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CRIMINAL LAW

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I INTRODUCTION

CRIMINAL LAW reflects the values of society. These values keep on changing to suit the needs of the time. So is criminal law. Legislation in this field should therefore be undertaken with caution. It is likely that the statutory provisions may not have the malleability to keep the same wavelength between the statute and the changed social values. The statute may cabin only the values, which were prevalent at the time of legislation. Unless the flexibility to read it in the context giving enough space for the courts is provided for, it may become difficult for the society to employ the law to contain the crimes. In such circumstances it is likely that the society may tamper with procedural law/evidentiary law to achieve the purpose of employing the substantive law. If these developments do not achieve the purpose special legislation is undertaken to fill up the gaps by following elaborate definitions, procedure and specialized courts. The Indian criminal law is in such a stage today. Fortunately since it still retains the basic characteristics of common law the need for reforms is expressed eloquently and piecemeal legislation does take place leaving much perforation in the texture of its basic philosophy. The need for urgent reforms is usually taken up by journalists. The recent writings on the misuse of the wide definition given to rape, the possibility for misuse of the evidentiary principles favourable to the women folk, the suggestion to extend the presumptions of torture under section 498A etc. are in point.

The substantive criminal law in India is contained in the Indian Penal Code. It is comprehensive. Reflects values of the Victorian era. Still it contains provisions, which are malleable to make them suit the times. But certain new manifestation of degradation in societal values compel the system to go for new legislation or new amendments. The case law does not quite often reflect the trend of developments in criminal law. The tendency of the courts is to resolve the conflicts within the contours of the statutory provision without examining the values underlying them. Also, it appears there is a tendency on the part of the police to set up the case suiting the requirements of the statutory provision so as to subsume the case with it to ensure conviction.

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The courts also without their knowledge fall in this process. It is reflected in the recent observation of the Supreme Court, which said thus:[1]

> In our opinion, criminal cases are decided on facts and on evidence rather than on case laws and precedents.

In such a situation a survey of the cases can only capture the trend set in by the courts in the course of their discussion of facts in the light of statute law. Only such cases, which the present author feels important are alone analyzed here. For facility of reference the case law is discussed under different subheads.

II CRIMINAL RESPONSIBILITY FOR UNINTENDED DEATH

In criminal law a person becomes responsible for crime if he intentionally commits it. This however, does not mean that the person is not responsible for his unintended acts even if it results in crime. On certain occasion man's act though not intended to cause death results in death. Criminal responsibility is fastened on him in such cases for his reckless act. The decision in *Cherubin Gregory* v. *State of Bihar*[2] signifies this position. In this case the accused in order to prevent others from using the lavatory put a live electric wire at the entrance. He did not intend to cause anybody's death but wanted intruders to suffer. A person who crossed the entrance was electrocuted. The accused was held responsible for the death as it was his reckless act which caused the death. In *Ratnappa Shivalingappa Jeevani* v. *State of Karnataka*[3] accused had taken an illegal electric connection and the deceased went behind his hut to urinate and was electrocuted. However, the accused was imposed only a pecuniary fine since the court held that no guilty intention was there and he had no knowledge that deceased would go over there. This decision does not seem to have applied the law correctly.

III CRIMINAL RESPONSIBILITY – ABETMENT TO COMMIT SUICIDE

Abetment to commit suicide can take many forms. In *Chandan Soni* v. *State of Chhatisgarh*[4] the accused was earlier convicted of rape of a child. He was granted bail. Then he continuously intimidated the child through

1 *Sairabano @ Sultana Begum* v. *State of Maharashtra*, Cr. App. 141 of 2006

2 1964 (1) Cri. LJ 138. Also read *State of Kerala* v. *Ashraf* 1993(1) KLT 501 where the accused had placed a live wire under water to catch fish. A boy who went to bathe was electrocuted. The court while convicting the accused held thus "Murder is unlawful, whether or not it is done negligently or rashly…." And the accused was sentenced to rigorous imprisonment for two years along with compensation to mother of victim of Rs.25000/-

3 2006 Cri LJ 1579 (Kar)

4 2006 Cri LJ 3528 (Chh).

telephone or S.M.S. that he would take revenge and would kill her and her mother for having complained against him. As a result she was under depression that led to her committing suicide. The charges framed under sections 305 and 107 were therefore found to be justified.

