. Pant & Amitava Roy, JJ.

IN THE SUPREME COURT OF INDIA

Date of Judgment: 02.07.2015

Issue

Conviction under Section 302 read with Section 34 IPC and the sentences consequential thereto.

Relevant Extracts

The prosecution case is traceable to the First Information Report (for short hereinafter referred to as FIR) recorded on 25.8.2001 at 12.15 PM, on the version made by the informant Bajrang Bali to the effect that on 23.8.2001, the a forenamed Devi Lal, Chander Singh, Vidyadhar alias Didaru and Daya Ram, sons of Sahi Ram, residents of the same village had abused his brother Ashok and had threatened to kill him. On being informed about this threat on the next day i.e. 24.8.2001, the informant had accompanied his brothers Rohtash and Ashok to their field at about 8.30/09.00 PM to look after the crops. According to the informant, as soon as they reached the field, Vidyadhar alias Didaru, Chander Singh, Daya Ram, Madan and Devi Lal sons of Sahi Ram and Hans Raj and Rohtash sons of Ami Lal all of the same village came out from behind the standing Bajara crop thereat, being armed with lathi, jailly and alleged that the assailants had hid themselves in the cover of the Bajara Crops and though he hadaccompanied his brothers, he was behind them by 10/12 paces. He stated that on seeing the attack, he concealed himself in the bushes nearby but in the moonlight he could recognise all the seven assailants. He mentioned that all the seven persons inflicted injuries on his brothers with their weapons whereupon the injured fell on the ground. According to the informant, Daya Ram thereafter fetched a cart (peter rehra) parked nearby and the assailants removed his brothers from the field. The informant stated that out of fear and alarm he kept himself in the hiding for the rest of the night and only at the break of dawn, he went back to the village and disclosed the above episode to his cousin-brother Sarwan and thereafter embarked on a search for the injured. He stated that after a thorough search, they could detect the dead bodies of Rohtash and Ashok lying in front of the door of the Dhani (small hutment adjacent to the agricultural field to enable the occupant to keep a vigil on the crops)of Sahi Ram, the father of the Appellants, Daya

Ram and Madan. The informant after waiting there in inconsolable anguish and pain, left the spot to inform the Police, by leaving Sarwan Kumar to be on guard. He met the SHO, PS Adamur at the bus stand at Darauli, and disclosed the whole incident. His statement was recorded by the said officer and after endorsing an observation that offences Under Section 148/149/302/201 Indian Penal Code had been committed, forwarded the report to the police station Adampur whereupon FIR No. 207 dated 20.8.2001 was registered. Investigation followed, in course whereof, the Appellants alongwith Devi Lal, Chander Singh, Vidyadhar alias Didaru were arrested and acting on their statements of disclosure, their weapons of the alleged assault i.e. jailly, kulhari/Gandasa and lathis were recovered and seized. The Investigating Officer also visited the site, performed inquest over the dead bodies, prepared a report and despatched the bodies for post-mortem examination. He drew a site-plan, collected samples of blood-stained earth, seized amongst others a bucket, a chappal (Hawai) from near the dead body of the Rohtash and one pair of leather slippers from near the dead body of Ashok. The Investigating Officer prepared recovery memos and sealed the seized items. He also recorded the statement inter-alia of the informant, Bajrang Bali and others and eventually laid a chargesheet against all the seven persons under the above provisions of the Code. The matter was eventually committed to the Court of the Additional Sessions Judge (Adhoc), Hissar and charge Under Section 302/201/148/149 Indian Penal Code was framed against all the seven persons including the Appellants, to which they pleaded "not guilty".

The learned trial court on a consideration of the evidence on record and after analyzing the rival contentions, convicted the Appellants Under Section 302 Indian Penal Code read with Section 34 of the Code and sentenced them as above. However, being of the view that the complicity of the other three accused persons, namely, Devi Lal, Chander Singh and Vidyadhar alias Didaru was doubtful, as the lathis otherwise identified to have been used by them did not wear blood-stains, it acquitted them on the benefit of doubt. It rejected the defence plea of delay in lodging of the FIR, having regard to the developments prior thereto. It dismissed the challenge to the trustworthiness of the informant, rejecting the defence plea of his indifferent conduct as a brother when the deceased were being openly assaulted in his presence. According to the learned trial court, it was not unusual for individuals to react differently in such situations and was of the view that there had been no undue delay in filing of the FIR. The learned trial court also

discarded the defence plea of inconsistency between the injuries on the dead bodies with the weapons of assault allegedly used by observing that the same could be inflicted by blunt weapons like lathi or jailly/kulhari, if used by the blunt side. The narration of the incident as made by the informant, PW 3 was otherwise accepted to be credible except to the extent of participation of the three accused persons, namely, Devi Lal, Chander Singh and Vidyadhar in the assaults. The learned trial court was of the view that the plea of the defence that the informant as the eye-witness could not specify the individual acts of assault, did not have any fatal bearing on the case of the prosecution and returned a finding of guilt against the Appellants on an exhaustive analysis of the evidence on record, by taking note inter-alia of the factum of seizure of their weapons of assault i.e. jailly, gandasa and lathis on their disclosures and also the report of the Forensic Science Laboratory, Haryana detecting human blood thereon. The sentence as above was awarded to the Appellants after according to them, hearing in connection therewith. The High Court concurred with the learned trial court on all the above aspects and maintained the conviction and sentence.

We have duly considered the evidence on record and also the arguments based thereon. The case witnesses an incident of double murder of which PW 3 has been cited to be the only eye-witness. It is a matter of record, that the deceased persons were the brothers of this witness PW 3, who coincidently is also the informant. The courts below on a correct assessment of his evidence, had concluded that he indeed was present at the place of occurrence at the time of the incident. Though the participation of the three of the accused persons, namely, Devi Lal, Chander Singh and Vidyadhar alias Didaru was not accepted due to absence of any blood mark in the lathis said to have been wielded by them, in our opinion in the face of the overwhelming and impregnable testimony of this witness on the entirety of the events relatable to the incident, it is not possible to extend any benefit of doubt to the Appellants on that count. Suffice it to state, that the ocular account of the incident presented by the PW 3 has been in graphic details. He did not vacillate in identifying the Appellants. He also could relate the weapons of assault used by them. The injuries sustained by the deceased in course of the incident and those detected in the post-mortem examination are compatible with each other. The seizure of the weapons of assault vis-a-vis the Appellants based on their statements of disclosure and the report of the Forensic Science Laboratory, also establish their irrefutable nexus with the crime. The plea of the decomposition of the dead bodies to nihilate the medical

opinion also lacks persuasion. Noticeably, as per the testimony of the doctor performing the post-mortem examination, the time of death does tally with the one of the incident. We are not inclined to reject the testimony of PW 3 on the ground that his conduct had been unusual at the place of the occurrence, he having kept himself aloof therefrom instead of attempting to save his brothers who were under murderous attack by a group of assailants. As rightly observed by the courts below that, on being confronted with such an unforeseen and sudden situation, it is quite likely that individuals would react differently and if the PW 3, being petrified by such unexpected turn of events, being in the grip of fear and alarm, as a matter of reflex hid himself from the assailants, his version of the episode, in our estimate, is not liable to be discarded as a whole as the same is otherwise cogent, coherent and compact.

As the eventual objective of any judicial scrutiny is to unravel the truth by separating the grain from the chaff, we are of the opinion that in the face of clinching evidence on record, establishing the culpability of the Appellants, their conviction and sentence as recorded by the courts below does not call for any interference at this end. The participation in the gory brutal attack of the Appellants with the lethal weapons resulting in death of two persons Ashok and Rohtash is proved beyond reasonable doubt not only by the testimony of PW 3, the eyewitness, but also by other evidence collected in course of the investigation and adduced at the trial. On an overall appreciation of the materials on record, we find ourselves in complete agreement with the findings recorded by the courts below. In the wake of the above, the impugned judgment and order of the High Court sustaining the decision of the learned trial court is affirmed. The appeal lacks in merits and is thus dismissed.

*****

3. Section 302/34

State of U.P. Vs. Satveer & Ors.

Pinaki Chandra Ghose & Uday Umesh Lalit ,JJ.

IN THE SUPREME COURT OF INDIA

Date of Judgment- 01-07-2015

Issue

Appeal against conviction and acquittal by trial Court & H.C. respectively in case of complicity of the parties in a murder case.

Relevant Extracts - Pursuant to the statement of PW1 Roop Basant recorded by scribe Soran Lal at 12:45 p.m. on 24.02.2006,

Crime No.23 was registered with Police Station Khurja Dehaat, Bulandshahar against the respondents. It was alleged that on that day Akash aged about 8 years, nephew of said PW1 was playing near Ambedkar Park. At about 10 a.m. respondent Subhadra took said Akash to her baithak, which was seen by villagers Mewa Ram and Vijay Pal. At that time three sons of said Subhadra, who along with Subhadra are respondents herein, were sitting in the Verandah. They went inside taking Akash along with them and did not come out for about half an hour. It was alleged that the respondents then came out with a "thaal" filled with articles of worship (pooja samagri) and went towards Chamunda Math for worship. Since Mewa Ram and Vijay Pal did not see Akash coming out, they suspected some foul play and soon after the respondents had left for Chamunda Math they went inside the baithak. As they entered, they saw dead body of Akash lying in a pool of blood with nostrils and ears cut. They raised hue and cry, which attracted number of villagers. When the villagers saw body of Akash, the situation took an ugly turn and there was complete chaos. The people then went to the Math and assaulted the respondents. The police thereafter arrived in the village and Inquest Panchanama was conducted between 2:30 p.m. to 4:00 p.m. Around this time, the respondents were arrested at about 3:30 p.m.

The Trial Court after considering the material on record found the eye witness account coming from PW2 Mewa Ram to be trustworthy and that the case was fully established against the respondents. It recorded findings; a) That on 24.02.2006 at about 10:00 O'clock accused Subhadra took the deceased Akash by holding his hand to their baithak. b) That the accused Satveer, Sanjay and Shishpal also accompanied Subhadra while going inside the baithak. c) That all the accused Subhadra, Sanjay, Shishpal and Satveer came out of baithak after 20-25 minutes. d) That they were holding the Pooja Samagiri. e) That all the accused offered prayer at Chamunda Math and offered flowers, batasa and lit the lamp there. f) That PW2 Mewa Ram had seen the dead body of Akash and found that ears and nose of Akash were cut and he was in pool of blood. g) That PW2 Mewa Ram was sitting on the bench near the clinic of a doctor which was 10-12 feet away from the place of incident. h) That the dead body of deceased Akash was found in the baithak of

accused persons which proved the death or human sacrifice by all the accused persons.

