1. Sec. 319

Dhrup Singh & Ors. vs The State Of Bihar. (2013) 55 OCR (SC) – 318

K. S. RADHAKRISHNAN AND DIPAK MISRA, JJ.

ISSUE

Summoning accused who were named in FIR, but not in the charge-sheet-Legality of Cognizance had been taken by the Magistrate against the petitioners for offences under Sec. 302/34, IPC read with Sec. 27 of the Arms Act- Petitioners had been named in FIR and the Magistrate after perusing the FIR, case diary and death report came to a prima facie conclusion of the involvement of all the persons named in FIR in the occurrence – Magistrate held that there were enough materials to initiate prosecution against them apart from the charge-sheeted accused persons – High Court concurred with that view – Whether the Chief Judicial Magistrate was right but not in the charge-sheet-Held, Yes.

This case, the question whether the Chief Judicial Magistrate is right in issuing the summons to the petitioners who were named in the FIR, but not in the charge-sheet. The order passed by the Chief Judicial Magistrate in A.U.P. No.572 of 2011 dated 18.04.2011 was challenged by the petitioners before the High Court, without any success, against this special leave petition has been preferred.

We notice that cognizance has been taken by the Magistrate vide its order dated 8.4.2011 against the petitioners for offences under Section 302/34 IPC read with Section 27 of the Arms Act. Counsel for the petitioners submitted that the learned Magistrate was not justified in invoking Section 319 of the Code of Criminal Procedure (Cr.P.C.) since the petitioners were not charge-sheeted by the police after conducting the investigation. Learned counsel pointed out that so far as those persons against whom charge-sheet has not been filed they can be arrayed as accused persons in exercise of powers under Section 319 Cr.P.C. only when some evidence or materials are brought on record in the course of trial. Learned counsel also referred to the Judgment of this Court in Hardeep Singh v. State of Punjab and others (2009) 16 SCC 785 and submitted that an identical question came up for consideration before the two Judge Bench of this Court and in view of the conflicting views expressed by two Judge Bench in Mohd. Shafi v. Mohd. Rafiq and another (2007) 14 SCC 544 and a two Judge Bench in Rakesh and another v. State of Haryana 2001(6) SCC 248, the matter was referred to a larger Bench and the same is pending consideration. In such situation, learned counsel submitted that this case also may be referred to a larger Bench.

We notice that in this case the petitioners have been named in the FIR and learned Magistrate after perusing the FIR, case diary and the death report came to a prima facie conclusion of the involvement of all the persons named in the FIR in the occurrence. Learned Magistrate expressed the view that there are enough materials to initiate prosecution against them apart from the charge sheeted accused persons. The High Court has also concurred with that view. In such a situation, we find no good reasons to take a different view from that of the learned Magistrate as well as that of the High Court. Hence, this special leave petition lacks merit and the same is dismissed.

Case referred:

1. **(2009) 16 SCC 785 : Hardeep v. State**
2. **(2007) 14 SCC 544 : Mohd. Shafi v. Mohd. Rafiq**
3. **(2001) 6 SCC 248 : Rakesh v. State**
4. **(2010) 9 SCC 479 : Uma Shankar v. State**

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2. Sec. 309

Mohan Lal & Anr. V. State Of Punjab (2010) 55 OCR (SC) – 489

Dr. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULL, JJ.

ISSUE

Adjournments – when the examination of witnesses had once begun, the same shall be continued from day to day, until all the witnesses in attendance have been examined – Speedy and expeditious trial and enquiry are envisaged under Sec. 309, Cr.P.C.

We have gone through their depositions and it is clear that in the earlier part of their evidence, both the witnesses had clearly implicated all these accused. The FIR could not be lodged immediately after the incident, as there was no one in the family to support their cause. Smt. Jaswant Kaur (PW-2) had to send a telegram to her husband and it is only after he reached their place, that FIR was lodged. The victim was examined on several dates within the period of two years and she had been consistent throughout, that rape had been committed upon her. However, her father died during the trial and it may be because of his death that both the prosecutrix and her mother had resiled to a certain extent from the prosecution case. Naturally, when the protective shield of their family had withered away, the victim and her mother could have come under immense pressure from the appellants. The trial Court itself has expressed its anguish as to how the accused had purposely delayed and dragged the examination of the prosecutrix and finally succeeded in their nefarious objective when the father of the prosecutrix died and the prosecutrix resiled on the last date of her cross-examination. The appellants belonged to a well-to-do family, while the prosecutrix came from poorest state of the society. Thus, a sudden change in their attitude is understandable.

A witness is a responsible citizen. It is his duty to support the case of the prosecution and should depose what he knows about the case. In the instant case, it is shocking that the mother of the prosecutrix had turned hostile and she repeatedly told the court that there had been some talks of compromise. In a case where an offence of this nature had been committed, we fail to understand as to how there can be a compromise between the parties. The conduct of the mother herself is reprehensible.