In *Pothyamsetti Satyanarayana Reddy* v. *State of A.P.* [5] the act of accused persons following a girl in the street, demanding her to fulfil their lust, uttering vulgar words and spreading rumour about her chastity were held enough to drive the girl to commit suicide.

However, in *Madiya* v. *State of M.P.*[6] the acts of the accused was held not falling under section 107, IPC. In this case the accused outraged the modesty of the deceased. The matter was reported by her sister, who was an eyewitness, to the parents. Ashamed, the deceased committed suicide. The accused in these circumstances could not be hauled up for abetting suicide. The reasoning adduced by the court ran thus: [7]

> The period of two days which elapsed between two incidents show that, it was not the act of the accused petitioner which instigated her to commit suicide, but it was defamation and feeling of shame which ultimately became the cause of commission of suicide.

IV EXCEPTIONS FROM CRIMINAL RESPONSIBILITY

A man accused of crime can escape liability in two ways. One by arraigning evidence against the prosecution story and, secondly, by invoking the aid of general exceptions.

Applicability of section 80 IPC

It has been emphasized by the Gujarat High Court in *A.K. Chaudhary and Anr*. v. *State of Gujarat & Ors.*[8] that while framing charges the courts should have regard for general exceptions provided under sections76, 79 and 80 of IPC. It was a case in which the whole family of the victim committed suicide on the ground that he was chargesheeted contemplating departmental enquiry into allegation against him, as per staff regulations. In fact as senior officer the defendant was required to follow the regulations. There was no direct connection between the act of the defendant officer and the suicide. The court opined that action of suicide in such case can be said to fall under exception provided under section 80 IPC.

Applicability of section 84 IPC

It has been rightly reiterated that there should be independent evidence to prove insanity under section 84 IPC. In *Bihari Lal* v. *State of HP*[9] the

5 2006 Cri LJ 27 (AP).
6 2006 Cri LJ 1963 (MP).
7 *Id*. at 1965.
8 2000 Cri. LJ 726 (Guj).
9 2006 Cri LJ 3832 (HP).

accused tried to prove that he was suffering from schizophrenia by way of a certificate issued by an independent practitioner. The court rejected the defence. Similarly in *Sadashivu Balappa Samagar* v. *State of Karnataka*[10] the abnormal behaviour of the accused in having attempted to cut the penis of his 5 year old nephew and sending his wife to the parents, the Karnataka High Court ruled that at the most the acts of the accused indicate his sexual deficiency and mental imbalance which need to be treated but does not reduce the culpability of the accused. He was not entitled to take the defence of insanity under section 84 IPC.

Right of private defence

Right to private defence came to be accepted in several cases including those wherein the accused did not plead it. *Krishnan* v. *State of TN*[11] was a case wherein two brothers and their families fought over thorn fencing of drain. The accused was neither armed with any weapon when he came to the spot nor brought anything from his house when the quarrel started. He did not claim the right of private defence even in his statement under section 313 Cr PC. But the eye witness's evidence indicated that the deceased and his son had hit the accused on his head. When he raised his hands to protect his head, he picked up one of the thorny sticks which was lying at the spot and hit the deceased with it to protect himself and not with the intention of killing him. The Supreme Court granting him right of private defence held that preponderance of probabilities has to be taken into consideration to give the benefit of general exceptions.

V CONSPIRACY UNDER SECTION 120 B IPC

For establishing conspiracy the Mumbai High Court treated examination answer paper as a valuable document, in *Shaikh Parvej* v. *State of Maharashtra.*[12] In this case the examination valuer was accused of increasing marks of a student after valuation was completed. The marks were changed by over writing and the court held that the conduct of student and teacher amounted to conspiracy to commit forgery in a valuable document under section 463 read with section 120B

VI CONSTRUCTIVE LIABILITY

Common intention

In order to incur liability under section 34 IPC two or more persons are a must. But every offence which involves more than one person would not fall within the ambit of joint liability as was held in *Nagarathinam* v. *State*.[13] In

10 2006 Cri LJ 899 (Kar) (DB).
11 2006 Cri LJ 3907 (SC).
12 2006 Cri LJ (NOC) 255 (Bom).
13 (2006) 9 SCC 57.

