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CRIMINAL LAW

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I INTRODUCTION

EACH SYSTEM of public governance will have to address the question of administrative relationship of the individual with the community. The community norms of behaviour may quite often come into conflict with the individual norms. In such a situation the individual may be pitted against the organized power of the society, which is represented by the state. In order to regulate the relationship between the state and the individual the society goes for a set of code of conduct in terms of law because what the society wants to achieve is not rule of men but rule of law. For this purpose an independent and impartial instrument like the court is established to resolve the conflict between the individual and the state. Furthermore, the courts through criminal law system seek to balance the individual freedoms and interests with the social or collective interests and thereby strive to ensure peace and tranquility. In our country the provisions in the IPC and other statutes reflect the societal norms of behaviour. In fact the substantive law is to be mainly found in IPC. In the present survey the cases touching upon the various aspects of the general principles of criminal law reported in 2007 have been analysed under various general heads.

II OBSCENITY

In *Ajay Goswami* v. *Union of India*[1] the contention of the petitioner was that the freedom of speech and expression enjoyed by the newspaper industry is not keeping balance with the protection of children from obscene published material. The petitioner prayed for a writ of *mandamus* to newspaper industry for laying down rules/regulations to ensure that minors are not exposed to sexually oriented material. The court held that any step to ban publishing of certain news items or pictures would fetter the independence of the press, which is one of the hallmarks of our democratic set up. The court further opined that there were enough safeguards under Press Council Act, 1978 and sections 292 and 293 of the Indian Penal Code

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1 (2007) 1 SCC (Cri) 298.

to deal with such situations. It, however, urged the Government of India to amend section 14 of the Press Council Act which would enable it to act more authoritatively against delinquent newspapers. The court further exhorted that a culture of "responsible reading" should be inculcated among the readers of news article and that no news items should be read or viewed in isolation or out of context.

III OFFENCES AGAINST HUMAN BODY

It is a settled principle of criminal law that if the prosecution is not able to explain the injuries on the defendant, the same may be taken as a ground to discredit the prosecution case. But *Abdul Rashid Abdul Rahiman Patel* v. *State of Maharashtra*[2] was distinguished by the Supreme Court as there was consistent evidence of the relatives as well as that of independent eyewitnesses against the defendant. As such the court held that even if it is assumed that the prosecution had failed to explain the injuries on the defendant the same cannot be taken to be a ground to reject the testimony of such witnesses.

Alteration from section 302 to section 304

In *Vadla Chandraiah* v. *State of A.P.*[3] the facts were that a police constable took four guavas from a vendor, but refused to pay for the same. This led to a quarrel. The appellant and his son who were doing some carpentry work on the roadside intervened and the quarrel took an ugly turn resulting in appellant's hacking the constable with a *badze* (a carpentry instrument) causing instantaneous death. The trial court and the high court convicted the appellant under section 302. On appeal the Supreme Court deliberated on the issue of absence of any motive and in particular the fact that the appellant was not even known to the deceased. The accused was having his tool with which he caused injury but was not otherwise armed. The court held that though it might have been used to cause injuries but sudden provocation was not in doubt and hence the charge was altered from section 302 to section 304 part II.[4]

Distinction between exceptions 1 and 4 to section 300 IPC - reiterated

In *D. Sailu* v. *State of A.P.*,[5] the Supreme Court reiterated the distinction between exceptions 1 and 4 to section 300 as follows:[6]

> The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have

2 (2007) 3 SCC (Cri.) 323.
3 (2007) 3 SCC (Cri.) 709.
4 See also *Kulesh Mondal* v. *State of U.P.*, (2007) 3 SCC (Cri) 741.
5 AIR 2008 SC 505 (Decided on Dec. 18, 2007).
6 *Id*. at 508.

> been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do.

The court also reiterated that where the eyewitness's account is found credible and trustworthy medical opinion pointing to alternative possibilities is not accepted as conclusive.

Further explicating exception 4, the court in *Byvarapu Raju* v. *State of A.P.*[7] held that "it is to be noted that the "fight" occurring in exception 4 to section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passion to cool down".