It is a settled legal proposition that statement of a hostile witness can also be examined to the extent that it supports the case of the prosecution. The trial court record reveals a very sorry state of affairs, inasmuch as no step had ever been taken by the prosecution or the Investigating Officer, to prevent the witnesses from turning hostile, as it is their solemn duty to ensure that the witnesses are examined in such a manner that their statement must be recorded, at the earliest, and they should be assured full protection.

There is nothing on record, not even a suggestion by the appellants to the effect that the victim had any motive or previous enmity with the appellants, to involve them in this case. Unfortunately, the trial court went against the spirit of law, while dealing with such a sensitive case of rape of a student by her teachers, by recording the statement of prosecutrix on five different dates. Thus, a reasonable inference can be drawn that defence had an opportunity to win her mother.

Also, the manner in which the trial court conducted the trial is shocking, especially in view of the provisions of Section 309(1) of the Code of Criminal Procedure, ?1973 (hereinafter referred to as the 'Cr.PC'), which reads as under:-

quot;309 (1) - In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses".

The said proviso has been added by amendment vide Act 5 of 2009 w.e.f. 31.12.2009, but even otherwise, it was the duty of the trial court not to adjourn the proceedings for such a long period giving an opportunity to the accused to persuade or force, by any means, the prosecutrix and her mother to turn hostile.

Giving recognition to the principle of speedy trial, sub- sec (1) of section 309 Cr.P.C., envisages that when the examination of witnesses has once begun, the same shall be continued from day to day, until all the witnesses in attendance have been examined. Speedy and expeditious trial and enquiry were envisaged under section 309 Cr.P.C.

It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piece-meal. Once the trial commences, except for a very pressing reason which makes an adjournment inevitable, it must proceed de die in diem until the trial is concluded. [1]

when a witness is available and his examination- in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking. While deciding the said case, the court placed great emphasis on the provisions of Section 309 Cr.P.C. and placed reliance on the earlier judgment in State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667; and N.G. Dastane v. Shrikant S. Shivde, (2001) 6 SCC 135. In the said case, this court has deprecated the practice of the courts adjourning the cases without examination of witnesses when they are in attendance. The trial court should realize that witness is a responsible citizen who has some other work to attend for eking out a livelihood, and a witness cannot be told to come again and again just to suit the convenience of the advocate concerned. Seeking adjournments for postponing the examination of witnesses without any reason, amounts to dereliction of duty on the part of the advocate as it tantamounts to harassment and hardship to the witnesses. Tactics of filibuster, if adopted by an advocate is also a professional misconduct. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21.[2]

In view of the above, we are of the considered opinion that it was a fit case where the provisions of Section 114-A of the Evidence Act are attracted and no attempt had ever been

made by any of the appellants or other accused to rebut the presumption. In such a case, we do not see any reason to interfere with the finding of fact recorded by the courts below. So far as the conviction is concerned, as it was case of gang rape by teachers of their student, the punishment of 10 years rigorous imprisonment imposed by the trial court is shocking, considering the relationship between the parties. It was a fit case where life imprisonment could have been awarded to all the accused persons. Unfortunately, Smt. Jasbir Kaur had been acquitted by the High Court, and State of Punjab did not prefer any appeal against the same. One of the accused, Ranjit Singh, had approached this court and his special leave petition has been dismissed. Thus, in such circumstances, we are not in a position even to issue notice for enhancement of the punishment to the accused.

In view of the above, appeals do not have any merit and accordingly are dismissed.

Case referred:

1. Lt. Col. S.J. Chaudhary v. State (Delhi Administration) AIR 1984 SC 618
2. Mohd. Khalid v. State of West Bengal, (2002) 7 SCC 334
3. Maneka Gandhi v. Union of India & Anr., AIR 1978 SC 597
4. Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr., AIR 1992 SC 1701
5. Vakil Prasad Singh v. State of Bihar, AIR 2009 SC 1822
6. Shri Sudarshanacharaya v. Shri Purushottamacharya & Anr. (2012) 9 SCC 241).

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3. Sec. 293
Hantheswar Mallik v. State of Orissa. (2013) 55 OCR – 413
I. Mahanty, J.
ISSUE

Report of State Forensic Science Laboratory – Inordinate delay in receipt of the report – Hampering of investigation – Plea of lack of manpower and equipment – Direction issued to the Govt. for improvement of the system and the S.F.S.L. and all D.F.S.L. should be functional and provided with manpower – Suggestion also given for setting up facilities for conducting D.N.A. sampling as well.

At this stage, this Court is of the considered view that the ends of justice be best served, if the present CRLMC is disposed of granting liberty to the petitioner to raise all his issues before the Court below at the stage of charge and this Court orders accordingly.