Dhanerwar Mahakud & Ors. v. *State of Orissa*[14] it was reiterated that since both section 34 and section 149 deal with constructive liability, an accused can be convicted under section 34 even if the original charge was under section 149 and vice versa. The court held:[15]

> [I]f the injuries caused are sufficient in the ordinary course of nature and they have been caused in furtherance of the common intention, then each and every individual propagating the common intention can be convicted under Section 302 read with Section 34 IPC, although he has not been charged under Section 34 IPC and has been charged under Section 149 IPC along with Section 302 IPC.

Common object

In *Munna Chandra* v. *State of Assam*[16] the question before the apex court was: where there was no evidence as to who had assaulted the deceased and the role played by the accused either conjointly or individually in causing death of the deceased was not known, could all the accused be convicted under section 149? The court held that section 149 IPC creates a specific and distinct offence and involves two essential ingredients : -

i. commission of an offence by any member of an unlawful assembly; and
ii. commission of such offence in prosecution of the common object of that assembly or members of the assembly knew that such offence was likely to be committed.

Thus, it is essential to prove that the person sought to be charged with an offence with the aid of section 149 was a member of the unlawful assembly at the time the offence was committed.

In this case the offence of homicidal death was committed but there was nothing to show as to what role the appellants either conjointly or separately played. There was no clear picture as to who all were present at the time of the last blow. Hence the court gave the accused the benefit of doubt.

In *Munivel* v. *State of T.N*[17] it was held that for conviction under section 149 the entire incident as a whole must be taken into consideration. Even if members of the unlawful assembly whose common object was to inflict injuries but if the members knew that the offence of murder was likely to be committed in prosecution of the common object and if death was caused, then every member of the unlawful assembly would be liable for offence of murder irrespective of the fact who caused the fatal injury. Further, for conviction under section 149 IPC it is not necessary that there should be a prior concert

14 (2006) 9 SCC 307.
15 *Id*. at 313.
16 (2006) 3 SCC 752.
17 (2006) 9 SCC 394.

and a common meeting of mind before the attack. It may develop at the spur of the moment but must exist at any time before the actual occurrence.[18] To draw such an inference background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant.

VII MORAL POLICING

IPC enables the state to have moral policing under sections 292 and 293 IPC. In *Director General, Doordarshan* v. *Anand Patwardhan*[19] the Supreme Court found that the documentary film showcased a real picture of crime and violence against women and members of various religious groups perpetrated by politically motivated leaders for political, social and personal gains. The court held thus:[20]

> In the present situation the documentary film is seeking to portray certain evils prevalent in our society and is not seeking to cater to the prurient interests in any person. Therefore, we have no hesitation in saying that this documentary film if judged in its entirety has a theme and message to convey and the view taken by the appellants that the film is not suitable for telecast is erroneous.

Proscribing publication

Interpreting section 295 A of IPC the Calcutta High Court in *Sujato Bhadra* v. *State of West Bengal*[21] ruled that since the book was a reflection on position of women in Bangladesh society and the role of state religion in subverting secularism and democracy, by no stretch of imagination could it be said that the author intended to insult the religion of any class of citizens in India to outrage their religious feelings. It was also emphasized that passages should not be read out of context or in isolation of the central theme of the book. The court setting aside the forfeiture order held thus: [22]

> Historical perspective and a discussion based thereon without the requisite mens rea does not and cannot fall within the ambit of Section 295 A of the IPC.

VIII FACTS ARE DETERMINATIVE

The usual pattern of courts falling upon facts to decide responsibility is discernible more in cases involving killing of human beings. While dealing

18 *Mohinder Singh & Ors.* v. *State of Punjab* (AIR 2006) 10 SCC 418.
19 (2006) 8 SCC 433.
20 *Id.* at 448.
21 (2006) Cri LJ 368 (Cal).
22 *Id.* at

with such a killing in *Rajinder* v. *State of Haryana*[23] the court made it clear that it is really the facts, which are determinative of guilt. When the factual background of the case was tested on the principles set out in case law, it has to be held that the conviction under section 302 cannot be maintained and it has to be in terms of section 304 part II. The accused was, accordingly, sentenced to seven years imprisonment.