Intention to be gathered from facts

The pivotal issue to be decided to impute liability under section 302 or section 304 part I or part II is that of intention. *Manubhai Atabhai* v. *State of Gujarat*[8] involved a single blow of knife. The parties had a dispute over a wall. The accused party came armed and a fight ensued. The deceased while trying to pacify them received a knife blow on his stomach that led to his death. The trial court convicted the accused under section 304 part I, which was altered to section 302 by the high court. The apex court upholding the judgment of the high court for conviction under section 302 observed thus:[9]

> The nature of intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon death. In the instant case the accused had used a knife, the blade of which had a length of six inches. The injury was caused just below the stomach and had affected a vital part i.e. liver.

The court cautioned that merely because a single blow was given does not automatically bring in application of section 304 part I IPC.

In *State of Haryana* v. *Jagat Paul*,[10] death was as a result of cardiac arrest which was caused due to injuries. The trial court convicted the accused under section 302 but on appeal the high court altered it to one under section 325. It is a settled principle of law that it is the intention to cause death or such bodily injury sufficient in the ordinary course of nature to cause death which would seal the fate under section 302.[11] The Supreme Court held that

7 2007 Cri LJ 3204 (SC).
8 (2007) 3 SCC (Cri) 588.
9 *Id.* at 590.
10 (2007) 3 SCC (Cri) 446.
11 See also *Pulicherla Nagaraju* v. *State of A.P.,* (2007) 1 SCC (Cri) 500.

the cardiac arrest is a symptom of death. And in the instant case the death was direct cause of injuries since the cardiac arrest was only due to infliction of injuries. Hence the apex court upheld the trial court's conviction of the accused under section 302/34 IPC.

Recklessness and negligence distinguished

The apex court in *Naresh Giri* v. *State of M.P.*[12] distinguished the mental state required under section 302 IPC from the one required under section 304 A IPC. It was a case wherein the driver of a bus, which was hit by a train in an unmanned railway gate killing two, who was charged among other sections, under section 302 IPC. He challenged the charge on the basis that he had no intention to cause death. The court upholding his contention observed thus:[13]

> Recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it.

The Supreme Court had another occasion to deal with the ingredients of culpable negligence in *Rathnashalvan* v. *State of Karnataka*.[14] In this case the accused drove a lorry in a rash and negligent manner and dashed against a tree resulting in loss of three lives and serious injuries to others travelling in the lorry. Explaining the meaning of culpable negligence the court said thus:[15]

> Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not… Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

The apex court quashed the appeal and the accused stood convicted under sections 304-A, 279 and 337 IPC.

In *State of Rajasthan* v. *Chittarmal*,[16] the facts were that the accused placed a naked electric wire near the fencing of his property to prevent wild

12 (2008)1 SCC 791 (decided on 12.11.2007).
13 *Id*. at 792.
14 (2007) 2 SCC (Cri) 84.
15 *Id*. at 86.
16 (2007) 3 SCC (Cri) 696.

animals entering into his property. The deceased who came in contact with it was electrocuted. The accused was charged under section 302. The high court altered his conviction under section 302 to section 304A IPC. This was upheld by the Supreme Court observing that section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death.

Dying declaration — facts are determinative

The Supreme Court in *Sayarabano @ Sultanabegum* v. *State of Maharashtra*,[17] dismissed the appeal filed by the appellant against her conviction under section 302 IPC on the charge of murdering her daughter-in-law by burning. Though the deceased in her first dying declaration recorded by the magistrate absolved the mother-in-law and others but in the subsequent dying declaration (again recorded by the same magistrate) alleged that her mother-in-law burnt her.

The court observed thus:[18]

> In our opinion, criminal cases are decided on facts and on evidence rather than on case law and precedents. In the case on hand, there is ample evidence to show that even prior to the incident in question, the appellant used to beat the deceased and ill-treat her. It is in the light of the said fact that other evidence requires to be considered. In our view, both the Courts were right in relying upon the second dying declaration of the deceased treating it as true disclosure of facts by the deceased Halimabi.

In contrast, a dying declaration retracted by the maker in *Anil Prakash Shukla* v. *Arvind Shukla*,[19] came to be rejected both by the high court and the Supreme Court as it was not supported by the factual matrix of the case. In this case the magistrate who recorded the declaration did not appear to give evidence.