The Trial Court convicted the respondents under Section 302 read with Section 34 IPC. After considering the submissions advanced on behalf of the prosecution and the respondents on the issue of punishment, the Trial Court by its further order found the case to be rarest of rare warranting extreme punishment of death penalty. It thus imposed death penalty on the respondents subject to confirmation by the High Court.

The matter reached the High Court upon Reference so made by the Trial Court. The respondents also preferred Crl. Appeal No.7911 of 2006 challenging their conviction and sentence. The High Court accepted that the prosecution had proved that Akash a boy of eight years was done to death at about 10 a.m. on 24.02.2006 in the baithak owned by respondents. It however took the view that the prosecution had failed to prove the complicity of the respondents in the offence. It observed that looking to its contents and language, the First Information Report did not appear to be a genuine document and the scribe Soran Lal was also not examined. According to the High Court it did not stand to reason that large number of villagers had apprehended the respondents and given them thrashing and yet allowed them to escape, that respondent Subhadra, a lady of 58 years, would so succeed in running away. It also found force in the contention of the respondents that the place of occurrence was an open place and accessible to all.

By its judgement under appeal the High Court rejected the reference and allowed the Appeal acquitting the respondents of the charges levelled against them.

The State being aggrieved has preferred the instant appeal challenging the order of acquittal passed by the High Court.

In the instant case two facts were accepted to have been proved on record by the trial court as well as the High Court, namely, (a) the dead body of Akash was found inside the baithak and (b) said baithak belonged to the respondents. The prosecution has examined only one witness i.e. PW2 Mewa Ram who can throw some light. The spot panchnama Ext. Ka-15 shows that on one side of the road is the house of the respondents next to which is

Chamunda Math and on the other side of the road is the baithak in question. Thus, according to the sole witness he saw respondent Subhadra coming from her house on one side of the road and then proceeding across the road towards the baithak holding the arm of Akash. According to him the respondents were inside the baithak for some 20-25 minutes, and when they went towards Chamunda Math i.e. to the other side of the road, he and Vijaypal could immediately enter the baithak and see the dead body lying in a pool of blood, which meant that the baithak was not locked at all.

The evidence of the sole witness thus needs to be considered with caution and after testing it against other material and further, such evidence must inspire confidence and ought to be beyond suspicion.

We now proceed to examine the testimony of the sole witness in the context of the material on record. According to PW2 Mewa Ram he was sitting on a bench in front of the clinic of a doctor with Vijaypal when he saw Akash being led inside the baithak by the respondents. Apart from his own testimony nothing has been placed on record by the prosecution which could lend corroboration to his own presence and the content of his version. First, no reason has been given why Mewa Ram and Vijaypal were sitting on the bench outside the clinic of the doctor. Neither the doctor nor Vijaypal were examined. Beyond the testimony of the witness himself there is nothing to indicate whether PW2 Mewa Ram was actually there at the relevant time or not. Secondly, the place from where he allegedly witnessed the occurrence is not a natural place where either the witness resides or carries on any vocation. The reason for his being there is not placed on record. Again the reason for his continuing to be there for 20-25 minutes is also not spelt out. Thirdly, none from the house of Akash was examined nor did PW1 Roop Basant throw any light as to when Akash left the house and in whose company was he playing. Neither has the prosecution given the names of those children nor has anybody else been examined to say that he had seen the children playing at the place in question. There is nothing on record which could corroborate that Akash was actually present with other children. Fourthly, there is nothing to indicate how far was the house of Akash and whether that was the normal place where Akash would always be playing. Lastly, if the

incident created chaos in the village so much so that the villagers went and thrashed the respondents, there is no reason why none of them was examined.

As regards his version about the incident, the manner in which it statedly occurred, the involvement of the respondents--whether all or some of them, we have nothing on record which could possibly allow us to test the veracity of the version of the sole witness. To us, it is doubtful whether PW2 Mewa Ram could be called a natural and truthful witness and could be completely relied upon. The movements of Akash are also not established to show that he was actually there as suggested by the witness. Since PW2 Mewa Ram is the sole witness and the entire case depends on his testimony, we have looked for even minutest detail which could possibly lend corroboration. We have however not been able to locate any such material. In order to evoke confidence and place intrinsic reliance on the testimony of this sole witness, we tried to find some corroboration on material particulars, which unfortunately is lacking. The assessment of the entire material has left many doubts and questions unanswered. Two facts, that the baithak was of ownership of the respondents and that the body of Akash was found there, though very crucial, cannot by themselves be sufficient to fix the liability. The baithak was not part of the house, was across the road and apparently accessible to others. And importantly, presence of respondents--whether some or all of them, has not been fully established.

Now the other features on record need consideration. The respondents were apprehended the same day when one of them i.e. respondent Sanjay was allegedly found to be in possession of blood stained dharati or sickle. According to the prosecution the weapon was blood stained and was kept in the folds of dhoti by said Sanjay. However, no such blood stained dhoti of respondent Sanjay was recovered. For that matter no blood stained clothes were recovered from any of the respondents though they were supposed to be authors of the crime which left body of Akash in a pool of blood. Even the blood stains found on the cemented portion from

Chamunda Math, though of human origin, were quite disintegrated as per FSL examination.

In the circumstances and particularly when we are considering an appeal against acquittal, the interference in the present case would be justified and called for, only if we were to find the testimony of the sole witness of such character that it could be fully relied upon. In the present matter where the accused are being tried for an offence punishable with capital punishment, the scrutiny needs to be stricter. In our view the material on record definitely falls short and the respondents are entitled to benefit of doubt. We, therefore, affirm the view taken by the High Court and dismiss the state appeals. The appeal preferred by the Complainant is also dismissed.

*****

4. Section 302,498-A & 201
Eshwarappa Vs. State of Karnataka
T.S. THAKUR & ADARSH KUMAR GOEL ,JJ.
IN THE SUPREME COURT OF INDIA
Date of Judgment-24.07.2015

Issue

Sentences of imprisonment and fine awarded in case of death, cruelty and making disappearance and giving false information to screen the offender.

Relevant Extracts

The prosecution case is that a day prior to the incident the parents of the deceased brought the deceased-Latha back to her matrimonial home in village Lakya, but the appellant's cruel behaviour towards her continued unabated. On the fateful day, the deceased appears to have asked the appellant to pay her some money so that she could take her sick child to the doctor. The appellant is alleged to have asked her to come to the field, where the appellant was going for work to collect the money. According to the prosecution, Latha followed her husband to the field while her parents returned to their village, but only to receive by evening the sad news that their daughter was lying dead under a tamarind tree

near the land of the appellant in his village. They rushed to the village and the place of occurrence only to find that the deceased had died of strangulation. The matter was, thereupon, reported to the police who registered a case, commenced and completed the investigation and filed a charge-sheet not only against the appellant whom the prosecution accused of committing offences punishable under Sections 498A, 302 and 201 IPC but even against the parents of the appellant and Sarpina, the alleged lady love of the appellant. At the trial, the prosecution examined as many as 20 witnesses to prove the charges against the accused persons. The Trial Court, however, came to the conclusion that the prosecution had failed to prove its case against the accused persons except the appellant who was found guilty for offences punishable under Sections 498A, 302 and 201 IPC. He was accordingly sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/- under Section 302 IPC. The fine amount was directed to be paid to the grandparents of the child left behind by the deceased. He was also sentenced to undergo imprisonment for three years and to pay a fine of Rs.2,000/- under Section 498A IPC. In default, three months imprisonment was prescribed. For the offence punishable under Section 201 IPC, the appellant was sentenced to undergo imprisonment for three years and to pay a fine of Rs.2,000/-. In default of payment of fine, he was sentenced to undergo imprisonment for three months. All the sentences were directed to run concurrently.

Aggrieved by the judgment and order passed by the Trial Court, the appellant preferred Criminal Appeal No.1676 of 2007 which was heard and dismissed by the High Court in terms of its order impugned in this appeal. The High Court, on a careful reappraisal of the evidence on record, came to the conclusion that the appellant had been rightly found guilty by the Trial Court.

In the light of the evidence on record, it was argued on behalf of the appellant that there was no eye witness to the occurrence and the entire prosecution case was based on circumstantial evidence. It was also submitted that the circumstances sought to be relied upon do not form a complete chain so as to lead the Court to an irresistible conclusion that the death of the deceased was homicidal and the appellant was responsible for the same. In particular, reliance was placed by learned counsel for the appellant upon the deposition of the doctor to suggest that the death could have been caused by hanging. The Trial Court and so also the High Court has rejected the story of suicide by the deceased and in our opinion rightly so, for reasons more than one.

In the totality of the circumstances and having regard to the nature of the evidence which the courts below have found credible on all material aspects of the prosecution case, we do not see any compelling reason to interfere with the view taken by the Trial Court as affirmed by the High Court. The only modification no matter inconsequential in the facts and circumstances of the case that we may make is the setting aside of the conviction of the appellant for the offence punishable under Section 498A Indian Penal Code.

We, accordingly, allow this appeal but only in part and to the limited extent that the judgment and order passed by the Trial Court as affirmed by the High Court in so far as the same convicts and sentences the appellant to imprisonment for the offence punishable under Section 498A of the Indian Penal Code shall stand set aside. The appeal insofar as the same challenges the conviction and sentence of imprisonment awarded to the appellant for the offence under Section 302 IPC as also the sentence awarded under Section 201 IPC together with the amount of fine imposed and the sentence in default shall stand dismissed.

*****

5. Section 302 /34

Kamla Kant Dubey vs State Of U.P.& Ors

Pinaki Chandra Ghose & Uday Umesh Lalit ,JJ.

IN THE SUPREME COURT OF INDIA

Date of Judgement -01.07.2015

Issue

Conviction and sentence for murder and common intention.