In *Prahlad Krishant Patil* v. *State of Maharashtra*[24] the victim died as a result of the accused's hitting him with an iron rod. The question was whether the offence fell under section 300 IPC. The Supreme Court concluded that the appellant did intend to cause the injury on the head of the deceased and the injury inflicted was sufficient in the ordinary course of nature to cause death. The court ruled that the case squarely fell under thirdly of section 300 IPC.

The plea of sudden and grave provocation came to be pleaded in several cases. However, the court was wary of in allowing this defence. In *Namala Subbarao* v. *State of A.P.*[25] on refusal of his wife to return to the house from the house of her paramour the petitioner lost his cool and killed his wife. His plea of sudden and grave provocation was not accepted by the Supreme Court.

The distinction between the offence of culpable homicide and murder is the presence of special *men srea*, which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These attitudes are stated in section 300 IPC to distinguish murder from culpable homicide not amounting to murder. No hard and fast rule, however, can be laid down as different situations may arise having regard to the factual matrix involved therein. In the present case the repeated blows on the body of the deceased evidently were done with an intention to cause bodily injuries to him and such injuries were sufficient in the ordinary course of nature to cause death. The offence would come within the purview of culpable homicide amounting to murder as envisaged under section 300 IPC.[26]

In the absence of a mode to measure the mental element in crimes the courts evolve the method of making the measurements by way of the seriousness of attacks or the gravity of the injuries suffered. The seriousness of the attack came to be related to the number of blows or number of wounds in the vital parts of the body in which injuries are caused, etc. For example, while in *Santhya Jathai* v. *State of Maharashtra*[27] the number of blows was held to be not determinative, in *Pappu* v. *State of M.P.*[28] it was held that the

23 (2006) 5 SCC 425.
24 (2006) 9 SCC 211.
25 (2006) 10 SCC 557.
26 *Subash Sharrao Pachunde* v. *State of Maharashtra,* AIR 2006 SC 699. Single blow by blunt side would not mitigate the offence under S. 302.as was held in P*ulicherlu Nagaraju* v. *State of A.P.* (2006) 11 SCC 444. For *contra* see *Kailash* v. *State of M.P.*(2006) 11 SCC 420- reduced to S. 304 Part II; *Bunnilal Chowdhary* v. *State of Bihar,* (2006) 10 SCC 639,act not likely to cause death and hence conviction altered from s. 303 to s. 304 part II..
27 (2006) 4 SCC 653.
28 (2006) 7 SCC 391.

application of this rule would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which the injury was inflicted, etc.

The decision in *Pulicherla Nayaraju* v. *State of A.P.*[29] indicates the factors usually taken into consideration by the courts to determine the existence of intention to commit the crime. In the instant case the court did not see any sudden provocation, quarrel or fight. There were no circumstances to bring the case under exception 4 to section 300 either. The appellants were convicted under section 302 IPC.

IX DOWRY DEATH AND MURDER

There have been some cases wherein the conviction of the accused under section 304 B came to be altered to one under section 302 as the facts made out the offence of murder. In *Panakanti Sampath Rao* v. *State of A.P.*[30] the death of the woman occurred within seven years of the marriage. The high court dismissed the appeal and altered conviction from sections 304B and 498A to section 302 IPC. There was medical proof that death was due to asphyxia caused by throttling and hence it was a homicidal death and not suicidal.

The facts were similar in *Balbir Singh* v. *State of Punjab*.[31] In her first dying declaration the deceased stated that her husband had poured kerosene on her, and after igniting had locked door from outside. In the second dying declaration before the I.O. she named not only her husband but also her mother-in-law as participants in the crime. There was evidence that she used to be harassed for dowry. The apex court confirmed conviction of the husband under sections 302 and 498A. Because of the inconsistency in the dying declaration, mother-in-law was given benefit of doubt. She was, however, convicted under section 498A. The court opined that the accused was not prejudiced because of the lack of a charge under section 304 B.

