7

CRIMINAL LAW

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I INTRODUCTION

CRIMINAL LAW reflecting the coercive power of the state must be clear and determinate. Individuals have an inclination to be free and to do things according to their wishes. The society, on the other hand, does want the individuals to conform to its norms for the betterment of all. It always tries to rein in their conduct, which according to it may threaten its existence. There is an inherent tension within societies concerning the security of the nation versus the liberty of the individual. The criminal justice system thus may be reflective of the outcome of this tension. This continuous interplay of conflicting interests requires to be closely watched to resolve the conflicts by striking a balance between the individual interests and societal interests if criminal law is to achieve its primary purposes of punishing offenders and preventing crimes being committed, by its coercive measures. During 2008 many significant decisions on general offences have been reported which are the subject matter of the present survey. For convenience, cases have been discussed under different heads.

II ELEMENTS OF CRIMINAL RESPONSIBILITY

Motive

Motive is not an essential element of crime but facilitates in determination of the intent. Motive is the drive that induces a man to do the act, which he intends to do. As Stephen states "intention is the operation of the will directing an overt act; motive is the feeling which prompts the operation of the will". In criminal law, motive may not be culpable. It is the culpable intention which is an essential element of an offence. However, sometimes, motive plays an important role and becomes a compelling force to commit a crime and therefore, motive behind the crime is a relevant factor for which evidence may be adduced.[1] In *Kuchibotla Saran Kumar* v. *State of Andhra Pradesh*[2] the victim and the accused were to enter into

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1 *Suresh Chandra Bahri* v. *State of Bihar*, 1994 Cri LJ 3271.

2 (2008) 11 SCC 478.

wedlock. But subsequently differences arose and the girl refused to marry him. The accused, however, was keen on marrying her only and had made this intention of his clear on many occasions. Subsequently, the girl was found killed. While fixing the culpability of murder on the accused it was held that apart from available evidence a clear cut motive was established from the circumstances of the case which put a final stamp on his guilt.

Knowledge

Knowledge of the consequences is generally an alternate mental element provided in bodily offences for determining culpability. Intention is purely an operation of the mind and is often difficult to prove. It is, generally, inferred from the surrounding circumstances and the act of the person.[3] The court in *Radhe* v. *State of Chhattisgarh*[4] held that "clause (4) of section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons – being caused from his imminently dangerous act, approximates to a practical certainty." The instant case involved brutal chopping of legs which resulted in death. The conviction for murder was accordingly upheld.

Corpus delicti

A common misconception concerning the principle of *corpus delicti* is that the prosecution is required to produce the body of the deceased to obtain a conviction for murder; however, this is not the correct position in law. The expression *"corpus delicti"* refers to the "body of the crime"- that is, the evidence that a crime took place.[5] In other words, it refers to the body of facts which constitute an offence; gist or substance of the offence.[6]

The Supreme Court in *K.T. Palanisamy* v. *State of Tamil Nadu*[7] dealt with such a situation. A person went missing after accompanying the appellant (astrologer) for some *puja* and no missing person report was filed. Only a missing person's notice was published in the newspaper. After three months, three others, who happened to be the parents and grandmother of the yet to be traced person, were murdered. It was on record that they also on the advice of the same astrologer had gone to perform some *puja*. Thereafter an FIR was filed about the missing person by the wife. There was not enough circumstantial evidence to nail the accused. Moreover, no dead body was found. Only the chain which the missing person was wearing was recovered supposedly at the behest of the appellant accused. The court held that it was not necessary to prove *corpus delecti*. There may be cases where it is not

3 R.C. Nigam, I *Law of Crimes in India* 77 (1965).
4 (2008) 11 SCC 785.
5 Frank Gibbard, "Corpus Delicti: Three Unusual Colorado Cases" 38 *Colorado Lawyer* 83 (2009).
6 P. Ramanatha Aiyar, *Concise Law Dictionary* 205 (1997 ed.).
7 (2008) 3 SCC 100.

possible but necessarily in each case death has to be proved which was not done in this case. The court allowed the appeal of the accused against the conviction. It is surprising that the missing man has been referred to as deceased in the entire judgment while holding that death was not proved. In the interest of justice the court ought to have summoned records of the triple murder which had taken place in similar circumstances and thereafter decided this case which approach would have served the interest of substantive justice.