In the present case as well as the experience of this Court in dealing with various cases. It is found that the State Forensic Science Laboratory takes unusually long time complete the analysis of the materials sent to it for examination (as noted in the letter of the Superintendent of Police, Kandhamal, which is quoted hereinabove). Generally reports are not available from the S.F.S.L. before two years and others cases, this Court has come across where report have not been sent for even up to 12 years. Various instances have come to the notice of the Court where investigation in greatly hampered due to the apparent undue delay on the part of the scientific officials. It is claimed that one of the main reasons for such delay

is that the S.F.S.L. suffers lack of manpower and equipment. Whatever may be the cause or lapses and inadequacies of the S.F.S.L. the State has to the endeavour to support a proper and early investigation and in this regard, it is the responsibility of the State to ensure adequate man power resources and materials in order to equip the S.F.S.L. in this regard. Several instances have come to the notice of this Court, where viscera or other material are collected but are either not sent for examination and even if viscera is sent for examination, no report is obtained and inevitably the collected materials, due to long lapse of time obviously do not contain any clue and, therefore, the examination report of the S.F.S.L. in most of the case is made purely academic and rendered meaningless. It needs to be placed on record that the working of the S.F.S.L. and D.F.S.L. are at an abysmal state.

It these circumstances, this Court is of the considered view that a request ought to be made the Secretary, Home Department, Odisha to make a visit to the S.F.S.L. along with the Director General of Police, Odisha, Cuttack and the Advocate General, Odisha, Cuttack along with the A.D.G., - in – Charge of the S.F.S.L. at the earliest possible and to assess the needs for immediate improvement in the system. It would be also pertinent to mention herein that apart from the S.F.S.L. and D.F.S.L. in all the districts in the State are either dysfunctional or having no man power or have only token man power. Therefore, this Court is also requests the authorities concerned to take immediate urgent steps in this regard. It needs to be mentioned herein that lack of forensic support to the investigation is one of the major causes of the low rate of conviction. This Court remains hopeful that adequate and necessary steps will be taken by the State to remedy and improve the situation that prevails. The Committee may also warder setting up facilities for conducting D.N.A. sampling as well.

The Registry is directed to sent a copy of this order to the Secretary, Home department, Odisha, Bhubaneswar as well as to the Director General of Police, Odisha, Cuttack, who shall send a copy of the remedial steps taken, as well as a time frame for action to the Registry of this Court within four week from the date of a receipt of a copy of his order.

A free copy of this order be handed over to the learned Additional Government Advocate for the State for communication and compliance.

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4. Sec. 125 (4)
Sri. G. Devendra Rao v. G. Puspa Prabha Rao @ Dora. (2013) 55 OCR – 401
B. K. Nayak, J.
ISSUE

Maintenance – Divorce decree passed in favour of husband on the ground of desertion of wife – If the divorced wife is not remarried, she is entitled to get maintenance from her ex-husband.

Heard learned counsel for the parties.

Order dated 25.08.2012 passed by the learned S.D.J.M., Bargarh in Criminal Misc. Case No. 52 of 2012 directing payment of interim maintenance at the rate of Rs. 1000/- and Rs. 500/- respective in favour of the opposite party Nos. 1 and 2 under Sec. 125 Cr.P.C. litigation expenses of Rs. 10,000/- has been challenged in this Criminal revision.

The only contention raised by the learned counsel for the petitioner is that opposite party No. Who was the wife of the petitioner was divorced by virtue of a decree of divorce dated 08.03.2007 passed by the learned Civil Judge (Senior Division) Sambalpur in Matrimonial Case No. 06 of 2004 of the ground of desertion and therefore, in terms of Sub-section (4) of Section 125 of Cr. P. C. She is not entitled to get maintenance.

Learned counsel for the petitioner submits that since as per the explanation the wife includes a divorced wife and since under Sub-section (4) Sec. 125 Cr.P.C. the wife who has deserted the husband and refused to live with him without sufficient reason is not entitled to maintenance, a wife divorced on the ground of desertion is also not entitled to get maintenance.

Law on this point has already been settled by the apex Court in the decision reported in AIR 2000 S.C. 952 (Rohtash Singh-v-Smt. Ramendri and others.) where delineating the various provisions of Sec. 125 Cr. P.C. the apex Court held as under.