Relevant Extracts

Acording to the case of the prosecution:-

One Brahmadeen Dubey owned lands in District Mirzapur in State of Uttar Pradesh. Under two sale deeds, he sold two parcels of land admeasuring 10 bighas and 6 bighas to Rama Kant Dubey and Sushil Kant Dubey respectively. Two registered deeds in this behalf were executed on 02.02.1993. However, it came to the notice that there was already a sale deed executed on 09.09.1992 in respect of very same lands in Kolkata in favour of Basant Lal Dubey and others. This led to the filing of Civil Suit No.160 of 1993 by Brahmadeen seeking cancellation of sale deed dated 09.09.1992,

submitting, inter alia, that the deed in question was a sham document which was obtained by setting up an imposter in place of the owner i.e. Brahmadeen Dubey.

On 16.11.1994, brother-in-law of Brahmadeen named Kedar Nath Dubey was murdered while sons of Kedar Nath were also injured in the transaction. In respect of said incident, Basant Lal Dubey and his three sons Lalji, Gyan Prakash and Om Prakash were facing trial for having caused the murder of Kedar Nath and injuries to his sons.

Brahmadeen aged about 90 years was living with the sons of Kedar Nath Dubey on whom he depended because of his old age.

On 26.11.1998 at about 8.00 in the morning PW1 Kamla Kant Dubey, son of Kedar Nath Dubey alongwith Brahmadeen had gone to ease out at some distance from the village. At that time Basant Lal and his sons Lalji, Om Prakash and Gyan Prakash came on a tractor driven by Om Prakash from a small road along side a Canal. Lalkara was given by Basant Lal that the old man be killed and should not be allowed to escape. The tractor swerved and was driven straight in the direction where Brahmadeen was easing out. He got up in fright but the tractor pushed him down and he was crushed. The tractor took round and came back again to crush him. PW1 who was easing out at some distance, raised shouts which attracted the attention of villagers, whereupon the tractor escaped towards western side of the village.

Pursuant to this complaint, First Information Report was registered at 9.30 a.m. on 26.11.1998 and investigation was undertaken.

The trial court observed that the name of PW3 was not mentioned in the original complaint and it would be doubtful to accept him as witness who had seen the accused making good their escape. The trial court accepted that the first information report was lodged with promptitude and was well supported by the inquest and spot panchnama. It observed that the motive alleged by the prosecution was proved beyond reasonable doubt. The trial court accepted the eye witness account of PW1 and considered whether the testimony of sole witness could be relied upon. Having found corroboration to the version of the eye witness on material

particulars, it accepted such testimony and the case of the prosecution. It convicted all the accused under Section 302 read with 34 IPC. By its subsequent order, it observed that a 90 year old infirm man was done to death in a gruesome manner purely on account of greed for property and as such the case called for extreme punishment. It therefore imposed death penalty on the accused, subject to confirmation by the High Court. The death sentence so imposed led to Reference No.6/2000 in the High Court.

It was also observed that the ocular account was in conflict with the medical opinion. It stated as under:

"The counsel for the appellant submits that ante mortem injuries are in conflict with ocular account. In this connection, we may advert again to the prosecution case according to which the deceased was repeatedly crushed under the wheels of the tractor. Our particular attention was drawn to injury No.1 which could be result of the crushing by the wheel of tractor but in so far as injury No.6 is concerned, it is only on the left part of chest resulting in internal damage to the ribs but had he been crushed under the tyres, then right chest should have also sustained similar injuries. By this reckoning, the medical evidence belies the prosecution case that the deceased was repeatedly crushed under the wheels of the tractor. In the circumstances the submission of the learned counsel gains ground that the deceased came under the wheel of the unidentified tractor by accident and the version of PW1 with regard to this vital fact appears to be inherently improbable and intrinsically incredible and therefore, the same cannot be accepted."
The High Court thus gave benefit of doubt to the accused and allowed their appeal acquitting them of all the charges leveled against them. In the light of its discussion, Reference No.6/2008 was also rejected. These appeals by special leave filed by the informant and the State seek to challenge the correctness of the view taken by the High Court in acquitting the respondents accused.

We have gone through the record and considered the submissions. At the outset, it must be stated that PW4 Dr. K.N. Mehrotra, in his examination clearly stated that the injuries in

question were possible because of crushing by a tractor. In the cross examination, all that was suggested was that such injuries could also be possible by a jeep or a truck. We have seen the observations in the post mortem which indicate that on internal examination it was found that all bones of the skull were broken in pieces, membrane and brain were burst and that eye ball had come out. Further, all bones on the left side of the chest were broken, left lung was protruding out. Air pipe, trachea lerenex were also broken. The external examination and injuries indicated in the post mortem suggest crushing injuries. At least two areas, the left side of the skull and the left side of the chest appear to be crushed under the impact, which is consistent with ocular version. The spot panchnama Ext.Ka.14 shows tyre marks having round or circular motion which indicate that the vehicle must have been brought back and used for repeated crushing. In the face of these facts, the assessment that the medical evidence belies that the deceased was repeatedly crushed under the wheels of the tractor, is completely incorrect. Further, the area where the incident occurred is such where a vehicle would not enter by mistake causing an accident but the attempt was definitely deliberate.

We now proceed to consider the reasons which weighed with the High Court while discarding the evidence of the eye witness. The complaint Ext.P1 shows that PW1 and the deceased had gone at a distance from the village for easing themselves. Narrative clearly shows that it was at that stage that the tractor was driven straight towards the deceased. We do not see how there was an improvement in the version in court as against the one which finds mention in the complaint Ext.P1 or that the place of occurrence was changed. In the very same complaint PW1 had said that after the incident he had raised alarm whereupon many persons from the village had arrived at the scene of occurrence. It is true that he had not named PW3 as one of those persons in the complaint. That factor may certainly weigh while appreciating the testimony of witnesses. Similarly, if as against the role of exhortation which was attributed to only one person in the complaint, if there is subsequent improvement in the oral testimony in court, that aspect of the matter can also be taken care of while appreciating the

evidence and grain could be separated from chaff. But the question is whether these two reasons are strong enough to discard the testimony of the eye witness in toto. In our view, even if there were some improvements on part of PW1, these matters are not so fundamental affecting the very core to such an extent that his testimony needs to be discarded completely.

It is settled principle that a conviction can well be founded on the testimony of a single witness if the court finds his version to be trustworthy and corroborated by record on material particulars[1]. We find on the touchstone of these principles the testimony of PW1 is completely trustworthy. Out of three infirmities found by the High Court, one regarding place of occurrence is not correct at all. So far as other two infirmities are concerned, it is well accepted principle that the first information report need not contain every single detail and every part of the case of the prosecution. However, assuming them to be improvements, in our view the basic substratum of the matter does not get affected by such improvements at all. Even after segregating the part which appears to be introduced as improvement, the testimony of PW1 is clear and creditworthy. The feature that there was strong motive for the respondents to commit the murder in question is also clear from the record and the trial court had accepted that the respondents had strong motive to commit the crime. The finding as regards motive has not even been touched by the High Court. While PW1 narrated facts regarding civil litigation, the fact that the respondents accused were being tried for the murder of his father and that there was a separate case instituted against them for having assaulted Brahmadeen, he was not countered in cross- examination. The motive therefore lends complete corroboration and assurance while appreciating the version of PW1. We are conscious that we are considering an appeal against acquittal and that going by the law laid down by this Court, the view taken by the High Court ought not to be interfered with if it is a possible view. However, in our considered opinion, the view which weighed with the High Court cannot be termed as a possible view in the matter. It is well settled that in such circumstances it is open to an appellate court to consider the matter afresh[2]. Having undertaken such exercise, we are of definite conclusion that PW1 is a natural witness whose presence at the time and place of incident is established and is worthy of acceptance. However, mindful of the fact that in the original reporting he had attributed lalkara to respondent Basant Lal alone while the tractor was being driven by respondent Om Prakash, which meant that the other two accused,

though sitting on the tractor were not attributed any overt act, we grant benefit of doubt to the other two accused, namely, Lalji and Gyan Prakash. It could possibly be put that Brahmadeen, an old man of 90 years would normally be accompanied by someone for assistance but would be unaccompanied while easing out and therefore the time and place was so deliberately chosen, in which case culpability of every occupant of the tractor would be made out. However, in the absence of any material establishing that, Lalji and Gyan Prakash are entitled to benefit of doubt.

We therefore set aside the acquittal of Basant Lal and Om Prakash and restore the order of conviction as recorded against them by the trial court for the offences punishable under Section 302read with 34 IPC. However, we do not deem it appropriate to restore the sentence of death. In our view, the appropriate sentence in the matter ought to be sentence for imprisonment for life, which we proceed to impose on said Basant Lal and Om Prakash. Consequently, the appeals are partly allowed. The acquittal of Lalji and Gyan Prakash as recoded by the High Court is affirmed. The appeals as regards Basant Lal and Om Prakash are allowed and their acquittal is set aside. Accused Basant Lal and Om Prakash are convicted under Sections 302 read with Section 34 IPC and sentenced to suffer life imprisonment. They are directed to be taken into custody forthwith to suffer the sentence awarded to them.

*****

6. Section 341,506 &376
Rabindra Sahoo Vs. State of Orissa.

S.K. Sahoo, J.

IN THE HIGH COURT OF ORISSA, CUTTACK

Date of Judgment-06.07.2015

Issue

Settling issues of wrongful restraint - Criminal intimidation and punishment for rape.