Transferred malice

"Malice aforethought" which is a common law principle has been given statutory recognition under section 301 IPC. It means foresight that death is likely to be caused of any human being. In *Rahimbux* v. *State of Madhya Pradesh*[8] the accused ran after A with a sword in his hand. The very act manifested his intention of causing serious injury. However, he was not able to catch up with A and in turn inflicted a deadly blow on A's brother. He was convicted under section 302. His contention rested on the fact that it was not his intention to kill the deceased. Upholding his conviction under section 302, the court held that the guilty intention was very much there as nobody chases any person with a sword for any benevolent purpose. The only thing which happened was transfer of malice or the transmigration of motive from one brother to the other. The victim got changed but the culpability on which conviction was based remained the same.

III SPECIFIC OFFENCES

Murder during riot

Harendra Sarkar v. *State of Assam*[9] deals with communal riots. The incident took place on 14.12.1992 in the aftermath of the destruction of the Babri Masjid. A mob indulged in arson and killing of members of the minority community. The trial court convicted eight accused persons under section 302 read with section 34 and section 448 read with section 34 brushing aside as minor the contradictions in the statement of the witnesses *vis a vis* their statements under section 161 CrPC. On appeal the high court on reappreciation of facts gave benefit of doubt to three accused persons. The rest of the convicted persons appealed to the Supreme Court by way of special leave. Sinha J was of the opinion that the courts, in order to do justice between the parties, must examine the materials brought on record in each case on its own merits. Marshalling and appreciation of evidence must be done strictly in accordance with law; wherefor the provisions of the Code of Criminal Procedure and Evidence Act must be followed. In the instant case the judge opined that the trial court and the high court failed miserably on this count, and so the appeal must be allowed. Bedi J had a different opinion

8 (2008) 12 SCC 270.
9 (2008) 9 SCC 204.

on the issue. The judge observed that communal riots usually take place in a surcharged atmosphere where passions run high and the minority community which is usually the target is at the receiving end. The genesis of communal riot is not confined to tension between two communities but is also caused by considerations of politics, vote-bank and the like and so in the process, the administrators of law and order and the investigators also become a party to the malaise. In such a surcharged atmosphere the prosecution and investigation agencies cannot be trusted to do a fair job. Hence a strict adherence to procedural laws in such cases may thwart justice. Several commissions and judicial inquiries have time and again reiterated this position. Since the two judges could not concur, the case was referred to a larger bench. In such circumstances, it may perhaps become necessary to find new ways not envisaged by the criminal procedure law to do complete justice. Our judiciary seems to be empowered to do this.

Dowry death

State of Punjab v. *Raj Kumar*[10] deals with the issue of dowry death. In the instant case the deceased was set on fire by pouring kerosene on her by the mother-in-law. There were two dying declarations and in both the guilt of the mother-in-law stood proved. The only declaration which was not relied upon by the high court was the one in which the husband and father-in-law were also implicated and which appeared to be interpolated. It is a settled point of law that dying declaration is entitled to great weight should it be of such nature as to inspire confidence of the court in its correctness (as in the instant case). This being so, as in many serious crimes victim being the only eye witness his/her dying declaration is the only clinching evidence available. The apex court after a detailed examination of the dying declarations opined that even if so called interpolations were left out, the guilt of the mother-in-law stood proved and the case would be covered under section 304 part II. It is submitted that this case clearly fell under section 302 and not under section 304 part II. What prompted the courts to alter the conviction is beyond comprehension. Is killing a person with a knife less heinous than killing him/her by burning? And it is surprising that Arijit Pasayat J, an ardent adherent of *just deserts,* sentenced the accused to only six years.[11]

Dacoity

In *Raj Kumar* v. *State of Uttaranchal*[12] it was reiterated by the court that for commission of offence of dacoity a minimum of five persons is an essential ingredient. "In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not

10 (2008) 8 SCC 543.
11 (2008) 4 SCC 171.
12 (2008) 11 SCC 709.

disputed or is clearly established, but the court may not be able to record a finding as to identify all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such a case, conviction of less than five persons – or even one – can stand. But in the absence of such a finding, less than five persons cannot be convicted for an offence of dacoity."