In *Nallapati Sivaiah* v. *Sub-Divisional Officer*, *Guntur*, *A.P.*,[20] there were two dying declarations out of which one was made before the magistrate. But the forensic expert opinion which remained unimpeached raised doubt as regards the condition of the deceased to make a voluntary and truthful statement. After examining the case law the court came to the conclusion that "the dying declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a dying declaration depends upon not only the testimony of the person recording dying declaration – *be it even a magistrate* but also all the material available on record and the

17 2007 Cri LJ 1458.
18 *Id.* at 1461.
19 (2007) 3 SCC (Cri) 159.
20 AIR 2008 SC 19 (Decided on Sep. 26, 2007. Emphasis Supplied).

circumstances including the medical evidence." And the court refused conviction on the basis of dying declaration.

IV GENERAL DEFENCES

The killing of a human being is homicide, howsoever he may be killed, and all homicide is presumed to be malicious and murderous, unless the contrary appears from circumstances of alleviation, excuse or justification.[21] The chapter on General Defences in the Indian Penal Code deals with these circumstances of excuse and justification.

Insanity

Section 84 embodies the fundamental maxim of criminal law *actus non facit reum nisi mens sit rea* (an act does not constitute guilt unless done with guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, it is assumed that they do not know what they are doing or what is wrong and lack the "free will" and autonomy which the law presupposes. There is also little point in punishing these offenders, as they are unlikely to understand the command of law.[22] In *Bapu* v. *State of Rajasthan*[23] the accused chopped the head of his wife and held it in one hand with the blood stained sickle on the other when he was caught. The defense of insanity was taken up. The accused had at some point of time taken treatment for insanity. The court deliberated at length on the defense of insanity and the distinction between legal insanity and medical insanity. The court rejecting the plea made a very apt observation thus:[24]

> The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place and in coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime.

Right of private defence

Private defence is pleaded as a matter of course in murder cases and the courts have to be extremely cautious to ensure that in the guise of self-preservation force is not used for vindictive or retributive purposes. But, of course, as has time and again been reiterated by the court, the burden of proof in this respect on the defence is not that heavy.

In *Ranbaj Singh* v. *State of Punjab*[25] the factual matrix proved that the accused had received a *sota* blow first and in order to save his son gave a

21 *Woolmington* v. *Director of Public Prosecutions*,(1935) AC 462.
22 K.N.C. Pillai, *General Principles of Criminal Law* 287 (2003).
23 (2007) 3 SCC (Cri) 509.
24 *Id.* at 516.
25 2007 Cri LJ 295.

blow on the head of the deceased which proved fatal. The court reiterated its stand thus:[26]

> Whenever the plea of right of private defense is taken it is not necessary for the defence to lead specific evidence. The defence is entitled to substantiate their case from the evidence of the prosecution. It is not incumbent upon the defence to substantiate right to private defence if it can be substantiated from the prosecution evidence. Therefore, the burden of establishing the defence is not that rigorous on the part of the defence as that of the prosecution.

However, right to private defence being a valuable right serving a social purpose, it should not be construed narrowly.Keeping this in view the apex court in *Krishna and Anr*., v. *State of U.P*.[27] deliberated at length on the nuances of right to private defence. The court's observations are noteworthy:[28]

> The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea. The number of injuries is not always a safe criterion for determining who the aggressor was.
>
> …
>
> In order to find whether right to private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.
> [Further] in moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate to damage apprehended to him… such situations have to be pragmatically viewed and not with high powered spectacles or microscopes to detect slight or even marginal overstepping.

The apprehension of death or bodily injury in the mind of the accused persons would have to be determined having regard to the number of people assembled to take part in assaulting, the manner in which they were

26 *Id*. at 297-98.
27 2007 Cri LJ 3525 (SC).
28 *Id*. at 3527-28.

assaulted, the arms used as also the *situs* of injury received by them as was held in *Surendra* v. *State of Maharashtra.*[29] The court in this case reiterated that a person apprehending death or bodily injury cannot be expected to weigh in golden scales the threat on the spur of the moment. Moreover in *Krishnan* v. *State of Tamil Nadu*[30] the fact that the accused in his statement under section 313 Cr.P.C. did not admit to have inflicted the fatal blow was not regarded as infirmity for denying him the right of private defence. More so when the evidence of the eyewitness and the circumstances weighed in favour of private defence.

The court in *Krishna* v. *State of U.P.,*[31] emphasized that where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused.