The second ground on which she would not be entitled to maintenance allowance is the ground of her refusal to live with her husband without any sufficient reason. This also presupposes the subsistence of marital relations between the parties. If the marriage subsists, the wife is under a legal and moral obligation 'to live with her husband and to fulfil the marital obligations she cannot, without any sufficient reason, refuse to live with her husband "sufficient reasons" have been interpreted differently by the High Courts having regard to the facts of individual cases. We are not required to go into that question in the present case as admittedly the marriage between the parties case to an end on account of decree for divorce having been passed by the Family Court. Existence of sufficient cause on the basis of which the respondent could legitimately refuse to live with the petitioner is not relevant for the present case. In this situation, the question which survives for consideration is whether a wife against whom a decree for divorce has been passed on account of her deserting the husband can claim maintenance allowance under Sec. 125 Cr.P.C. and how far can the plea, of desertion be treated to be an effective plea in support of the husband's refusal to pay her the maintenance allowance.

Claim for maintenance under the first part of Sec. 125 Cr.P.C. is based on the subsistence of marriage which claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to; Sub-Sec. (1) of Sec. 125, Cr.P.C. if the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by wife but she was held entitled to maintenance allowance as a divorced wife under Sec. 125 Cr.P.C. and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. (See : High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position."

This Court has also in the case reported in 1998 CRL.L.J. 4740 (Jashelal Agrawal alias Jain-v.- Smt. Puspabati Agrawala) has held that even if a decree of divorce has been passed against the wife on the ground desertion, she can claim maintenance under Sec. 125 Cr.P.C. the decision in Rohtash Singh case (supra) has also been relied upon by the this Court in the decision reported in 2006 (Supp. – 1) OLR 575 (Sri Debaraj Patra-v-Smt. Radha Patra) and

grant of maintenance to a divorced wife was upheld even though the divorce was on this ground of desertion.

In view of such legal position the contention raised on behalf of the learned counsel for the petitioner has no force and the impugned order suffers from no infirmity.

CRLREV is accordingly dismissed.

Learned S.D.J.M., Baragarh is directed to dispose of the main proceeding under Sec. 125 Cr.P.C. expeditiously preferably within a period of three months from the date of production of the Copy of this order. Arrear interim maintenance shall be paid by the petitioner to the opposite parties without unreasonable delay.

Issue urgent certified copy.

Case referred:

1. AIR 2000 SC 952: Rohatash v. Smt. Ramendri
2. 1998 CRL.L.J. 4740 : Jashelal v. Smt. Puspabati
3. 2006 (Supp-I) OLR 575 : Sri Debaraj v. Smt. Radha

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5. S. 154
Umesh Singh V. State Of Bihar AIR 2013 SC 1743
CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ
ISSUE

Information given to police on basis of hearsay- not liable to be treated as FIR – Treating statement of eyewitness, though recorded later in point of time, as FIR – Justified.

The learned counsel further submits that the dispute regarding the place of incident as contended by the learned counsel for the appellant is factually not correct. In view of the concurrent finding of the High Court regarding the place of occurrence is very much certain as it is said to be at Tungi. PW4 Ashok Kumar Singh in his evidence has categorically stated that he is not an eye-witness but on the basis of hearsay he has informed the police. The I.O. has further stated in his evidence that PW4 is a hearsay witness and therefore his information could not have been treated as FIR. Hence he has requested this Court that there is no merit in this appeal, particularly, having regard to the concurrent finding on the charge by the High Court on proper appreciation of legal evidence and record and affirming the conviction and sentence for charge under Section 302 read with Section 34, IPC. Hence, the learned senior counsel has requested this Court not to interfere with the same in exercise of its jurisdiction.

PW2 Arvind Kumar, who is the cousin brother of the deceased, accompanied him on the date of occurrence of the incident. At that point of time the appellant, along with other accused, surrounded them and it is stated that the appellant shot at the Kanpatti with revolver and other accused persons Binda Singh with the rifle in the stomach of the deceased and Sudhir Singh with rifle in the left thigh. PW7 has stated in his evidence that the aforesaid accused persons fled away at that time Ashok Singh, Damodar Singh, Balram Singh and Shyam Sunder Singh were going to the bazaar who have witnessed the incident. His evidence is supported by the evidence of the other witness namely PW3, who has stated that he has seen Moti Singh and Jaddu Singh catching both hands of the deceased and Moti Singh ordered him to fire and the said witness also spoken about the firings by Awadhesh Singh and Nawal Singh as stated by the PW2. Further, he has supported his evidence that Awadhesh Singh pushed the dead body in the Payeen and also stated that Moti Singh and Jaddu Singh had caught hold of the informant also. PW5 also claimed to have seen Jaddu Singh and Moti

Singh catching hands of the deceased and further he has stated that Umesh Singh, the appellant herein, had fired at the temple region of the deceased. Further, he has given categorical statement stating that Binda, Sudhir, Awadhesh and Nawal also had fired at the deceased with their rifles. Therefore, the evidence of PW2 has been supported by PW3, PW5 and PW7. In so far as PW6 is concerned he has given a general statement that he has seen the several persons surrounding the deceased and killing the deceased with rifle and revolver. Therefore, the trial court was right in recording the finding on the charge against the appellant on proper appraisal of the evidence of the eye-witness PW2 supported by PW3 and PW5. The said finding of fact on the charge of Sections 302 read with section 34, IPC against this appellant and others was seriously examined by the High Court and concurred with the same and in view of the evidence of PW2 and PW9 the informant who was eye-witness and the I.O.'s evidence regarding his evidence treating the statement of PW2 as FIR is perfectly legal and valid. Therefore, reliance placed upon the decisions of this Court referred to supra by the learned Senior Counsel in the course of his submission are not tenable in law as they are misplaced.