In *Rajendra* v. *State of Maharashtra*[32] there were three dying declarations by the victim of dowry death in which she made out a consistent story that she was held by her husband, kerosene was sprinkled by her mother-in-law and she was set on fire. Though there was neither any evidence of her having sought the help of neighbours and nor was there any evidence of kerosene on her clothes, the court convicted the appellant under section 302 read with section 498 A IPC.

These decisions indicate the care with which the appellate court deal with offences against women inasmuch as it did not insist upon the rules of evidence with strictness as usual.

29 (2006) 11 SCC 444.
30 (2006) 9 SCC 658.
31 (2006) Cri LJ 4646 (SC).
32 (2006) 10 SCC 759.

However, the court did not show such liberalization where rules of procedure were involved. *Harjit Singh* v. *State of Punjab*[33] stands testimony to that wherein on facts of the case ingredients of dowry death as envisaged in section 304 B IPC read with section 113 B, Evidence Act, under which he was charged, were not satisfied. Thereafter, conviction under section 306 was invoked relying upon the judgment in *Prema S. Rao* v. *Yadla Srinivasa Rao*.[34] The court rejecting the plea distinguished that case on the basis of its peculiar facts and circumstances and observed thus:[35]

> Omission to frame charges under S.306 in terms of S.215 Cr. PC may or may not result in failure of justice, or prejudice the accused. It cannot therefore be said that in all cases an accused may be held guilty of commission of an offence under S.306 IPC wherein the prosecution fails to establish the charge u/s 304 B.

In *Trimukh Maroti Kirkan* v. *State of Maharashtra*[36] the wife was killed by the husband for dowry. The court upholding the high court judgment held that in such cases offence is committed within the four walls of a house. There is a corresponding burden that the inmates of the house have to give a cogent explanation about the injuries and cannot get away that the prosecution has to prove the case. And if they are unable to discharge this shift of burden in such case or gives an untrue explanation it is treated as an additional link in the chain of circumstances against the accused to make it complete. It was the high court, which overturned the judgment of the trial court and convicted the offender under section 302 and sentenced him to life imprisonment.

In *Vijayakumar Ramchandra Agarwal* v. *State of Maharashtra*[37] wife was tried to be killed by the husband by strangulation. She remained unconscious for one and a half months. The Supreme Court on appeal upheld the arguments of the wife and convicted the husband under section 498A and section 307 IPC.

Section 304 B IPC was enacted as a measure to punish persons torturing their wives for dowry. The essential ingredients of the offence came to be listed by the apex court in *Ram Badan Sharma* v. *State of Bihar*.[38] They are: (i) death of the woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.

33 (2006) 1 SCC 463.
34 (2003) 1 SCC 217.
35 *Id*. at 471.
36 (2006) 10 SCC 681.
37 (2006) 9 SCC 604.
38 (2006) 10 SCC 115. Also see *T. Aruntprunjothi* v. *State*, (2006) 9SCC 467.

X CRIME AGAINST WOMEN

Outraging the modesty of women

There have been some cases involving outraging the modesty of women. In *Tarkeshwar Sahu* v. *State of Bihar* (now Jharkand)[39] the appellant forcibly took the prosecutrix to his *gumti* with the intention of committing illicit intercourse. But before he could accomplish his nefarious activity, hearing alarm raised by the victim led her father and villagers to come to her rescue. The court observed: [40]

> [I]t is not a mere case of kidnapping for indecent assault but the purpose for which kidnapping was done by the accused has been proved. It is a different matter that the accused failed at the stage of preparation of committing the offence itself.

The essence of woman's modesty is her sex. The culpable intention of the accused is the crux of the matter.

In the absence of any attempt to penetrate, conviction under sections 376/ 511 was unsustainable but the court convicted the accused under sections 366 and 354 sentencing him to five years and two years imprisonment, respectively.

Abduction

In *Gabbu* v. *State of M.P.*[41] the charges levelled against the appellant was that he abducted the woman. The Supreme Court ruled that to constitute the offence of abduction under section 366 IPC it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled/forced her to go from place to place; that such inducement was by deceitful means; it took place with the intent to seduce her to have illicit intercourse; and that the accused knew it to be likely that she may be seduced to have illicit intercourse as a result of her abduction. In fact in this case no such intent could be proved when the complainant went with the accused on her own.