V JOINT LIABILITY

The doctrine of complicity deals with the conditions under which more than one person incurs responsibility before, during and after committing crimes. The Indian Penal Code incorporates provisions imposing criminal responsibility on certain parties, other than those centrally responsible, depending on their role in the perpetration of crime.[32]

As a natural corollary, sometimes, in cases where a large number of people allegedly take part in commission of an offence, possibility of some bystanders being falsely implicated cannot be ruled out.[33] But still for vicarious liability it is not necessary to prove that each and every accused had indulged in some overt act inflicting deadly injuries. It is enough if the material available on record discloses that the overt act of one or more of the accused was or were done in furtherance of common intention.[34]

A.K. Mathur J further explicating vicarious liability in *Sheo Prasad Bhor* v. *State of Assam* held thus:[35]

> When charge under section 149 is there, it is not necessary that each one should be assigned independent part played in the beating. If it is found that one of them was a member of the unlawful assembly and that unlawful assembly assaulted the deceased which ultimately caused the death of the deceased, then all who were members of the unlawful assembly can be held liable.

29 (2007) 1 SCC (Cri) 490.
30 (2007) 1 SCC (Cri) 437.
31 *Supra* note 27.
32 K.N.C. Pillai, *General Principles of Criminal Law* 159 (2005).
33 *Sabbi Mellesu* v. *State of A.P.,* (2007) 1 SCC (Cri) 142.
34 See *State of Haryana* v. *Jagat Paul*, *supra* note 10.
35 (2007) 2 SCC (Cri) 45.

It is also to be kept in mind that small contradictions and omissions are natural when body of persons are involved.

In *State of M.P.* v. *Mansingh*,[36] it was contended that section 34 has no application since the accused did not come together. Negativing the contention Pasayat J held:[37]

> Section 34 has no requirement that all the accused must come together. It is their common intention which is material and not how they converge on the place of occurrence.

VI INCHOATE OFFENCES

The aim of law is not only to punish completed crimes but also conduct which falls short of a full crime in order to deter people who have a proclivity towards crime. These incomplete offences *viz*. attempt, conspiracy and abetment are referred to as inchoate crimes.

Attempt

In *Mohd. Yakub*[38] Chinappa Reddy J gave a beautiful exposition of law of attempt and postulated that "the measure of proximity is not in relation to time and action but in relation to intention." Keeping in tune with this line of thought the apex court in *Lachman Singh* v. *State of Haryana*[39] while dealing with section 307 observed thus:[40]

> It is sufficient to justify a conviction under section 307 if there is present an intent coupled with some overt act in execution thereof … The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

It was further held that for attempt to murder under section 307 it is not essential that injury inflicted should be capable of causing death, though nature of injury actually caused may give considerable assistance in inferring the intention of the accused.

36 (2007) 2 SCC (Cri) 390.
37 *Id*. at 392.
38 *State of Maharashtra* v. *Mohd. Yakub*, (1980) 3 SCC 57.
39 (2007) 1 SCC (Cri) 123 at 128.
40 *Id.* at 128.

Abetment

The offence of abetment is a separate and distinct offence provided in IPC. And "abetted" in section 109 means the specific offence abetted. In *Kishori Lal* v. *State of M.P.*[41] the deceased and the accused had some marital discord and were living separately. About a month prior to the incident of her committing suicide she had joined her husband. The husband was charged with abetment to commit suicide. The alleged torture commited by the accused was 4-5 years prior to the incident. The court held that for conviction there must be proof of direct or indirect acts of incitement to the commission of suicide. Mere allegations cannot sustain conviction.

Conspiracy

In cases of conspiracy direct proof is very difficult if not impossible. The inference has to be drawn from circumstantial evidence. In *Suman Sood* v. *State of Rajasthan*[42] the contention of the appellant, who was the wife of the main accused, was that she was not a party to the criminal conspiracy of kidnapping a person to secure release of one of the members of Khalistan Liberation Force who was in custody. The trial court held that since there was no evidence on record that she was part of 'pressurize tactics' or had terrorized victim or his family members to get demands by her husband fulfilled she was entitled to benefit of doubt. However, since the victim was kept in the same house in which she was residing, she was held guilty under section 365 read with 120B, 343 read with 120B and 346 read with 120B. The high court, however reversed the acquittal under section 364A/120B related to kidnapping for ransom. The Supreme Court upholding the decision of the trial court finding her guilty of criminal conspiracy for kidnapping held thus:[43]

> In fact, she was all throughout keeping a watch on the victim. So much so that she used to give food, medicine etc… In the facts and circumstances of the case, therefore in our considered view both the courts were right in convicting Suman Sood.