IV SEXUAL OFFENCES

Rape

Bhupinder Singh v. *UT of Chandigarh*[13] stands out as a rape case. The facts reveal that the victim and the accused fell in love and got married on 4.12.1990 and were living as husband and wife. However, on 6.3.1994 the victim learnt that the accused was already married. He left for Patiala the same day on some errand. She was pregnant at that time and on 16.4.1994 gave birth to a female child. She informed him about the birth of the child but he did not come back so then she took recourse to law. The trial court found him guilty under section 376 and sentenced him to seven years imprisonment. On appeal the high court reduced the sentence from seven years to three years though found him culpable under "fourthly" of section 375 IPC due to, in the words of the court "peculiar facts of the case, more particularly the knowledge of the complainant about the accused being a married man." What is intriguing about the judgment is that if the prosecutrix had "knowledge" of the appellant being a married man then section 375 has no application whatsoever! The Supreme Court strangely upheld this reduction of sentence and also made an observation about the delay in filing the case. The facts as stand out in the judgment reveal that when the complainant got to know of the earlier marriage she had already spent good four years with him as his wife, had submitted sexually to him and had even given birth to a child. Now under these circumstances it was very difficult for her to plan the next move. It is submitted that there was obviously great mental trauma when a pregnant lady (advanced pregnancy) realized that her marriage was invalid in the eyes of law, she would try to make all efforts to let the façade of marriage go on. She may not be able to at once make the man, whose child she is carrying, liable for his nefarious deeds. Hence the observation on delay in filing a case that the "explanation is not satisfactory" defies sensitivity to the problem.

In sexual offences age of the victim when consent is pleaded becomes the deciding factor. In *State of Maharashtra* v. *Bantara Sudhakara*[14] and *State of Maharashtra* v. *Gajanan*[15] the trial courts had opined that the age of the victims was below sixteen based on documents produced before the

13 (2008) 8 SCC 537.
14 (2008) 11 SCC 38.
15 (2008) 8 SCC 38.

court and hence consent was out of question. The high courts, however, rejected the documentary evidence and relied on medical evidence with an error margin of 1-2 years and acquitted the accused in both the cases. The apex court, castigating the high courts for basing its judgments on surmises and abrupt conclusions, set aside the acquittals and upheld convictions.

In *Banta* v. *State of Uttar Pradesh*[16] a girl of five years was raped. In order to camouflage rape and pass it off as an accident, the accused inserted a stem/stick 33 cm deep inside her vagina which caused her death. He was, however, caught in a naked position while he was so doing. Though he was not caught in the act of committing rape, the apex court held thus:[17]

> [F]or a crime to be proved it is not necessary that the crime must be seen to have been committed and must in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

Opining that it did not fall in the rarest of rare category the court upheld the life imprisonment awarded by the trial court and confirmed by the high court under sections 376, 364 and 302 IPC.

In *B.C. Deva* v. *State of Karnataka*[18] the prosecutrix was on her way to the work site carrying meals for her mother when the accused caught her from behind and committed rape on her in the coffee estate. She narrated the incident to her mother and thereafter tried to commit suicide by drowning herself in a water tank from where she was mercifully saved. Medical examination did not confirm sexual intercourse but still the conviction of the accused under section 376 IPC was confirmed by the court basing its decision on the oral testimony of the prosecutrix which was found to be coherent and reliable.

In contrast is *Radhu* v. *State of M.P.*[19] wherein rape was alleged but medical examination did not corroborate the same though minor injuries were found here and there on the body of the prosecutrix. This case was distinguished from the earlier one for reasons that the evidence of the

16 (2008) 11 SCC 113.
17 *Id.* at 118.
18 (2008) 2 SCC (Cri.) 253.
19 (2007) 12 SCC 57.

prosecutrix was full of discrepancies and did not inspire confidence. The mother's evidence was also full of discrepancies. Under such circumstances the accused was set free. It is to be remembered that in sexual offences the victim is the only witness and hence corroboration is not insisted upon. But the life of the accused cannot be put to stake on whimsical accusations; only a cogent and reliable version of the victim can be the basis for conviction.