Rape

The Supreme Court had an occasion to deal with the ingredients of the offence of rape in *Tarkeshwar Sahu.*[42] The court said:[43]

> [T]he basic ingredient for proving a charge of rape is the accomplishment of the act with force. The other important ingredient is penetration of the male organ within labia majora or the vulva or

39 (2006) 8 SCC 560.
40 *Id.* at 576.
41 (2006) 5 SCC 740.
42 *Tarkeshwar Sahu* v. *State of Bihar* (2006) 8 SCC 560.
43 *Id.* at 569.

pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Ss. 375 and 376 IPC.

In *Sadashiv Ramrao Hadbe* v. *State of Maharashtra*[44] the court did not accept the prosecution evidence as it did not inspire confidence and there were no traces of semen in the vaginal swab. The presence of semen in the petticoat of the victim and the underwear of the appellant was, however, not considered relevant. He was given benefit of doubt.

Consent

The task of ascertaining whether the victim consented to the sexual intercourse is to be undertaken by an appreciation of the facts. In *Jedia Srinivasa Rao* v. *State of A.P.*[45] the appellant's argument that the victim consented was rejected. In fact she had been resisting the demands of the appellant for sexual favours. His demand was persistent as he was a regular visitor to her house. One day he managed to have the act done and promised that he would marry her. When she became pregnant he retracted. Though the trial court acquitted him the high court convicted him under sections 376 and 417 IPC. On appeal the Supreme Court concluded that the victim's consent was obtained by fraud and section 90 IPC could be invoked. The accused never intended to fulfil his promise and hence the consent of the victim was of no consequence and fell in the second category as enumerated in section 375 i.e. "without her consent" .The court upheld the conviction awarded by the high court.

The Supreme Court has been showing a balanced approach in the appreciation of evidence in rape cases. In *Vishnu* v. *State of Maharashtra*[46] the accused was charged for rape. Consent is crucial in rape cases and it was the plea of the accused that it was consensual sex. For this the age of the prosecutrix had to be determined. There was discrepancy in record of birth register and school leaving certificate. The appellant's failure to explain as to why he was being falsely implicated was held against him. The prosecution's evidence that she was below 16 and her consent, if any, was immaterial under clause sixthly of section 375 was, therefore, accepted as it inspired confidence.

Gang rape

It has been ruled among other things by the Supreme Court that to prove gang rape the prosecution must prove that :

i) more than one person acted in concert with common intention;
ii) more than one accused had acted in concert in the commission of offence of rape with preplanning

44 (2006) 10 SCC 92.
45 (2006) 9 SCC 615.
46 (2006) 1 SCC 283.

iii) in furtherance of such common intention, one or more persons of the group actually committed the offence of rape.[47]

A very interesting question as to whether a woman could be punished for gang rape arose in *Priya Patel* v. *State of M.P.*[48] It was a case wherein the husband surreptitiously managed to get the victim at his house on some false pretext. She approached the wife of the perpetrator to save her from sexual assault. The wife, however, pushed her back and went out of the house, thus facilitating assault by the husband. The high court was of the view that though a woman cannot commit rape, but if a woman facilitates the act of rape, explanation I to section 376 (2) comes into operation and she can be prosecuted for "gang rape". Negating this view the Supreme Court held that the explanation to section 376 (2)(a) only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each such person shall be deemed to have committed gang rape within the ambit of section 376(2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. The question whether she could be proceeded against as an abettor has not been examined.

Statutory rape

The Supreme Court has categorically ruled that in proving the age of the victim of rape the school register is sufficient.[49]

A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty.

Rape of pregnant woman

It has been held that to punish an accused under section 376 (2) (e) it should be proved that the accused knew that the woman was pregnant at the time of commission of offence. The trial court's surmises that the accused had "full possibility" of knowing it was rubbished by the Supreme Court which held thus: [50]

> There is a gulf of difference between possibility and certainty. While considering the case covered by Section 376(2) (e) what is needed to be seen is whether evidence establishes knowledge of the accused. Mere possibility of knowledge is not sufficient. When a case relates to one where because of the serious nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a possibility to be inferred.