<u>Relevant Extracts</u>

The prosecution case, as per the First Information Report lodged on 23.3.2005 by the victim (P.W.1) before the Inspectorin-charge, Salipur Police Station is that on that day at about 9.00 a.m. while the husband of the informant was not present in the house, the appellant who is the son of the victim and was addicted to liquor

and ganja wrongfully confined the victim inside a room and assaulted her by means of a bamboo stick on her left hand and left leg vigorously for which the victim became senseless. The appellant torn the saree of the victim and committed rape on her and also abused her in filthy languages. The victim was virtually dumb founded as she could not believe that her son would commit such an offence with her. The appellant pressed the neck of the victim and asked her to pay Rs.5000/- within three days or else she would be cut into pieces by means of bhujali and saying so, the appellant left the house. At that time the husband of the victim arrived at the house and found her crying sitting on the outside verandah and on being asked by her husband, the victim narrated the incident before him. On receipt of the written report from P.W.1, the Inspector-in-Charge of Salipur Police Station namely Trinath Mishra (P.W.12) registered Salipur P.S. Case No.74 dated 23.3.2005 under sections 323, 506 and 376 IPC at about 5.30 p.m. and he himself took up the investigation. He examined the informant and recorded her statement so also the statement of her husband Babaji Sahu. Then the I.O. visited the spot and in presence of the informant and other witnesses prepared the spot map Ext.8. The I.O. also seized one bamboo lathi, one lock with two keys from the spot room on production by the informant in presence of the witnesses under seizure list Ext.4. He further examined the witnesses and recorded their statements on 24.3.2005. The I.O. seized the wearing apparels of the appellant under seizure list Ext.9. Then he seized the wearing apparels of the victim under seizure list Ext.3 and then both the appellant and the victim were sent for medical examination under police requisition to S.C.B. Medical College & Hospital, Cuttack. The vaginal swab of the victim as well as her pubic hair were seized so also the semen and pubic hair of the appellant. The appellant was arrested and forwarded to Court on 25.3.2005. The I.O. received the medical examination report of the victim as well as of the appellant. On 15.7.2005 the seized exhibits were sent to SFSL, Rasulgarh for chemical examination and after completion of investigation, charge sheet was submitted on 20.7.2005 under sections 341, 506 and 376 IPC.

Upon critical analysis of the evidence led in the case, I find that the prosecution has succeeded in establishing the guilt of the

appellant beyond all reasonable doubt. The conclusions reached by the learned trial Court cannot be said to be palpably wrong or based on erroneous view of the law, so as to call for interference in appeal. Accordingly, the appeal stands dismissed. The impugned judgment and order of conviction of the appellant under section 376 Indian Penal Code and sentence of rigorous imprisonment for ten years as was imposed by the learned trial Court which cannot be considered to be excessive or unwarranted on the facts of the case, is hereby upheld. It appears from the record that the appellant was forwarded to Court on 25.03.2005 after arrest and since then he remained in jail custody. He was neither on bail during trial or during pendency of the appeal. Thus the appellant has already undergone the period of sentence as was imposed on him by the learned trial Court which is confirmed in this appeal. The appellant, if he is still in jail should be released forthwith, if his detention is not required in any other case.

Before parting, I would humbly say that a mother plays a very special and important role in a man's life. The son gets unconditional love from his mother. The son completes the womanhood of his mother. Mother makes a man out of a boy. The mother-son relationship and their emotional bond are dynamic. It is said that God cannot be everywhere and that is why he made mothers. Let us respect our mothers who not only brought us to this world but struggled so hard to make us a complete man. The Jail Criminal Appeal is dismissed.

*****

7. Section 376

State Of M.P vs Keshar Singh

Pinaki Chandra Ghose, Uday Umesh Lalit ,JJ.

IN THE SUPREME COURT OF INDIA

Date of Judgment - 03.07.2015

Issue

Appeal against acquittal of the offence of rape.

Relevant Extracts

The story of the prosecution is that the prosecutrix is a minor of unsound mind. On 09-11-1990 at around 8:30 a.m. when prosecutrix and her younger sister Nirmala (PW3) were going to their field with food for their father, the accused came and caught hold of the prosecutrix. He took her to some distance near a pond

and committed rape on her. Prosecutrix's private parts had bled and the petticoat was blood-stained. On seeing this, PW3 Nirmala rushed to her father Gopal (PW4) and informed him of the incident. Then PW4 came to the prosecutrix who told him with the help of sign language (since she cannot speak properly) that the accused committed rape on her. He noticed that there were blood stains on her petticoat near the private parts. Thereafter, PW4 took the prosecutrix to police station and lodged an FIR at 11:30 a.m. on the same day. Medical examination of the prosecutrix was conducted which revealed that the hymen was ruptured and the examining doctor Dr. (Mrs.) F.A. Qureshi opined that the prosecutrix was subjected to sexual intercourse. During investigation the accused was arrested on 21-11-1990 and was medically examined. He was found to be capable of performing sexual intercourse. The police filed charge-sheet against the accused with the charge of rape under Section 376 of IPC.

The prosecution produced PW1 Dr. Smt. F.A. Qureshi, PW2 Manohar Singh (uncle of the prosecutrix), PW3 Nirmala (younger sister of the prosecutrix), PW4 Gopal (father of the prosecutrix) and PW5 R.K. Mishra (Investigating Officer). Other witnesses were formal witnesses. It is important to note that the prosecutrix was also produced as a witness, being PW6, but it was found that she was not capable of understanding what was asked and made irrelevant answers. In the medical examination of the prosecutrix also, she is found to be 12-16 years old with low I.Q.

PW1 has deposed in her categorical finding that the private parts of the prosecutrix were injured, her hymen was ruptured and that she was subjected to sexual intercourse. The major eye witness in the present case is PW3 who is also a minor girl of 10 years. However, in her examination she was found to be competent witness as she answered the preliminary questions correctly and with understanding. She has in her examination-in- chief brought out the story that the accused, whom she knows, had caught her sister and taken her near the pond. According to her, he threw the prosecutrix on the ground, opened his pyjama and sat on her and gave the prosecutrix some money, which was thrown away by her.

The witness further stated in her deposition that the accused filled the mouth of the prosecutrix with lungi, raised her petticoat and committed sexual intercourse and that the private part of the prosecutrix bled. She also stated that her uncle Manohar Lal arrived there on whose asking she went to her father in a car and told him about the incident. She has also stated that the accused had inflicted knife blows on the thigh of the prosecutrix. In the cross-examination, we find that the counsel for defence has asked the child witness (PW3) many leading questions, the implication of which the child witness would never be able to understand. Therefore, she has answered most of the questions with a mechanical one word answer "Yes", without any elaboration. In this way, the defence elicited from the child witness the statements to the effect that the accused had given knife blows on the face, neck and thigh of the prosecutrix and that it was all these parts of the prosecutrix from where blood oozed out. In the same way she admitted the suggestion that she was read out a statement by police outside the Court and that she has made the same statement in the Court.

In view of the evidences, both the Sessions Court and the High Court found inherent inconsistencies in the statements of the prosecution witnesses. While PW2 and PW3 speak about knife blows being inflicted on thighs and blood oozing from there, the medical evidence does not support this theory. Further, PW3 said that she went to call her father PW4, while PW2 has said he had gone to call PW4. PW2 has also stated that when PW4 came along with him, they found the prosecutrix on the road, while PW4 has stated that he found the prosecutrix near khankri tree near a pond. Thus, the Sessions Court has rightly not considered the statement of the prosecutrix as she was found to be incompetent to understand the questions. In view of the above-mentioned inconsistencies, the Sessions Court found that although it is proved that rape was committed with the prosecutrix, but that it was done by the accused was not proved.

We have heard the learned counsel for both the sides and also analysed the evidence in this case. We find that there are inherent

inconsistencies in the case of the prosecution. The testimonies of two alleged eye witnesses, PW2 & PW3, are irreconcilable. PW2, the uncle of the prosecutrix says that he saw the accused sitting over the prosecutrix with his private part inside the private part of the prosecutrix when he was 25 feet away. We find this statement incredible for the reason that he could not have made such detailed observation from such a distance. Also, according to PW2, he had left the prosecutrix and PW3 on the road when he had gone to call PW4, while PW3 has completely contrary version where she states that she had gone to call PW4 leaving the prosecutrix with PW2. This creates a serious doubt as to who out of PW2 or PW3 stayed with the prosecutrix and who went to call PW4. Also PW2 stated that when he came with PW4, they found prosecutrix and PW3 on the road where PW2 had left them. However, PW4 states that it was PW3 who had come to inform him and he came with her to find the prosecutrix sitting alone near a tree next to the pond. In this way the three witnesses have three different versions. Moreover, both PW2 and PW3 have said that they saw accused inflicting knife blows at the prosecutrix on her thigh and blood oozed out on that account. This is completely unsupported by the medical evidence; no such injury by knife was found on the thigh of the prosecutrix.

We may note that PW3 had told about the accused inflicting knife blows in her examination in chief itself, and therefore, one cannot say she said so because of being misled by the cross-examiner. This is a major inconsistency in the testimony of both PW2 and PW3 which makes their statement unworthy of credit. Furthermore, the conduct of PW2 seems to be uncharacteristic of an uncle as he makes no mention of his raising any alarm or running towards the accused to apprehend him on seeing that the accused was sexually assaulting the prosecutrix. Also the medical evidence of Dr. Mrs. F.A. Qureshi on analysis seems to be not wholly supportive to the case of the prosecution. Dr. Quershi has accepted that if the sexual intercourse has happened in last 24 hours, then on touching the hymen fresh blood must necessarily ooze out. In saying so, she has approved what is written in the Modi's book on Medical Jurisprudence. However, she testifies that when she touched the hymen of the prosecutrix, no fresh blood oozed out.

This may be contrasted to the fact that allegedly, the medical examination of the prosecutrix was conducted within 12 hours of the alleged incident of rape. Had that been so, the prosecutrix must have bleeded fresh during the medical examination, but that did not happen. This shows that, probably, the sexual intercourse was done more than 24 hours back. In fact, Dr. Qureshi in her cross-examination has said that rupture of hymen was at the most 2-3 days prior to the medical examination. If this be so, the entire story of the prosecution would go out of the window. Further, there is another inconsistency to be found from the deposition of Dr. Qureshi. She has said in her statement that the girl she had examined was a healthy and 'normal' one. However, there is no dispute that the prosecutrix was far from normal as she was suffering from some mental disorder. Even when she was examined in Court, she was found to be of unsound mind. It would be highly unlikely and assumptuous on our part to say that even after conducting the whole examination of the prosecutrix, Dr. Qureshi may not have come to know of the mental disorder of the prosecutrix.

In view of the above reasoning, we are of the opinion that the case of the prosecution suffers from inherent inconsistencies and flaws. We do not find any merit in this appeal. Accordingly, this appeal is dismissed. Hon'ble Mr. Justice Pinaki Chandra Ghose pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Uday Umesh Lalit. The appeal is dismissed in terms of the signed reportable judgment.