In view of the concurrent findings by the High Court as well as the learned Additional Sessions Judge and an order of conviction and sentence imposed against the appellant herein is on the basis of legal evidence on record and on proper appreciation of the same. Therefore, the same is not erroneous in law as the finding is supported with valid and cogent reasons. For the foregoing reasons the impugned judgment and order cannot be interfered with by this Court. Hence, the appeal is devoid of merit and accordingly it is dismissed.

Appeal dismissed.

6. Sec.154
Guiram mondal v. State of west bengal, 2013 (2)Crimes 324 (SC)
K.S.Radhakrishanan and Dipak Mishra,JJ.
ISSUE

Placed before the Magistrate three days after registration –Cannot be concluded that FIR was antetimed, ante dated and fabricated.

We also fully agree with the views expressed by the High Court that the FIR was not anti dated, anti timed or was subsequently created. The verbal submission of PW 1 was reduced into writing by PW 15 and the same was treated as the FIR (Ext.3). The formal FIR was marked ext.3/3. Those documents would clearly indicate that the incident took place on 26.4.1984 at about 12 hrs and the FIR was recorded at village Pechaliya at 6.05 PM and after it was sent to the Khairasole police station which was registered as Khairasole P.S. Case No.10 dated 26.4.1984 at 7.25 P.M. There is nothing to show that the FIR was anti dated, anti timed or fabricated. Merely because the FIR was placed before the learned Magistrate on 30.4.1984, three days after registration of FIR, it cannot be said that the FIR was anti timed, anti dated and fabricated. In fact, no question was put to the Investigating Officer as to the cause of delay in sending FIR to the Magistrate.

Considering the totality of the evidence and circumstances of the case, we are of the view that the High Court has rightly reversed the judgment of the trial court after finding the appellant guilty under Section 302 read with Section 148 of IPC for the murder of Amrita Dome and awarded the sentence of life imprisonment. We, therefore, find no reason to interfere with the judgment of the High Court. The appeal lacks merit and the same is dismissed.

7. Sec. 190(1)(b)
Moti Lal Songara V. Prem Prakash @ Pappu and Anr. 2013 (2)Crimes 328 (SC)
K. S. Radhakrishnan and Dipak Misra ,JJ.
Issue

Additional Chief Judicial Magistrate taking cognizance on the basis of materials before him – No infirmity.

In view of the aforesaid enunciation of law, we are of the considered view that the order taking cognizance cannot be found fault with. We may hasten to clarify that the learned Additional Chief Judicial Magistrate has taken cognizance on the basis of facts brought to his notice by the informant and, therefore, he has, in fact, exercised the power under Section 190(1)(b) of the Code.

Consequently, the appeal is allowed, the order passed by the High Court in Criminal Revision No.327 of 2011 and the order passed by the learned Additional District and Sessions Judge, No.1, Jodhpur, in Criminal Revision No. 7 of 2009 are set aside and it is directed that the trial which is pending before the learned Additional District and Sessions Judge, No. 3, Jodhpur, shall proceed in accordance with law.

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8.Sec. 190(1)(b)
Ramesh Kumar Soni V. State of Madhya Pradesh. AIR 2013 SC 1896
T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.
ISSUE

Amendment changing forum of trial of certain offences – Applies retrospectively – would therefore govern cases instituted but pending as on date of amendment – Case in which cognizance is not taken – Cannot be said to instituted – As such if in case involving offences covered by amendment no charge-sheet has been filed till date of amendment – It cannot be said to be pending as on date of amendment – Would therefore be triable by amended forum. Cognizance – Date on which taken – Is deemed to be date of institution of case.

Applying the test judicially recognized in the above pronouncements to the case at hand, we have no hesitation in holding that no case was pending before the Magistrate against the appellant as on the date the Amendment Act came into force. That being so, the Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against the appellant was duty bound to commit the case to the Sessions as three of the offences with which he was charged were triable only by the Court of Sessions. The case having been instituted after the Amendment Act had taken effect, there was no need to look for any provision in the Amendment Act for determining whether the amendment was applicable even to pending matters as on the date of the amendment no case had been instituted against the appellant nor was it pending before any Court to necessitate a search for any such provision in the Amendment Act. The Sessions Judge as also the High Court were, in that view, perfectly justified in holding that the order of committal passed by the Magistrate was a

legally valid order and the appellant could be tried only by the Court of Sessions to which the case stood committed.