But the apex court reversed the decision of the high court as far as it convicted her for kidnapping for ransom since no proof was forthcoming which could pin her to that offence.

VII CHEATING

In *Soma Chakravarty* v. *The State (Th. CBI)*[44] the factual matrix was such that the publicity department of ITPO was concerned with the release

41 (2007) 3 SCC (Cri) 701.
42 2007 Cri LJ 4080.
43 *Id*. at 4088.
44 2007 Cri LJ 3257 (SC).

of advertisements in newspapers. A senior assistant of ITPO floated 6 bogus firms and submitted 76 bogus bills under fictitious names for payment. Out of these, 14 bills were processed and verified by the appellant though she was not the authorized authority to do the same. Her contention was that the liability is of the accounts section, which was negligent in verifying the bills. As far as her signatures were concerned she contended that she signed the bills in normal course of her duty. She admitted negligence on her part but contended that it was without any *mala fide* intention. Negativing the contention Markandey Katju J held that "In our opinion once a person signs on a document he or she is expected to make some enquiry before signing it." The court must take this sort of a serious view where fraud is alleged against the government since larger public interest is at stake.[45]

VIII SEXUAL OFFENCES

Rape

In sexual offences the courts have shown sensitivity to the fact that a girl in a tradition bound non-permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society. These observations form part of the judgment in *Dildar Singh* v. *State of Punjab*[46] wherein a minor was raped by the drawing teacher of her school. She did not disclose the incident to anyone till a point when she could not keep it a secret since her mother discovered that she was pregnant. Long passage of time since the incident was not held to be an infirmity for prosecution.

In *Santosh Sinha* v. *State of Tripura*[47] the accused deceitfully allured a minor to have sexual intercourse on a false assurance of marriage and had repeated sexual intercourse with her. He even enacted a marriage (*Gandharva*) before the portrait of Goddess Kali but subsequently resiled from actual marriage. It is interesting to note that the court convicting the accused under section 376 IPC deliberated at length on case law dealing with issues like the consent being vitiated (as it was a concept based on misconception), sole testimony of the prosecuterix etc. whereas the fact that she was a minor did not leave any room for the defense of consent and it was common knowledge that they were staying as man and wife. Such well established principles do not require, it is submitted with respect, this much unnecessary elaboration of case law. The factual matrix matched that of *Bodhisattwa Gautam* v. *Subhra Chakraborty*[48] insofar as the man had sexual

45 The matter was reverted back to the special judge with the caveat that the observations in the case will have no bearing on the final outcome.
46 (2007) 1 SCC (Cri) 129.
47 2007 Cri LJ 7 (Gau HC).
48 (1996)1 SCC 490.

proximity on the basis of false promises of marrige which could have been referred to.

Gang rape

Explanation 1 to section 376 states that "where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of such persons shall be deemed to have committed gang rape within the meaning of this sub section." Common intention is dealt in section 34 IPC and denotes action in concert and necessarily postulates a prior meeting of minds. Therefore, the courts have to be cautious and not everyone present can have a common intention. In *Pradeep Kumar* v. *Union Admn., Chandigarh*[49] the appellant had reached the place of incident i.e. where gang rape took place at a subsequent stage and was arrested along with the accused persons. The court set aside the order of his conviction by observing thus:[50]

> The statement of the prosecution does not inspire confidence to reach to the conclusion that the accused – appellant was present at the place of incident right from the very beginning to infer any pre-concert of the appellant with other accused persons to commit rape.

Benefit of doubt should be in favour of accused even in case of rape

The apex court apart from dispensing justice has also been zealously guarding the rights of the accused.In *Bibuishan* v. *State of Maharashtra*[51] while allowing the appeal and reversing the order of the high court of conviction under section 376 read with section 511 IPC, the Supreme Court, after examining the evidence of the doctor and upon satisfaction that there was no bodily injury to the prosecution and relying on the deposition of the doctor that the prosecutrix was habituated to sexual intercourse, took the view that the high court and the trial court had not correctly appreciated the evidence and the benefit of doubt should be applied in favour of the accused since the charges against him were not proved beyond reasonable doubt.