*****

8. Section 376
State of Madhya Pradesh Vs. Anoop Singh
Pinaki Chandra Ghose and U.U. Lalit, JJ
IN THE SUPREME COURT OF INDIA
Date of Judgment- 03.07.2015
Issue

Appeal against conviction and acquittal by the Trial Court and High Court respectively in a case of an offence of rape.

Relevant Extracts - The facts of the present matter are that on 03.01.2003, at about 10:30 A.M. the prosecutrix was going to

school along with her sister. On realizing that she had left behind her practical note book, she returned back and after taking the said note book she once again headed towards the school. When she reached near Tar Badi (wire fencing) near Hawai Patti, there was an Ambassador car standing there and as alleged, the accused respondent came out of the car, pulled the prosecutrix inside the car and forced her to smell something, as a result of which the prosecutrix became unconscious. As alleged by the prosecution, the prosecutrix was taken to some unknown place thereafter. On regaining consciousness, the prosecutrix felt pain in her private parts. On the same day, she was admitted in the District Hospital, Satna in an unconscious condition and information about the incident was given to Laxmikant Sharma (P.W.8), the uncle of the prosecutrix. On 10.01.2003, the prosecutrix was discharged from the Hospital and sent back to her home where she narrated the incident and thereafter an F.I.R was lodged. During the course of investigation, the prosecutrix was sent for medical examination and her clothes were seized and slides were prepared. After receipt of the medical report, F.I.R was registered and site map of the spot was prepared. The Investigating Officer seized various articles which included the prosecutrix's birth certificate and certificate of the Middle School Examination, 2001. Along with that the relevant page (page No. 20) of the register of the U.S.A Hotel was also seized. After due investigation a charge-sheet was filed against the respondent for offences under Sections 363, 366 and 376 of the Indian Penal Code, 1860 ("I.P.C.") and the statements of the prosecution witnesses were recorded. On 27.03.2003, the Judicial Magistrate, First Class Satna registered the Criminal Case No.116/2003 and passed the committal order. Accordingly, the case was transferred and was received by the Upper District Sessions Judge-III, Satna for trial. The IIIrd Additional Sessions Judge, Satna, by his order dated 24.04.2006 passed in Special Case No.123/2003, convicted the accused under Sections 363, 366 and 376 of I.P.C. and held that all the offences against the respondent were proved beyond reasonable doubt. The respondent was awarded 7 years' rigorous imprisonment and fine of Rs.500/- for the crime under Section 363 I.P.C., 10 years' rigorous imprisonment and fine of Rs.1000/- for the crime under Section 366 I.P.C., and 10 years' rigorous imprisonment and fine of Rs.1000/- for the crime under Section 376 I.P.C. with default clauses. All the substantive sentences were directed to run concurrently.

In the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident.

The prosecution in support of their case adduced two certificates, which were the birth certificate and the middle school certificate. The date of birth of the prosecutrix has been shown as 29.08.1987 in the Birth Certificate (Ext. P/5), while the date of birth is shown as 27.08.1987 in the Middle School Examination Certificate. There is a difference of just two days in the dates mentioned in the abovementioned Exhibits. The Trial Court has rightly observed that the birth certificate Ext. P/5 clearly shows that the registration regarding the birth was made on 30.10.1987 and keeping in view the fact that registration was made within 2 months of the birth, it could not be guessed that the prosecutrix was shown as under-aged in view of the possibility of the incident in question. We are of the view that the discrepancy of two days in the two documents adduced by the prosecution is immaterial and the High Court was wrong in presuming that the documents could not be relied upon in determining the age of the prosecutrix.

This Court in the case of Mahadeo S/o Kerba Maske Vs. State of Maharashtra and Anr., (2013) 14 SCC 637, has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

"Rule 12(3): In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the

child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

This Court further held in paragraph 12 of Mahadeo S/o Kerba Maske (supra) as under: "Under rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rule 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of the ascertaining the age of a victim as well."

(Emphasis supplied)

This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In paragraph 13, this Court observed:

"In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the proseuctrix did her V standard and in the school leaving certificate issued by the school under Exhibit 54, the date of birth has been clearly noted as 20.05.1990 and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20.05.1990. the reliance placed upon the said evidence by the Courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of occurrence was perfectly justified and we do not find any grounds to interfere with the same."

In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence

in the form of Exts. P/5 and P/6 cannot be discarded. Therefore, the Trial Court was correct in relying on the documents.

The High Court also relied on the statement of PW-11 Dr. A.K. Saraf who took the X-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but less than 18 years. Considering this the High Court presumed that the girl was more than 18 years of age at the time of the incident. With respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rule 12(3)(b) and only in the absence, the medical opinion should have been sought. We find that the Trial Court has also dealt with this aspect of the ossification test. The Trial Court noted that the respondent had cited Lakhan Lal Vs. State of M.P., 2004 Cri.L.J. 3962, wherein the High Court of Madhya Pradesh said that where the doctor having examined the prosecutrix and found her to be below 18½ years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the Trial Court rightly held that in the present case the ossification test is not the sole criteria for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.

Thus, keeping in view the medical examination reports, the statements of the prosecution witnesses which inspire confidence and the certificates proving the age of the prosecutrix to be below 16 years of age on the date of the incident, we set aside the impugned judgment passed by the High Court and uphold the judgment and order dated 24.04.2006 passed by the IIIrd Additional Sessions Judge, Satna in Special Case No.123/2003. Accordingly, this appeal is allowed. We direct that the respondent shall be taken into custody forthwith to serve out the sentence.

*****

9. Article 226/227

Naliniprava Rout & Another Vs. Kanhu Charan Sahu.

VINOD PRASAD & S.K. SAHOO

IN THE HIGH COURT OF ORISSA: CUTTACK

Date of Judgment- 01.07.2015

Issue

Maintainability of a Writ Petition Under Article 226 or 227 of the Constitution of India.

<u>Relevant Extracts</u>

The appellants are the plaintiffs and the respondent is the defendant in the Court of Civil Judge (J.D.), Jagatsinghpur in T.S. No. 47 of 2001 wherein a prayer was made for a decree of declaration that Registered Deed of Gift No. 493 of 1982 in respect of suit property executed by late Guri Dei in favour of the defendant is illegal, fraudulent, invalid, inoperative and not binding against late Guri Dei and that the defendant had acquired no valid title and possession by virtue of the said deed of gift and that the final consolidation ROR prepared in pursuance of the said deed of gift in favour of the defendant in respect of the suit land was wrong and illegal and that the alleged partition of the joint family properties effected by the defendant and his brother Banambar Sahu before Asst. Consolidation Officer in Partition Case No.128 of 1982 is illegal and not binding on the plaintiffs and that the suit property along with other joint family properties of Balakrushna, Kelu and Fakir remained joint.

The respondent appeared in the suit and filed his written statement denying the allegations made in the plaint. During trial of the suit, writ appellant no.2 Ramachandra Pradhan was examined as P.W.1. It is the case of the appellants that some contradictory statements were made by the writ appellant no.2 as P.W.1 in his examination-in-chief and cross-examination for which from their side, an application under section 137 and 138 of Indian Evidence Act was filed on 9.2.2002 for a direction of re-examination of P.W.1 in order to reconcile the discrepancy and inconsistency made between the examination-in-chief and cross- examination and to explain the statement inadvertently made in the cross-examination and to remove the ambiguity.

The learned Civil Judge (Jr.Division), Jagatsinghpur after hearing both the plaintiffs and the defendant in the matter of recall

and re examination of P.W.1, allowed the petition vide order dated 22.2.2002. The defendant being aggrieved by the said order dated 22.2.2002 preferred W.P.(C) No.7391 of 2003 before this Hon'ble Court for quashing the said order passed by the learned trial Court. This Hon'ble Court vide order dated 20.9.2005 remitted the matter back to the trial Court with a direction to the said Court to reassess the evidence and dispose of the petition filed by the plaintiffs in consonance with law. After receipt of the remand order dated 20.9.2005 of this Court passed in W.P.(C) No.7391 of 2003, the learned trial Court vide order dated 10.01.2006 rejected the petition filed by the plaintiffs to recall P.W.1 mainly on the ground that by re-examination of P.W.1, the effect of cross-examination would be destroyed. The plaintiffs-writ appellants being aggrieved by the order dated 10.1.2006 passed by the learned Civil Judge (J.D.), Jagatsinghpur in T.S. No. 47 of 2001 preferred a writ petition before this Court bearing W.P.(C) No.1357 of 2006. The matter was finally heard by a Single Bench of this Hon'ble Court and vide order dated 27.11.2014, the writ application was dismissed.

In a recent decision, the Hon'ble Supreme Court in case of Radhey Shyam and another –v- Chhabi Nath and others reported in 2015 (2) Supreme 459 held that judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution and jurisdiction under Article 227 is distinct from jurisdiction under Article 226. It is further held that an order of Civil Court could be challenged under Article 227 and not under Article 226 of Constitution of India.

Adverting to the present writ appeal, apart from the fact that it is not maintainable in view of the decision of the Full Bench of this Court in case of Mahammed Saud (Supra), we find that the reasonings assigned by the learned Single Judge in dismissing the

writ application suffers from no infirmity and there is no patent error on the face of the record and the view taken by the learned Judge is quite reasonable and logical. Re-examination is the examination of a witness, subsequent to the cross-examination by the party who called him. To explain the matters referred to in cross-examination, re-examination is directed by the Court. If the party who called the witness intends to introduce new matters in re-examination, necessary permission has to be taken from the trial Court in that respect. However, the adverse party can have the right to cross-examine upon the matter. Section 137 and 138 of the Indian Evidence Act, 1872 makes this proposition very clear. Thus right to re-examine a witness arises only after the conclusion of cross-examination. The object is to give an opportunity to reconcile the discrepancies if any between the statements in examination-in-chief and cross examination or to explain any statement inadvertently made in cross examination or to remove any ambiguity in the deposition or suspicion cast on the evidence by cross-examination. Where there is no ambiguity or where there is nothing to explain, question put in re-examination with the sole object of giving a chance to the witness to undo the effect of the previous statement should not be asked during re-examination. Recall and re-examination of any person already examined must appear to the Court to be essential for the just decision of the case and exercise of such power should be made judicially and also with extreme care and caution.