The Court observed: "The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of doctrine of "prospective overruling" is left to the discretion of the court to mould with the justice of the cause or the matter before the court."

In Rajasthan State Road Transport Corporation and Anr. v. Bal Mukund Bairwa (2009) 4 SCC 299: (AIR 2009 SC (Supp) 1857 : 2009 AIR SCW 2566), this Court relied upon the observations made by Justice Benjamin N. Cardozo in his famous compilation of lectures The Nature of Judicial Process – that " in the vast majority of cases, a judgment would be retrospective. It is only where the hardships are too great that retrospective operation is withheld." The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the Madhya Pradesh High Court will not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision. With the above observations, this appeal fails and is hereby dismissed.

Appeal dismissed.

9. Sec. 378

Habib V. State of Uttar Pradesh With Manuwa V. State of Uttar Pradesh. AIR 2013 SC 1764

K. S. Radhakrishnan and Dipak Mishra, JJ.

ISSUE

Appeal against Acquittal -Powers of Court – Court can re-appreciate evidence – However cannot interfere with acquittal if on evidence two views are possible.

The prosecution story is that Sammo, daughter of deceased Fakira and sister of Hamid (PW 1) - complainant was married to Habib, one of the accused. Sammo left the matrimonial home due to demand of dowry. Later PW 1 settled her marriage with another person but the nikah was not performed since no divorce was obtained from her husband–accused Habib. The prosecution version is that on 13.1.1981 at about 6.30 PM PW 1 Hamid accompanied by his father Fakira (deceased), his brother Rafique, servant Ashraf and other person namely Kailash Chandra were proceeding to a place Goverdhan along with cattle through a canal road. The accused Manuwa, his son Habib, appellants herein, and his brother Bhappa met PW 1 and others on the way and enquired about their destination. PW 1 informed that they are going to Goverdhan for cattle business. On seeing them, accused Manuwa instigated his sons Habib and Bhappa to challenge PW 1 and others. Manuwa himself opened fire with a view to kill Fakira, but it did not hit Fakira, Habib also opened fire and shot Fakira at his neck and he fell down and died on the spot. PW1 Hamid lodged a report to the police station Goverdhan, Mathura on 13.1.1981 at about 8.45 PM. Thereafter a case Crime No.13 under Section 302 IPC was registered. The case was tried by the Sessions Judge, Mathura.

Prosecution, in order to bring home the charge, examined PW 1 Hamid, the informant, PW 2 Rafique, brother of the deceased, PW 3 Kailash Chandra, eye-witness to the murder, PW 4 Radhey Shayam, head constable, PW 5 Ram Kheladi, constable, PW 6 Dr. K.K. Khanna, CMO of Mathura to prove the post-mortem report, prepared by Dr. K.K. Seth. PW 7 Brijpal Singh – Investigating Officer and PW 8 Bankey Lal, constable. On the side of the defence, accused examined Abdul as DW1 and Rajendra Prasad Pandey as DW2.

Sessions Court after appreciating the oral and documentary evidence acquitted all the accused persons and on appeal preferred by the State, the High Court reversed the judgment of the trial court and, as already stated, convicted the accused persons and sentenced them to undergo imprisonment for life.

We are of the view that the High Court has correctly appreciated the oral and documentary evidence, including the evidence of PW6, the Chief Medical Officer and rightly came to the conclusion that the trial court had committed an error in discarding their evidence. This Court in State of Punjab v. Ajaib Singh and others (2005) 9 SCC 94, also recorded that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record if the court finds that the view of the trial court acquitting the accused was unreasonable or perverse. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the innocence, the view which is favourable to the accused should be adopted. However, the paramount consideration of the court is to ensure that miscarriage of justice is prevented as noted in the Judgment of this Court in V.N. Ratheesh v. State of Kerala (2006) 10 SCC 617: (AIR 2006 SC 2667).

We are of the considered view that the High Court has rightly found that the finding recorded by the trial court was unreasonable and perverse and reversed the order of acquittal passed by the trial Court. The appeals, therefore, lack merits and the same are dismissed.

Appeal dismissed.

10. Sec. 439

Ravindersingh alias Ravi Pavar V. State Of Gujarat. AIR 2013 SC 1915

P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.

ISSUE

Case relating incident of hooch tragedy resulting in death of and serious injuries to many persons – Appellant not only supplier of alcohol but main conspirator in manufacture of spurious alcohol by using methyl alcohol – was also involved in many cases – Offences alleged against appellant are offences against society – Do not deserve leniency – Mere fact that appellant was 3 yrs. in custody as under trial – Not ground to grant bail – Other accused supplying methyl and ethyl alcohol for manufacture of spurious liquor – Despite having full knowledge that they are poisonous – Bail granted to him on mere ground that nephew of accused was looking after business liable to be cancelled.