Incest

Incest falls in the category of most heinous crimes known to mankind. In India there is no specific incest law but there is a moral sanction against it. Hindus detest it like plague and any form of incest is looked down upon. Other religions also view it as immoral. In *Siriya* v. *State of Madhya Pradesh*[20] the father-daughter relationship of trust was violated. The protector became the predator. The accused took his daughter to the market to buy her clothes. On the way back he took her to a dilapidated house and removed her clothes and raped her. The platonic relationship was soiled by sexual lust and perversity of mind. Children due to their vulnerability need the protection of their elders from the world at large which is full of all sorts of people good and bad. "But in this case the creator has become the destroyer and hence no leniency can be shown and be awarded life imprisonment" observed the apex court.

V VICARIOUS LIABILITY

Corporate responsibility

There are no clear-cut legal provisions, which deal with circumstances where corporations could be held liable and punishment imposed on them. The law on the subject has been developed through judicial pronouncements. Since criminal law envisages penalties as punishments, but corporations being bereft of not only mind but also body, it was felt that they fell outside the realm of criminal law. But then corporations could not be allowed to go scot free on a mere technicality, the reason being that it is individuals who form corporations. In sync with this truism the courts have moved in the direction of making the corporation directly responsible by the fiction that the elements of criminal liability present in the responsible agent of the corporation can be imputed to the corporation itself.[21] *S.K. Alagh* v. *State of U.P.*[22] dealt with the vicarious liability of managing director (MD) of a company. In this case the respondents were wholesale dealers of Britannia Industries Ltd. (the company) for Azamgarh district. This dealership was subsequently terminated. After termination the respondents sent two demand

20 (2008) 8 SCC 72.
21 Burrows, " The Responsibility of Corporations under Criminal Law" *1 Journal of Criminal Science* 1 (1948).
22 (2008) 5 SCC 662.

drafts for a sum of Rs.18,000/- and Rs.1,50,000/- for supply of goods to the appellant (MD of the company). The demand drafts were sent to the appellant through the local sales incharge of the company and the complainant refused to take the same back and insisted on delivery of goods. The company vide letter dated 25.9. 2000 reiterated that the dealership has been terminated. Hence a criminal complaint by the complainant against the company and the MD under section 406 IPC. The court after a detailed examination of the ingredients of section 406 came to the conclusion that admittedly the drafts were drawn in the name of the company, and even if the appellant was its managing director, he could not be said to have committed an offence under the said section. As and when a statute contemplates a legal fiction, it provides specifically therefor. It does not operate *sub-silentio*. The court held that in the absence of any provisions laid down under a statute (unlike Essential Commodities Act etc. where such vicarious liability is statutorily created) a director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.

Complicity

The doctrine of complicity envisages a situation where a person is accountable for another's conduct. The basis for this is that though he has not committed the substantive offence but has associated with it in some capacity or the other by aiding, abetting and so on.[23] In fact, when offences are committed by more than one person it becomes very difficult to impute liability on a single individual. Hence, the concept of joint liability either because the intention is common or the object is common to all the persons forming that group. But it is an onerous task for the courts to decipher the wheat from the chaff so that innocents are not implicated with the aid of constructive liability.

In *Shivjee Singh and Others* v. *State of Bihar*[24] the accused in an inebriated state quarrelled with PW1 and also called his family members to gang up with him. Since it was "holi" many villagers had gathered at the nearby *devisthan* and on hearing the commotion they came to the scene of crime. They scolded the accused and asked him to stop quarrelling. After which the accused along with his relatives went to the rooftop and started pelting stones and then he coaxed his son to fire from his gun, which he did, and which resulted in death. The contention of the appellants was that firing was done by one of the accused after the pelting of stones had stopped and hence section 149 would not be applicable and that the trial court and the high court had failed to appreciate this factual matrix. The apex court after a detailed examination of section 149 held thus:[25]

23 In *Barendra Kumar Ghosh* v. *Emperor*, (1925) 52 Cal 197(PC), it was held that "they also serve who only stand and serve."

24 (2008) 11 SCC 631.

25 *Id.* at 635.

> Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under section 149, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section…
> [However] The word 'knew' used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of the 'might have been known'.

The court after a careful perusal of facts of the case and a close examination of section 149 set aside the the conviction of the appellants under section 302 read with section 149. It may be noted that in cases of constructive liability the courts have to be very careful since liability may be imputed on people who are not the actual perpetrators but become so, as in the instant case, due to a legal fiction. Hence a close judicial vigilance is necessary to ensure that justice is not subverted in such cases.