By the judgment under appeal, the learned Single Judge of this Court dismissed the writ petition. In view of the facts narrated above and in the absence of any law which entitles the appellant to claim the benefit, at any rate, nothing is brought to our notice; we do not see any reason to interfere with the order under appeal. The writ appeal is therefore dismissed at the admission stage.

*****

10. Section 55
Delhi Development Authority vs P.R. Samanta.
Vikramajit Sen & Shiva Kirti Singh ,JJ.
IN THE SUPREME COURT OF INDIA
Date of Judgment - 21 .07. 2015
Issue

Reasonableness of rate of interest payable on refund – as Compensation.

Relevant Extracts

The appellant Delhi Development Authority is a statutory body constituted under the Delhi Development Act, 1957. It is entrusted with the planned development of Delhi and claims to function on a No Profit No Loss basis in the matter of providing subsidized housing to different income groups. The appellant invited applications from eligible members of the general public during the period May 1985 to August 1985 in a scheme described as Sixth Self Financing Housing Registration Scheme, 1985. The respondent deposited the requisite sum of Rs.15000/- and by filing application became a member of that scheme. In due course the appellant released a scheme for allocation of self financing society flats. Pursuant to advertisements published by the appellant the respondent vide his application dated 27.02.1991 opted for a flat at either of three locations, namely, (1) Sarita Vihar, (2) Kondli Gharoli and (3) Narela. He was allotted a flat at Narela but the offer was declined by the respondent on 27.10.1991.

In the year 1995 under a similar fresh scheme the persons who had registered with the appellant were required to indicate their preferences for upto 14 localities mentioned in the Brochure

Annexure ‘A’ and ‘B’. The advertised terms and conditions clarified that the registrants not indicating their preferences for 14 localities will be allocated/allotted flats which would be available after accommodating the preferences and choices of the registrants applying in terms of advertisement and the allotment would be through draw of lots. The respondent gave his preference only for 6 localities. He could not be accommodated against any of his 6 preferred localities but as per draw of lots he was allotted a flat in Dwarka. On receipt of the allotment letter dated 14/22.03.1995 the respondent through his letter dated 17.5.1995 declined the offer on the ground that the allotment was not as per his preferences. He demanded the registration deposit of Rs.15000/- made in 1985 along with an interest @ 15% p.a. in place of 7% p.a. indicated in the scheme and the Brochure on the ground that the deposit would have earned a minimum of 15% interest if it was deposited in a Class I company.

The appellant chose to accept the proposal for cancellation of allotment made by the respondent but it refunded the registration amount along with only 7% interest in terms of the offer document which had been accepted by the respondent and was thus the rate finalized by agreement between the parties. The respondent in his complaint before the Commission filed on 29.6.1997 raised two-fold grievances which have been noted by the Commission in paragraph 3 of the impugned judgment. The first grievance was against the levy of cancellation charges and penalty when the flat allotted to him was not in the 6 localities for which he had indicated his preference. The second grievance of the respondent was that the interest paid on the registration amount is at a rate lower than the rate at which the applicants are to be charged in case of

delay/default. After noticing the relevant provisions in the Brochure for 1985 scheme the Commission found no merit in the first grievance of the respondent since clause 5.5 of the Brochure made it clear that allotment of flat as per preference would depend on its availability and it was not the case of the respondent that inspite of availability of flats in the localities preferred, the same was not allocated to the applicant. The Commission thereafter considered the next grievance in respect of rate of interest i.e. : "The applicant's main grievance is against the payment of the interest on the registration amount, which is less than the one charged from the applicants when in default. I find substantial force in this plea of the applicant and would award interest @ 12% per annum on the registration amount as against the one paid by the Respondent authority. The rate of interest at 12% per annum is considered to be reasonable and equitable and has also been awarded in other cases in the similar circumstances. The applicant is also awarded a sum of Rs.5,000/- towards litigation charges which the Respondent is directed to pay."

In absence of relevant pleadings and evidence it cannot be presumed that the appellant has resorted to any unfair trade practice as defined under Section 36A or has increased its price unreasonably or made unreasonable earnings by investing the registration amount in accounts bearing higher interest. The relevant provision in the Brochure of the 1985 scheme by itself does not appear to be unreasonable in allowing interest @ 7% p.a. It is relevant to indicate here that nothing has been brought to our notice which may show that the registration amount is to remain locked for any fixed term or that the appellant can refuse an application for cancellation of registration at an early stage or even

before draw of lots for allotment/allocation of flats. In such a situation it is not possible to infer that the registration deposits must reasonably be kept in long term fixed deposits with a view to earn higher interests. In any case such aspects had to be pleaded and proved by the respondent before the Commission but that has not been done leading to absence of requisite findings.

Accordingly, we find the impugned order of the Commission awarding interest at the rate of 12% per annum on the registration amount and also award of Rs.5000/- towards litigation charges to be against law and unjustified. The impugned judgment and order is therefore set aside. The appeal stands allowed. However, in the facts of the case the appellant shall itself bear its cost of litigation.

*****

Prevention of Corruption Act 1988

11. Sections 7 and 13(1)(d) and 13(2)
***Chaitanya Prakash Audichya vs CBI*.**
A.K. Sikri, Uday Umesh Lalit ,JJ.
IN THE SUPREME COURT OF INDIA
Date of Judgment -01.07.2015
Issue

Conviction under Prevention of Corruption Act.

Relevant Extracts

The case of the prosecution was that PW1 Chandra Shekhar Bandari was sole proprietor of M/s JCS Associates, which firm was undertaking construction work for governmental agencies. The firm was awarded two contracts in March 2003 by Oil and Natural Gas Commission, Betul, Goa and it was mandatory requirement to have a licence from the office of the Assistant Labour Commissioner, (Central) Vasco. PW1 therefore applied for requisite licence vide applications, Exts. 31 and 32 with necessary documents along with prescribed fees and the applications were received in the office on

13-05-2003. According to PW1, he was told that the applications would be processed within seven to ten days. Since no communication was received within ten days, he approached the appellant who was then working as Assistant Labour Commissioner (Central) Vasco. PW1 was told by the appellant that his application would be duly processed. However nothing was heard in the matter.

According to the case of the prosecution the appellant was to visit the site of the proposed construction on 29-05-2003. PW1 was therefore present at the site. The appellant came and verified the documents at the site itself. According to PW1, the appellant was camping in the Rest House when PW1 went to meet him. The appellant had prepared Inspection Notes, Ext. 33 bearing signatures of the appellant and PW1. In the rest house the appellant allegedly demanded Rs.30,000/- towards illegal gratification for issuance of licence to PW1. The appellant told him to pay Rs.10,000/- by next day and the balance amount of Rs.20,000/- was to be paid after issuance of the licence.

On the next day i.e. on 30.05.2003 PW1 decided to file a complaint against the appellant in the office of CBI, Panaji and gave written complaint, Ext. 34 which was received at 1.15 pm in the office. The necessary approval having been received at 1.56 pm, appropriate steps for registering the crime and to lay a trap were undertaken. A request was sent to the office of Assistant General Manager, Bank of India, Panaji at about 2.25 pm to depute two officers from the Bank to act as panch witnesses. In the mean time FIR was registered at 3.15 pm in pursuance of said complaint Ext. 34. Accordingly PW2 Ranjit Singh Thakur and one Karapurkar, both officials from the Zonal Office of Bank of India were sent to act as panch witnesses at about 4.30 pm. Pre trap proceedings were undertaken. The numbers of three currency notes of Rs.1000/- each and fourteen notes of Rs.500/- each produced by PW1 were noted. Phenolphthalein powder was applied to the currency notes. The panch witnesses and PW1 were explained and briefed about the trap and those currency notes were kept in the shirt pocket of PW1 with instructions not to touch those notes unless and until demand was made by the appellant. The members of the raiding party then left

the office of CBI at about 5.30 pm. Since PW1 was unaware about the residential address of the appellant, the party first went to his office where one of the clerks gave the residential address of the appellant, whereafter the party proceeded to his residence. PW1 along with PW2 went to the house of the appellant which was situated on the ground floor of a building. The door was opened by wife of the appellant who told PW1 that the appellant was not available and that he had told her that in case PW1 came, he should be asked to wait. She further conveyed that the appellant would be back after 10.00 pm where upon PW1 told her that they would come back later and left the place. The raiding party then waited till 10.00 pm.

At about 10.15 pm PW1 and PW2 went to the residence of the appellant who opened the door and invited them inside. The appellant asked PW1 whether he had brought Rs.10,000/- as told by the appellant. Thereafter PW1 handed over the amount of Rs.10,000/- kept in his shirt pocket to the appellant who told him that the licence would be issued on Monday i.e. 02.06.2003. The appellant then kept the amount in his T-shirt pocket. PW2 was all the while sitting with PW1. PW2 then came out of the house and upon his signaling the raiding team went inside. The wrist of the right hand of the appellant was caught- hold of and the fingers of his right hand upon being dipped, the solution turned pink. The numbers of currency notes were verified and the portion of T-shirt of the appellant also turned pink upon being dipped in the solution. Post-trap panchnama was drawn. The search of the house of the appellant conducted thereafter resulted in recovery of cash leading to registration of a separate case against him with which we are presently not concerned.

The investigation was completed and appropriate sanction was granted for prosecuting the appellant for the offences punishable under Sections 7 and 13(1)(d) and13(2) of the Act. The charges were framed and the matter was tried in the court of Special Judge, Goa at Madgaon vide Special Case No.6 of 2009.

The trial court after considering the material on record came to the conclusion that the case against the appellant stood fully

established and that he had abused his position as public servant by accepting illegal gratification and had committed offences as alleged. The trial court convicted the appellant under Section 7 of the Act and sentenced him to suffer imprisonment for one year and to pay fine of Rs.10,000/-, in default whereof to suffer simple imprisonment for two months. The appellant was also convicted under Section 13(1)(d) read with Section 13(2) of the Act and sentenced to suffer imprisonment for one year and to pay fine of Rs.10,000/-, in default whereof to undergo simple imprisonment for two months. Both the sentences were ordered to run concurrently. The appellant preferred Criminal Appeal No.12 of 2010 in the High Court and the High Court by the judgment under appeal confirmed the conviction and sentence as ordered by the trial court. In this appeal by special leave, the appellant was directed to be released on bail, which facility he continues to enjoy.