Under these circumstances, considering the nature of the offence and the manner in which A-2 supplied those poisonous chemicals despite having full knowledge about its consequences, we are satisfied that the respondent (A-2) does not deserve liberty of

remaining on bail. Accordingly, the judgment and order dated 29.09.2011 passed by the High Court in Criminal Misc. Application Nos. 12384 and 12385 of 2011 is set aside. The respondent (A-2) is directed to surrender before the court concerned within a period of two weeks from today, failing which, necessary steps be taken for his arrest in order to put him in jail.

It is unfortunate to note that in a State like Gujarat, which strictly prohibits the use of alcohol in any form whatsoever, the accused caused death and injuries to several persons by supplying spurious country- made liquor. Taking a serious view of the matter, the complexity of the crime, the role played by accused persons as well as the number of casualties, we are of the view that it is not a fit case for grant of bail.

In the light of the above discussion, the appeal of the accused- Ravinder Singh @ Ravi Pavar is dismissed. We direct the trial Judge to proceed with the trial on day to day basis avoiding unnecessary adjournments. It is made clear that if the trial continues beyond one year from today, they are free to file fresh application before the trial Court. In that event, it is for the concerned court to dispose of the bail application on merits. It is made clear that whatever observations made above are only for the purpose of disposal of the bail application. It is for the trial Court to decide on the basis of the materials placed before it in accordance with law.

The appeal of Ravindersingh alias Ravi Pavar (A-11) is dismissed and the appeals filed by the State are allowed.

Order accordingly.

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11. Sec. 439
Sambhu Behera V. State of Orissa. (2013) 55 OCR – 434
B.N. MAHAPATRA, J.
ISSUE

Petitioner implicated for commission of offences under Sec. 365/302/120-B/201/34 I.P.C-Co-accused persons released on bail – Petitioner not standing in the similar footing like that of the co-accused persons – Apart from the statement of the co-accused persons and confessional statement of the petitioner, there is evidence of leading to discovery of rope by means of which the deceased was killed – Held, not a fit case for grant of bail.

Prosecution case in brief is that one Bansidhar Panigrahi had land business with the deceased Ramesh Chandra Biswal and in such business Bansidhar Panigrahi suffered heavy loss. Bansidhar Panigrahi, in order to take revenge against the deceased, chalked out a plan and hatched conspiracy with his supporters to kill the deceased. He gave them assurance to pay Rs. 10 lakhs for the said work and in advance he paid Rs. 3 lakhs. Ramesh Chandra Biswal, the deceased was dealing with Ayurvedic medicine of "Sri Ram Dev Baba". As per conspiracy among the accused persons, accused Jiban @ Jibanjit Dakua was set to visit the house of the deceased to receive Ayurvedic treatment so as to gain confidence of Ramesh Chandra Biswal. Accordingly, Jibanjit Dakua frequently went to the house of deceased-

Ramesh Chandra Biswal and gained his confidence day-by-day. By the by, the deceased proposed Jibanjit Dakua introduced one Pabitra @ Pabi to the deceased through phone as a customer for purchase of land worth Rs. 30 lakhs. The accused persons to gain further confidence took the deceased to verify the land physically. On 15.04.2010 the deal was finalized at Rs. 30 lakhs and it was decided to register the land in question on 16.04.2010 at Bhubaneswar. As per the plan, on 15.04.2010 Jibanjit Dakua, Bhima @ Panchanan Behera, Sambhunath Behera, Pradip Bisoi and Sanjaya arranged a Bolero vehicle from Daringibadi and came to Bhubaneswar and stayed in a Lodging at Bhubaneswar. Accordingly, on 16.04.2010 all the above accused persons came to the house of the deceased and parked the Bolero vehicle near the house of the deceased at Bombay Hotel, College square, Cuttack. As Jibanjit Dakua was conversant and acquainted with the deceased and his house, he asked the deceased to come with him for monetary transaction. The deceased could not read the minds of the accused persons and in good faith came along with Jibanjit Dakua and sat in the Bolero vehicle which proceeded towards Bhubaneswar being driven by accused Tulu Nayak. Further allegation is that the accused persons named in the FIR kidnapped the deceased and on the way towards Bhubaneswar killed him and threw the dead body from kalinga Ghati towards the low level of the hill and fled away from the spot.

On the rival contentions of the learned counsel for both parties, the following questions fall for consideration by this Court.

(i) Whether the petitioner is entitled to be released on bail on the ground of parity as other co-accused persons namely, Amulya, Kartika and Tulu were released on bail?