Bija v. *State of Haryana*[26] dealt with a homicidal death which was tried to be passed off as an accident due to electrocution. The deceased was alone in the room and other family members were on the roof top. She died due to asphyxiation by smothering. The facts revealed that she was not good looking and could not conceive and hence was ignored by her husband and was practically abandoned by him. *Panchayat* was informed of this development and the *Panchayat* after several rounds of meeting decided that the younger brother of the husband, who was unmarried at that time, should get married to her. He did marry her but was not happy with the alliance. The girl could not yet conceive and hence was despised more. The trial court and the high court were convinced that it was homicidal death and convicted the father-in-law, mother-in-law, former husband and husband of the deceased under section 302 read with section 34 IPC. The Supreme Court on appreciation of evidence came to the conclusion that her husband's conviction under section 302 was justified since he had the motive to get rid of her. In respect of others who had no such motive, they could not be implicated unless there was strong enough evidence to link them with the killing. They were accordingly acquitted of the charge.

26 (2008) 11 SCC 242.

VI GENERAL DEFENCES

Right of private defence

Right of private defence is available only in the face of imminent peril to the body when the state help is not available and this right is available only till that danger lasts. And since this justification protects against impending conviction, a strict scrutiny is essential. In *Katta Surendera* v. *State of Andhra Pradesh*[27] the court had to deal with the duration of right of private defence if there was one available. There was prior enmity among villagers and then a dispute arose regarding a road to be laid. An injunction order prohibiting work was passed by the court. Inspite of that the villagers started the work. The opposite party came armed to stall the work and attacked them. One of the accused stabbed the deceased on his left chest due to which he fell and succumbed to the injury. The accused put up the plea that there was pelting of stones by both sides and it was difficult to pin down the culprit. Moreover, the appellant had acted in self defence. Rubbishing the claim, the court held thus:[28]

> [A] plea of right of private defence cannot be based on surmises and speculation and even if in the instant case it is accepted that at some point of time the appellant was exercising right of private defence, same had ceased long before the fatal blow was given by the appellant.

VII INCHOATE CRIMES

Attempt

An attempt to commit an offence is itself a crime. What is essential is that the prosecution must prove the two essential elements of crime. They are:[29]

(a) the offender's physical conduct reached the point which the law prohibits (the *actus reus*), in other words, there must be proof of something done by the offender, a deed, which the law regards as marking the commission of that particular offence; and
(b) in pursuing this line of conduct he was actuated by the intention (the *mens rea*) to go further and to achieve a definite end which is a specific crime (i.e. which is another *actus reus*).

The difficulty in attempt law is to decide what constitutes the physical element, the *actus reus* of attempt. In *Sachin Jana* v. *State of West Bengal*[30]

27 (2008) 11 SCC 360.
28 *Id*. at 362.
29 J.W. Cecil Turner, I *Russell on Crime* 177 (2001, Indian Reprint).
30 (2008) 3 SCC 390.

the accused party assaulted the defendants and poured acid on them. Upholding conviction of the accused under section 307 read with section 34, the court observed that "to justify a conviction under this section (section 307) it is not essential that a bodily injury capable of causing death should have been inflicted…. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section."[31]

VIII SENTENCING

Mohan Anna Chavan v. *State of Maharashtra*[32] dealt with an accused who had already been convicted for the rape of a minor girl. After completion of his sentence he continued with his nefarious activities and in the instant case not only raped two minor girls but also killed them. Death penalty was awarded by the trial court which was confirmed by the high court. The contention on appeal was that the case being based on circumstantial evidence death sentence was improper. The court after a detailed analysis of circumstantial evidence and the rarest of rare category cases as laid down in *Machi Singh*[33] and *Bachan Singh*[34] upheld the conviction. It further held that "proportion between crime and punishment is a goal respected in principle and inspite of errant notions it remains a strong influence in the determination of sentences." It is pertinent to note here that deterrent and *just deserts* theories of punishment are gaining momentum since there is disenchantment with reformation theory. In the instant case and even after conviction and serving the sentence the accused showed no remorse; hence a deterrent punishment commensurate with his crime was rightfully handed down.