Shri R. Venkataramani, learned senior Advocate along with Shri Manu Mridul, learned Advocate appearing in support of the appeal submitted inter alia, that (1) the FIR in the present case was registered at 3.15 pm on 10.05.2003 whereas the services of the panch witnesses were requisitioned at about 2.25 pm i.e. even before the registration of the crime. (2) In the complaint Ext.34 the place and time for acceptance of money as demanded by the public servant was not mentioned at all. (3) The fact that on the day in question the raiding party first went to the office also indicated the absence of fixing of such definite place and time; which makes the case of the prosecution completely suspect. (4) The entire trap was undertaken without making any preliminary investigation which as per the CBI manual ought to have been undertaken first. (5) The way the raiding party had conducted itself showed it was clearly a case of the public servant being chased. (6) The appellant was responsible for having initiated certain proceedings against PW1 and thus the present complaint was not bona fide.

In the present case the versions of PW1 and PW2 are completely consistent establishing the basic ingredients of demand and acceptance. The tainted currency notes were found on the person of the appellant. The explanation give by him soon after the incident through his letter dated 10.06.2003 is completely different from the theory put forth while the appellant examined himself as DW2. In our view, the demand and acceptance thus not only stand

fully established but the presumption invocable under Section 20 of the Act also stood unrebutted. The other two cases cited by the appellant dealt with situations where the demand and acceptance were not fully established and despite that an attempt was made to rely on the presumption invocable under Section 20 of the Act. Such is not the case in the present matter. It is further well established that where misconduct is proved, the alleged enmity between the complainant and the delinquent officer is immaterial. B. Hanumantha Rao v. State of A.P.

In the circumstances we are not persuaded to take a view different from the one which weighed with the courts below. Affirming the decisions taken by the High Court and the trial court, we dismiss the present appeal. The bail bonds stand cancelled and the appellant shall be taken in custody forthwith to undergo the sentence awarded to him.

*****

Industrial Disputes Act, 1947

12. Section 33 C (2)
M/s. Gulf Oil Corporation Ltd. Vs. Sri Manoj Kumar Sahu
C.R. DASH, J.
IN THE HIGH COURT OF ORISSA, CUTTACK
Date of Judgment: 10.07.2015
Issue

Settlement of Claim u/s 33 C (2) of Industrial Dispute Act, 1947.

Relevant Extracts

The brief facts relevant for disposal of these writ petitions are as follows :- The present opposite party workman, while working as a Senior Laboratory Technician under the petitioner Management, was terminated from service on 16.04.1996. He raised an Industrial Dispute before the District Labour Officer, Rourkela, which ended in submission of a Failure Report to the appropriate government. The appropriate government, in turn, referred the matter under Section 10 read with Section 12 of the I.D. Act for adjudication. The P.O., Labour Court, Sambalpur passed the award in the aforesaid I.D. Case No.9 of 1997 on 31.03.1999 directing reinstatement of the present opposite party workman in service with full back wages from the date of his termination till his reinstatement. It was further directed that, in the event of failure to implement the award, the

Management shall be liable to pay interest @ 15% per annum on the back wages till actual payment is made.

The Management (present petitioner) challenged the award before this Court under the writ jurisdiction, vide O.J.C. No.7086 of 1999. Stay was granted in the writ petition subject to compliance of the provision of Section 17-B of the I.D. Act. While the matter was pending, the award was implemented by giving some back wages and the aforesaid O.J.C. was disposed of on 27.04.2005 with the following order :- "Heard. The award dated 31st March, 1999 passed by the Presiding Officer, Labour Court, Sambalpur in I.D. Case No.9 of 1997 is assailed by the petitioner-management in this writ petition. Mr. Nanda, learned counsel for the petitioner management submitted that in the meanwhile the management has complied with the direction issued in the award. In that view of the matter, nothing remains to be decided in this writ petition. Accordingly, the writ petition is disposed of giving liberty to the workman to pursue any other grievances before the appropriate forum, if he is so advised." The present opposite party workman submitted his Joining Report on 24.06.2004, which was duly accepted. In the petition under Section 33 C (2) of the I.D. Act he alleged that from the date of joining he is drawing pay of Rs.3,894/- per month, which was his existing pay at the time of his termination from service and his pay structure has not been regularized in consonance with the pay drawn by his co-workers in the same position. The applicant thus filed a statement of claim amounting to Rs.15,50,796/- in two schedules, which include differential salary, differential allowances, etc. including interest.

The present petitioner Management filed objection stating that the opposite party workman was, in fact, working in a Junior Management Cadre and he has already been paid full salary for the period of his non-employment due to termination and that, he is not entitled to the claim regarding L.T.C., Bonus, etc. It was specifically averred that the present workman was paid a sum of Rs.1,13,621/- under Cheque bearing No.238018 dated 23.09.2004 and he was supplied with a calculation sheet. According to the Management, the application under Section 33 C (2) of the I.D. Act is not maintainable on the ground that the amount claimed is not based upon any pre-existing right. Taking into consideration the scope and ambit of Section 33 C (2) of the I.D. Act, I am of the considered view that learned P.O., Labour Court, Sambalpur should have disposed of the proceeding without leaving anything to be done by the Management, by computing the entire claim of the petitioner for

the periods set out in all the Misc. Cases, i.e. I.D. Misc. Case No.23 of 2006, 2 of 2008 and 7 of 2011. Learned P.O., Labour Court having not done that, has committed an error, and therefore the matter is liable to be remanded for the aforesaid exercise. Learned P.O., Labour Court has awarded Rs.5,00,000/- (five lakhs) in favour of the opposite party workman, but there is no basis for such award. In view of such fact, I deem it proper to modify the order on the aforesaid aspect directing the petitioner Management to pay Rs.2,50,000/- (rupees two lakh fifty thousand) to the opposite party workman within 30 (thirty) days from the date of receipt of a certified copy of this order. The said amount shall be paid to the opposite party workman to defray the expenses of the litigation. If, on conclusion of the proceeding he is found to have been entitled to get any amount, that amount shall be adjusted against payment of Rs.2,50,000/- (rupees two lakh fifty thousand).

In view of the above, all the three writ petitions are disposed of. The matters are remanded back to the learned P.O., Labour Court, Sambalpur for computation of the claim of the opposite party workman fully on the basis of materials supplied by the parties. Learned P.O., Labour Court, if necessary, may also take resort to Sub-section (3) of Section 33 C of the I.D. Act for computing the claim of the opposite party workman. The petitioner Management is directed to supply all the documents as required by the learned Labour Court or as called for at the behest of the opposite party workman for just adjudication of the matter in dispute. Opposite party workman is also directed to co-operate in the trial without making any frivolous claim. The proceeding be concluded within 4 (four) months from the date of receipt of a certified copy of this order or within such extended time not exceeding six months on the discretion of the P.O., Labour Court. The petitioner Management is directed to pay Rs.2,50,000/- (rupees two lakh fifty thousand) to the opposite party workman within one month from the date of receipt of a certified copy of this order, subject to the adjustment as outlined in the preceding paragraph. No order as to cost.

*****

13. Section 19 &13,
Order 9 Rule 13 of C.P.C.
Sarat Kumar Mishra Vs. Smt. Sandhyarani Satapathy.
VINOD PRASAD AND S.K. SAHOO
IN THE HIGH COURT OF ORISSA, CUTTACK
Date of Judgment-14.07.2015

Issue

Seeking order of divorce and settling of issue u/s. 19 and order 9 rule 13 of C.P.C.

Relevant Extracts

It is the case of the opposite party-wife that she is the legally married wife of the petitioner-husband and their marriage was solemnized on 9.5.2001 according to Hindu rites and customs and at the time of marriage, cash of Rs. 50,000/- and other household articles worth of Rs. 50,000/- were given to the petitioner-husband and his family members including gold ornaments weighing about 10 bharis and silver ornaments weighing about 30 bharis by her father and other relations. The marriage was consummated in the house of the petitioner husband. After two months of marriage, the opposite party-wife who was working as a demonstrator in a private college at Cuttack came to her parents' house for continuing her service in the college where she was working. The opp. party-wife used to visit her in-laws' house in regular intervals. It is the further case of the opp. party-wife that the petitioner-husband was very adamant and behaved with her in a very inhuman manner, subjected her to cruelty and forcibly took away all the gold and silver ornaments from her. The petitioner husband also did not look after her comfort and he had no love and affection for her. Due to frequent assault on her by the petitioner-husband, the opp. party-wife became very much apprehensive of her life and thought that it would be very much harmful and injurious on her part to live in the company of her husband. The petitioner-husband was working as a Computer Operator in CESU at Bhubaneswar and staying at Bhubaneswar and he did not allow the opp. party-wife to stay with him to lead a conjugal life. The opp. party-wife was deprived of resumption of normal conjugal life and cohabitation and all attempt made by her for such resumption was in vain. On being noticed, the petitioner-husband entered appearance in Civil Proceeding No. 177 of 2008 through his counsel on 24.06.2008 but subsequently he remained absent for which the case was set ex parte against him on 23.9.2008.

The opp. party-wife filed her evidence affidavit which remained unchallenged.

During hearing of the appeal, the learned counsels for both the parties on instructions submitted at the bar that there is no chance of reconciliation between the parties. In view of the changed scenario and the prevailing situation, the learned counsel for the petitioner-husband also did not challenge the ex-parte order of divorce but prayed for reduction of the quantum of permanent alimony of Rs. 2,00,000/- as was fixed by the learned trial Judge. He submitted that there was no material before the learned trial Judge to determine and fix up that amount and the petitioner-husband is serving as a Data Entry Operator in CESU, Bhubaneswar and at the time of passing of the ex parte decree, he was getting a sum of Rs.3,390/- per month and subsequently he was getting a consolidated sum of Rs.4,500/- per month. After going through the pleadings and the impugned order, we found that the reasonings assigned by the learned trial Judge in dismissing the petition filed by the petitioner-husband under Order 9 Rule 13 CPC in Misc. Case No. 277 of 2008 are quite cogent, sound and acceptable. The Hon'ble Supreme Court in the case of Parimal v. Veena reported in (2011) 3 SCC 545, held that the Second Proviso of Order 9 Rule 13 of CPC is mandatory and has interpreted the expression "sufficient cause" as under:

" 'Sufficient cause' is an expression which has been used in a large number of statutes. The meaning of the word 'sufficient' is 'adequate' or 'enough', inasmuch as may be necessary to answer the purpose intended. Therefore, word 'sufficient' embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, 'sufficient cause' means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been 'not acting diligently' or 'remaining inactive'. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. [Vide Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361; Lonand Grampanchayat v. Ramgiri Gosavi, AIR 1968 SC 222; Surinder Singh Sibia v. Vijay Kumar Sood, (1992) 1 SCC 70 and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn., (2010) 5 SCC 459].