Murder or rape?

In *Amrit Singh* v. *State of Punjab*[52] a girl of 2nd standard was brutally raped and subsequently died due to excessive bleeding. The trial court as well as the high court convicted the accused under section 302 and awarded death sentence. The Supreme Court though conceding the heinous nature of the crime held that death was not intentional though the rape was brutal. The point is since she was a little girl whose body was not capable of withstanding that assault the very act of brutal rape should have been construed as causing

49 (2007) 1 SCC (Cri) 41.
50 *Id.* at 47-48.
51 (2007)1 SCC (Cri) 129.
52 (2007) 2 SCC (Cri.) 397.

such bodily injury as is likely to cause death. Hence what was warranted was a conviction under section 302 and not ten years imprisonment under section 376. Moreover the courts understanding of the mental state of the accused is indeed shocking when it observed thus:[53]

> The manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of the appellant, seeing a lonely girl at a secluded place.

IX DOWRY DEATH

Meaning of dowry

In *Appasaheb* v. *State of Maharashtra*[54] the prosecution case was that the deceased ended her life by consuming poison because of harassment for dowry caused by the appellants and hence sought conviction under section 304 B. The apex court analysed the term 'dowry' under the Dowry Prohibition Act, 1961 and came to the conclusion that demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure (as was the issue in the instant case) would not fall within the definition of the term. The term dowry mentioned in section 2 of the Dowry Prohibition Act envisages any property or valuable security given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the parties. And the court decided that the demand in the instant case cannot be construed as dowry as it being a penal provision it should be construed strictly. But it is submitted that such an interpretatation does not augur well for the Indian women and they would continue to be harassed for dowry under the garb of necessities of life. The same Act, which was enacted to ameliorate their condition is standing in their quest for justice.

In another case where conviction was for abetment of suicide the charges were that the deceased was harassed for dowry.[55] One of the material facts was that the husband had demanded money for buying a tractor. The moot point is, if for charge under section 306 money for tractor is demand for dowry, what prevented the court from applying the same test in the earlier case?

The case of *Raja Lal Singh* v. *The State of Jharkhand*[56] stands apart as the expression "soon before her death" was not given a literal interpretation to mean just minutes or hours before death but was held to even refer to period even within a few days or few weeks before death. In this case the harassment was 10-15 days prior to the death. Markandey Katju J held "what

53 *Id*. at 404.
54 (2007) 3 SCC (Cri) 468.
55 *Surender* v. *State of Haryana*, (2007) 2 SCC (Cri) 210.
56 2007 Cri LJ 3262 (SC).

is relevant is there should be a perceptible nexus between death of the deceased and dowry related harassment or cruelty inflicted on her". This is the kind of judicial reasoning that is expected of from the apex court.

Conviction in dowry death case

In *M. Srinivasulu* v. *State of A.P.*[57] the Supreme Court essayed on the interrelationship between section 304B and section 498A read with section 113B Evidence Act thus:[58]

> It is to be noted that Section 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections.

Knowledge of fact

Knowledge of fact is reflective of a guilty intention. In *Shakuntla* v. *State of Haryana*[59] the deceased was constantly harassed for dowry. Fed up with the bickerings of her mother-in-law she poured kerosene on herself to frighten the accused mother-in-law. Seizing the opportunity to get rid of her the accused lighted a matchstick on her and ran out screaming that the deceased had set herself on fire. The court relying on the dying declaration (as the doctor had opined that she was fit to make a statement) convicted the accused under section 302 as it was plain and simple murder since she had full knowledge that by her act the woman would certainly die.

X CIRCUMSTANTIAL EVIDENCE

In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts should be consistent with the hypothesis

57 AIR 2007 SC 3146.
58 *Id.* at 3150.
59 (2007) 3 SCC (Cri) 454.

of guilt of the accused. In *Shaik Mastan Vali* v. *State of A.P.*[60] the deceased had intimacy with the accused and on the previous day of her death the accused had dragged her to his hut. On the next day she was found dead. The police found one towel of the accused which was tied around the waist of the deceased and a rope lying near the cot. The chain of circumstantial evidence being complete – the guilt of the accused stood proved.