(ii) Whether the petitioner, who was arrayed as an accused on the basis of the statements of the co-accused persons, and on the basis of his own confession admitted commission of the offence can be released on bail?

(iii) Whether the petitioner has made out a case for grant of bail?

Question No. (i) is as to whether the petitioner is entitled to be released on bail on the ground of parity.

Question No. (i) is as to whether the petitioner is entitled to be released on bail on the ground of parity.

Now, the question arises whether the case of present petitioner is similarly situated with that of Amulya Mallick, Kartika and Tulu; the answer would be certainly not. All the three co-accused persons were released on bail on the ground that they were not present in the vehicle in which the deceased was murdered and they were also not present when the dead body were thrown somewhere at Kalinga Ghati. On the other hand, the record reveals that the present petitioner was present in the vehicle in which the deceased was murdered and he was also present when the dead body of the deceased was thrown to the lower level of Kalinga Ghati. Apart from the above, the petitioner also led the police to the place where the rope was hidden by means of which the deceased was murdered and the police recovered the said rope in presence of the witnesses.

In view of the above, it cannot be said that the case of petitioner stands on same footing with that of the co-accused persons namely, Amulya, Kartika and Tulu.

For the reasons stated above, there is also no need to refer to the judgments relied upon by learned counsel for the petitioner that similarly situated co-accused persons have

been released on bail and the petitioner has a right to be released on bail on the ground of parity.

Question No. (ii) is as to whether the petitioner who was arrayed as an accused on the basis of the statements of the co-accused persons and in his own confession admitted commission of the offence, can be released on bail.

Mr. Das, learned counsel for the petitioner submitted that the name of the petitioner does not appear in the F.I.R. Subsequently, on the basis of the statements of the co-accused persons, he has been arrayed as an accused in the case and the confession made by him before the police is not admissible. As stated above, in addition to the statement of the co-accused persons and confessional statement of the petitioner, the petitioner led to recovery of the plastic rope by means of which the deceased was killed and the Investigating Officer seized the said rope in presence of the witnesses. This aspect cannot be ignored while considering the bail application of the petitioner.

In the fact situation, I am not inclined to accept the prayer of the petitioner for bail. Hence, the same is liable to be rejected.

Question No. (iii) is as to whether the petitioner has made out a case for grant of bail. Keeping in mind the gravity of offence and materials available on record, I am of the considered view that the petitioner has not made out a case for grant of bail.

Accordingly, the BLAPL is rejected.

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12. Sec.482

Niranjan Hemchandra Sashittal and another V. State of Maharashtra. AIR 2013 Sc 1682

K. S. Radhakrishnan & Dipak Misra ,JJ.

ISSUE

It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective.

In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system.

It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.

It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop.

It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. When we say so, we may not be understood to have said that the accused is debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. In the present case, as has been stated earlier, the accused, as alleged, had acquired assets worth Rs. 33.44 lacs. The value of the said amount at the time of launching of the prosecution has to be kept in mind. It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people. We may hasten to add, some citizens do protest but the said protest may not inspire others to follow the path of sacredness of boldness and sacrosanctity of courage. Many may try to deviate. This deviation is against the social and national interest. Thus, we are disposed to think that the balance to continue the proceeding against the accused-appellants tilts in favour of the prosecution and, hence, we are not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the learned Special Judge is directed to dispose of the trial by the end of December, 2013 positively.

The writ petition is accordingly disposed of.

Order Accordingly.

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13. Criminal Trial [Principles of Sentencing]
Shyam Narain V. The State of NCT of Delhi. 2013 (2)Crimes 342 (SC)
Dr. B. S. Chauhan and Dipak Misra ,JJ.
ISSUE

Sentencing – Principles – Discussed –Propotionality of sentence to gravity of offence is important –Just punishment –Impact of the crime on the society must not be lost sight of.

Primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the Court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.In this context, we may refer with profit to the pronouncement in Jameel v. State of Uttar Pradesh , wherein this Court, speaking about the concept of sentence, has laid down that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

In Shailesh Jasvantbhai and another v. State of Gujarat and others (2006)2 SCC 359, the Court has observed thus: "Friedman in his Law in Changing Society stated that: "State of criminal law continues to be – as it should be -a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration".

In State of M.P. v. Babulal AIR 2008 SC 582, two learned Judges, while delineating about the adequacy of sentence, have expressed thus : -

Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for commission of an offence and found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The law does not envisage a person being convicted for an offence without a sentence being imposed therefore.

The object of punishment has been succinctly stated in Halsbury's Laws of England, (4th Edition: Vol.II: para 482) thus: "The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided".

Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniousity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended up to life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualized. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilized society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the

mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasized on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court.

Ex consequenti, the appeal, being sans merit, stands dismissed.

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