In the case of G.P. Srivastava v. R.K. Raizada reported in (2000) 3 SCC 54, the Hon'ble Supreme Court held as under:

" Under Order 9 Rule 13, CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for nonappearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex parte decree. The words 'was prevented by any sufficient cause from appearing' must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The Courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

Keeping in view the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases, we are of the view that the learned trial Judge has rightly held that no sufficient cause was shown by the petitioner-husband for non-taking of steps continuously after the first date of appearance. So far as the permanent alimony part is concerned, the learned trial Judge, Family Court, Cuttack has directed the petitioner-husband to pay a sum of Rs. 2,00,000/- (Rupees Two Lakhs) as permanent alimony to the opp. party-wife. The quantum of permanent alimony has not been challenged in the appeal. The petitioner husband is working as Computer Operator in CESU at Bhubaneswar. The contention of the learned counsel for the petitioner-husband that the petitioner was getting a scanty

consolidated amount of Rs. 4,500/- per month is not supported by any documentary evidence.

Considering the economic status of the parties, their respective needs, the capacity of the petitioner-husband to pay and taking note of the fact that the amount of permanent alimony fixed for the wife should be such that she can live in reasonable comfort and simultaneously it should not be excessive or extortionate and affect the living condition of the husband and considering the young age of the opp. party-wife and that she has to meet any kind of man-made misfortune in future, we are of the view that direction to the petitioner husband to pay Rs. 2 lakhs (Rupees two lakhs only) as one time alimony to the opposite party-wife as was fixed by the leaned trial Judge can be said to be quite reasonable in the ends of justice.

Accordingly, we do not find any illegality or impropriety in the impugned order dated 24.09.2009 passed by the learned Judge, Family Court, Cuttack in Misc. Case No. 277 of 2008. In the result, MATA application stands dismissed. No order as to costs.

*****

<u>Family Court Act , 1984</u>

14. Section 19(1)
***Nirupama Mohapatra Vs. Sabyasachi Mohapatra*.**
VINOD PRASAD & S.K. SAHOO, JJ.
IN THE HIGH COURT OF ORISSA: CUTTACK
Date of Judgment: 01.07.2015
Issue

Application for restitution of conjugal rights and consequential relief on failure of it.

<u>Relevant Extracts</u>

The case of the respondent-husband borne out from the plaint is that he is the only son of his parents and his marriage was solemnised on 13.12.2006 with the appellant-wife as per caste and custom prevailing in Brahmin community without any demand of dowry. Though both of them lead a happy conjugal life for few days but thereafter the appellant-wife persistently pressurised the respondent-husband to live separately from the joint family. The respondent-husband tried his level best to change the mind of the appellant-wife but she being misguided by her parents started

misbehaving to the elder members of her in-laws family and almost turned the happy home of the respondent-husband into a pandemonium house. It is the further case of the respondent-husband that he took the appellant-wife to his service place for a change of her mind along with his parents who were ailing. The appellant-wife expressed her displeasure regarding stay of her ailing parents-in- laws in her company for which the situation became very tense and it lead to untold miseries, plight and sorrow feeling for the appellant-husband. On 9.3.2007 the married sister and brother of appellant-wife reached at the service place of the respondent-husband and in absence of the respondent-husband, they abused his ailing parents and on the very next day the appellant-wife was taken to her paternal house situated at Puri. The respondent-husband brought the appellant-wife back to his service place on 10.4.2007 where she was treated in Hinjilikatu Government Hospital and then she was taken to Berhampur Medical College on 15.4.2007 as she was found to be pregnant. The respondent-husband was very much happy coming to know about the pregnancy of the appellant-wife but surprisingly the appellant-wife insisted to terminate her pregnancy as her beauty would be damaged by giving birth to a child. The appellant-wife did not attend her father-in-law when he was hospitalised and ultimately she withdrew herself from the society of her husband and left with all her belongings including gold ornaments. The respondent-husband wrote two letters to the Odisha State Commission for Women expressing his discontentment but the appellant-wife stoutly denied joining with the society of her husband. Finding no way out, the respondent-husband filed a suit for restitution of conjugal rights with alternative prayer to dissolve the marriage between the parties in the Court of learned Civil Judge (Senior Division), Puri in MAT Case No.432 of 2007 which was transferred to Judge, Family Court, Puri and it was registered as Civil Proceeding No.69 of 2010.

In view of the full and final settlement between the parties, since both the parties are not interested to continue their conjugal life and the marriage between the parties has been rendered a complete deadwood and reconciliation is not possible, accepting the pragmatic reality of life and taking a decision which would ultimately be conducive in the interest of both the parties, we set aside the impugned judgment of the Judge, Family Court, Puri and direct that in the extra-ordinary facts and circumstances of the case, the marriage between the appellant and the respondent stands dissolved according to the provisions of the Hindu Marriage Act, 1955 and the divorce shall take effect from today. In terms of the

compromise, all the proceedings instituted by either party in any Court or before any authority shall be withdrawn/ closed.

Before parting we would quote, "Marriage isn't a love affair. It isn't even a honeymoon. It's a job. A long hard job, at which both partners have to work, harder than they've worked at anything in their lives before. If it's a good marriage, it changes, it evolves, but it does on getting better........But a bad marriage can dissolve in a welter of resentment and acrimony........And it's never one person's fault. It's the sum total of a thousand irritations, disagreements, idiotic details that in a sound alliance would simply be disregarded, or forgotten in the healing act of making love. Divorce isn't a cure, it's a surgical operation, even if there are no children to consider."

- Rosamunde Pilcher, Wild Mountain Thyme

The matrimonial appeal is accordingly disposed of. We direct the parties to bear their own costs.

*****

Land Acquisition Act.

15. (Category IV of Odisha Resettlement and Rehabilitation Policy 2006)
Indira Mohapatra vs. State of Odisha and others
SANJU PANDA & DR. D.P.CHOUDHURY
IN THE HIGH COURT OF ORISSA, CUTTACK
Date of Judgment: 9.7.2015

Issue

Declaration of displaced person under Odisha Resettlement and Rehabilitation Policy 2006 of Land Acquisition Act.

Relevant Extracts

The factual matrix leading to the case of the petitioner is that the petitioner is the recorded owner of land pertaining to Khata No. 5, Plot No. 682/998, area measuring Ac.4.62 decimals. It is alleged, inter alia, that for the Talcher- Sambalpur Rail Link Road Over Bridge Project at Boinda, opposite parties vide Land Acquisition Notification No. L.A.(c)-61/2004 dated 31.5.2005 Ac.3.43 decimals of land from the above suit plot of the petitioner. Again vide notification No. L.A.(c)-75/2005 dated 10.8.2005 the rest of the

land of the petitioner measuring Ac.1.19 decimals was acquired. Therefore, the petitioner became the double displaced person under the 'R.R. Policy 2006'. Since the suit land as stated above, is situated about 1 k.m. distance from Boinda Chhak and it is adjacent to N.H.55, by acquiring such land, the petitioner was deprived of the said valuable suit land. It is also alleged that the petitioner is a widow and became completely landless person due to acquiring of the aforesaid land. It is claimed by the petitioner that the petitioner is a displaced person belonging to category IV which deals with Urban Liner Projects such as Railway and Road Projects.

Regard being had to the submission made by the learned counsel for the respective parties, after going through the petition, the para-wise comment and also on perusal of the copy of the orders passed by the Hon'ble Apex Court, this Court and the CAT, we find that the present petitioner is 100% land oustee while her land was acquired under the project namely Talcher-Sambalpur Rail Link project and she is entitled to get the benefit under Clause IV Type D of 'R.R. Policy 2006'.

It is admitted fact that the said Talcher-Sambalpur Rail Link project is a linear project. Therefore, according to Clause IV Type D of above policy, the project authority shall provide employment to one of the members of the displaced person in the project. In fact according to the petitioner, she made representation before O.P.3 who after verification, forwarded the same to O.P. No.4 to give her benefit of employment according to the above policy. Thereafter O.P. No.4 sent the same to O.P. No.5 but O.P. No.5 is sitting over the matter without disposing of the same. O.P.NO. 5. Railway Authority can only give employment to the petitioner or any of her family member as per the above policy. It is needless to point out that this court in O.J.C. No. 6165 of 2002 has gone in detail when Railway has prayed this Court against the order of the CAT who in fact has directed the Railway to provide jobs to the petitioners in

those cases on top priority basis. This Court in the batch of cases including O.J.C. No. 6165 of 2002 at paragraph-9 has observed that filling up of 511 vacancies of group-D basis was only confined to outsiders and without giving any appointment to the applicants before the Tribunal, the posts were sought to be filled up. Not only this but also the decision has reached its finality being dismissed in the Hon'ble apex Court. We have gone through the notification of the Railway and observe that the said notification is not issued in consonance with the 'RR Policy, 2006' because according to the said policy one of the member of the family suffering of land oustees, must be given employment. So it was for the O.Ps.4 & 5 to get the vacancies to be filled up on top priority by these category of persons and thereafter the vacancies should be filled up by the candidates from outside. Notification issued by the Railway project being inconsistent with the 'RR Policy, 2006', is thus held not be applied for the case of the petitioner. On the other hand O.P.No.4 & 5 should consider her case for providing employment on top priority basis as she is 100% land oustee. Therefore, in the present case, we hereby direct O.Ps.4 & 5 to take a decision as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order so that the poor person can get the benefit within the 'RR Policy, 2006'. The writ petition is disposed of accordingly.

*****