The bench of B.N. Agrawal and P.P. Naolekar JJ has further held:[61]

When the case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
(3) The circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

In *Trimukh Maroti Kirkan* v. *State of Maharashtra*[62] the apex court while dealing with dowry death made a very apt observation thus:[63]

> In a case based on circumstantial evidence where no eye witness account is available, there is another principle of law which must be kept in mind. The principle is that when incriminating circumstances is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

Missing link in the chain

FIR was lodged by the father of a girl that she had been killed. Later he said that he saw the accused leave his house when he got back from work. This vital fact was never mentioned in the FIR. The court held that FIR need not be an encyclopedia. But such a vital fact could not have slipped from the

60 (2007) 3 SCC (Cri) 486.
61 *State of Goa* v. *Sanjay Thakran and Anr* (2007) 2 SCC (Cri) 162.
62 2007 Cri LJ 20 (SC).
63 *Id*. at 27.

father's mind and should have definitely been mentioned in the FIR. It is not a minor discrepancy in the FIR which could be condoned. Hence the accused was given the benefit of doubt as a vital link in the chain of circumstantial evidence was missing.[64]

Imposition of death penalty

The apex court in *Bishnu Prasad Sinha* v. *State of Assam*[65] ruled that death penalty should not usually be resorted to in cases proved by circumstantial evidence. The court observed thus:[66]

> There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily death penalty should not be awarded.

XI SENTENCING

Principle of proportionality

In India we do not have sentencing guidelines. In IPC maximum punishment is prescribed for offences and in cases of grave crimes minimum sentence is also prescribed. There are votaries both in favour as well as against this sub-minimum. Apart from this the sentencing policy varies with change in times, with judges disposition and so on. The sentencing policy in the year gone by is in sync with the *just deserts* theory. The sentencing policy has indeed come a long way since *Phul Singh*[67] and Pasayat J gives a note of caution thus:[68]

> Judge in essence affirm that punishment ought always to fit the crime yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of the crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of injustice that are serious and widespread.

Keeping this in focus the apex court in *State of Karnataka* v. *Raju,*[69] reversed the judgment of the high court wherein the court had reduced the punishment of 7 years rigorous imprisonment for rape of a 10 year old child to two and half years. The high court reasoned that the accused was a young

64 *Sujoy Sen*. v. *State of West Bengal*, (2007) 3 SCC (Cri) 47.
65 (2007) 11 SCC 467.
66 *Id*. at 483.
67 *Phul Singh* v. *State of Haryana*, (1979) 4 SCC 413.
68 *Bablu* v. *State of Rajasthan*, (2007) 2 SCC (Cri) 590.
69 2007 (11) SCALE 114.

boy of 18 years belonging to Vaddara community and illiterate and hence it was proper to reduce the sentence. The apex court deprecating the practice of taking resort to "special and adequate reasons" – in a casual manner held that "Judicial response to human rights cannot be blunted by legal jugglery". The apex court restoring the sentence given by the trial court held that the measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused the state and age of the sexually assaulted female and the gravity of the criminal act.

Number no criterion

In *Des Raj* v. *State of Punjab*,[70] the appellant was convicted for murder of three persons by the high court. The Supreme Court commuting the death sentence to life imprisonment revised the sentence reasoning thus:

> The repeated loading and firing in utter disregard for life, in the circumstances, is not an indication of extreme depravity or brutality, but of a drunken rage. The trial court and the High Court have persuaded themselves to award the death penalty by considering only the aggravating circumstances, and to an extent carried away by the fact that three died and four (two directly and two indirectly) were injured. The mitigation circumstances have not been given their due importance. On a careful balancing of the aggravating and the mitigation circumstances, we find that in spite of the gravity of the crime involving triple murder, the aggravating circumstances notice and enumerated by the High Court do not outweigh, much less overwhelmingly, the mitigating circumstances. This is not the rarest of rare case, which invites death penalty.

XII CONCLUSION

There has not been much discourse on fundamental issues in criminal law in 2007. Our courts, particularly the Supreme Court, as usual played an effective role in straightening the law in this area in several respects. Some decisions are encouraging. There have, however, been some disappointing decisions such as the one in *Amrit Singh* v. *State of Punjab*[71] in the year under survey.

70 Criminal Appeal No. 648 of 2007. (Decided on 7.9.2007).
61 *Supra* note 52.