The decision of the Supreme Court in *Swamy Shraddananda (2)* v. *State of Karnataka*[35] is a path breaking judgment as far as sentencing policy is concerned. A two judge bench which decided the case could not concur on the sentencing and so it was referred to a larger bench. It was a cold blooded murder where the accused *swami* played on the weakness of Indian women to beget sons. The *swami* was able to convince the deceased that with occult power he could make her beget one. All along he was eyeing on her vast material wealth. He lured her into matrimony after she divorced her first husband. She reposed complete faith in him and not only opened many joint bank accounts but also executed a testamentary will in his favour besides a

31 *Id.* at 393.
32 (2008) 7 SCC 561.
33 (1983) 3 SCC 470.
34 (1980) 2 SCC 684.
35 (2008) 13 SCC 767.

general power of attorney appointing him as her agent and attorney. But the *swami's* greed was unsatiable and he killed her and buried the body in the very same house where they lived. He convinced others that she was all the time in London. He sold off her properties substantially and literally swept the bank lockers, all along forging her signatures. The most diabolic thing was that he lavishly continued to live in the same house and in the same room where she lay buried and continued to give concocted stories of her not wanting social contact. Markandey Katju J was of the view that he deserved nothing short of death, whereas SB Sinha J felt that life imprisonment rather than death would serve the ends of justice. But the judge realized that the gap between life imprisonment (as it works out under section 433A CrPC) and death sentence is too wide whereas this case was heavily tilted towards death sentence but just fell short of it. Hence, through judicial ingenuity he sentenced him to life imprisonment with a qualification that he would not be released from prison till the end of his life. In view of the difference of opinion the present appeal came before the three judge bench comprising of BN Agrawal, Aftab Alam and GS Singhvi JJ. The three judge bench, after having considered the entire precedent on the point, particularly the judgments in *Pandit Kishori Lal*,[36] *Gopal Vinayak Godse*,[37] *Maru Ram*,[38] *Ratan Singh*[39] and *Shri Bhagwan*[40] observed thus:[41]

> [T]he unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.

The court made it very clear that the judgment is not in any way interfering with the constitutional provisions or the state's sovereign powers regarding commutation, remission etc. but relates to provisions of commutation, remission etc. as contained in Cr PC, the Prisons Act and the rules framed by the different states. It is submitted that it is the right approach when one considers the *just deserts* theory i.e. punishment to measure up to the crime committed. An abolitionist judge may have ended up giving practically 14 years imprisonment and a retentionist judge may have awarded death penalty for a similar fact situation. A synthesis of both these approaches was the need of the hour and the courts have lived upto this necessity.

36 *Pandit Kishori* v. *King Emperor*, AIR 1945 PC 64.
37 *Gopal Vinayak Godse* v. *State of Maharashtra*, AIR 1961 SC 600.
38 *Maru Ram* v. *Union of India*, (1981) 1 SCC 107.
39 *State of M.P.* v. *Ratan Singh*, (1976) 3 SCC 470.
40 *Shri Bhagwan* v. *State of Rajasthan*, (2001) 6 SCC 296.
41 *Supra* note 35 at 804.

In *Bathula Nagamalleswara Rao and Others* v. *State*[43] there were convictions under section 302 read with section 149. One of the convicted persons was of 87 years of age suffering from Parkinson's disease, hypertension, diabetes with several calcific A V stenosis, mild AR, moderate MR and anaemia to some degree and had been behind bars for three years. His appeal for showing leniency was turned down as he had been found guilty of being a member of unlawful assembly and sharing common intention to commit a murder. It appears to be a hard decision.

IX CONCLUSION

The year under survey did not see any major change. However, *Shraddananda Swamy* does stand apart for judicial innovation in sentencing. *Siriya* v. *State of M.P.* and *Banta* v. *State of Uttar Pradesh* are a grim reminder of the fact that at present there are no specific laws in the country covering sexual abuse of children be it by strangers or by the family members themselves. The legal definition of rape continues to be fettered by "penetration". Even in the instant case if penetration had not been proved the father would have been served a very lenient sentence under section 354 for outraging the modesty of a woman. It is high time the legislature intervenes.

42 (2008) 11 SCC 722.