47 See *Pardeep Kumar* v. *Union Admn* (2006) 10 SCC 608.
48 (2006) 6 SCC 263.
49 *State of Chhatisgarh* v. *Lekhram,* (2006) 5 SCC 736
50 See,*Om Prakash* v. *State of U.P.,* (2006) 9 SCC 787 at 793.

XI SENTENCING

The courts including the Supreme Court have been following the existing sentencing policy retaining their discretion. The Supreme Court has had no qualms in awarding death sentence in deserving cases. In *Renuka Bai* v. *State of Maharashtra*[51] for example, the Supreme Court sentenced the accused to death penalty as she was engaged in abducting and killing children. It could generally be said that the courts usually give life imprisonment to even serious offenders by not classifying their offences as "rarest of the rare". But in this case the accused showed such depravity of mind that there was no chance of reformation. The Supreme Court maintained a sense of proportion in awarding sentences. Whenever it found that a sentence was disproportionate to the guilt it did interfere as in *Omana Kuttan* v. *State of Kerala*.[52] In this case the court felt that the fine of Rs. 50,000 with life imprisonment was somewhat harsh and, therefore, it was reduced to Rs. 1000. It maintained the sentence of life imprisonment though.

The factors that matter in the sentencing process have been listed out in *Dinesh* v. *State of Rajasthan*.[53] The court held thus:[54]

> The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal in the avowed object of law and that is required to be achieved by imposing an appropriate sentence. 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 *State of M.P.* v. *Santosh Kumar*[55] the Supreme Court instructed the high court to adduce reasons while awarding sentences. In this case the high court had reduced the sentence for an offence under section 376 (2) (f) from statutory minimum of 10 years' RI to five years' RI by stating that the accused was of young age and belonged to scheduled tribe. The court came down heavily on the high court and cautioned that just like the trial courts the high courts are also bound to give reasons if at all they decide to depart from the statutory minimum. And of course the reasons have to be "adequate and special" and not the kind of fanciful reasoning which they had recorded.

In *Ram Kumar* v. *State of Haryana*[56] the victim of rape was married and was residing with her husband at the time of final determination of sentence

51 (2006) 7 SCC 442.
52 (2006) 10 SCC 197.
53 (2006) 3 SCC 771.
54 *Id*. at 776.
55 (2006) 6 SCC 1.
56 (2006) 4 SCC 347.

to the accused. This was considered a circumstance that warranted mitigation of sentence.

XII PROPERTY OFFENCES

The basic requirements for attracting section 403 have been identified and reiterated in *IOC Ltd.* v. *NEPC India Ltd.*[57] They are (i) the movable property in question should belong to a person other than the accused; (ii) the accused should wrongly appropriate or convert such property to his criminal use; and (iii) there should be dishonest intention on the part of the accused. Here, the basic requirement is that the subject matter of dishonest misappropriation or conversion should be someone else's movable property.

The actual manner of misappropriation of property need not be proved under sections 405 and 409 IPC by the prosecution. What needs to be proved is entrustment of the property to the accused. In *State of H.P.* v. *Karanvi*[58] a postmaster who was entrusted with money for issuing National Savings Certificates misappropriated the amount. On his coming to know of the complaint he repaid the whole amount with interest. However, the Supreme Court found him guilty under sections 405 and 409 as he misappropriated the money though later repaid it.

Destruction of property under section 425 IPC

There are three ingredients of section 425, which are (a) intention to cause or knowledge that he is likely to cause wrongful loss to the public; (b) causing destruction of same property; and (c) the change so made destroying the value of property. It has also been held in *IOC* v. *NEPC Ltd.*[59] that ownership of property is irrelevant so far as the offence under section 425 is concerned. Even if the property belongs to the accused himself, if the ingredients are made out, as in the present case, the party would be liable for mischief.

XIII CONCLUSION

The survey of cases reported in 2006 signifies the need for criminal law to keep pace with the moods and mores of the times. If there is a gap in the law the need is immediately felt in the realm of criminal law and criminal procedure. It is, therefore, essential that the legal fraternity keep a watch on the trends in criminal law and criminal procedure indicate.

57 (2006) 6 SCC 736.
58 (2006) 5 SCC 381.
59 (2006) 6 SCC 736.