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CRIMINAL LAW

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I INTRODUCTION

SUBSTANTIVE LAW and procedural laws make one unified whole and they aim at seeking truth and to arrive at a justified punishment. Substantive laws prescribe conduct rules and procedural laws prescribe decisional rules. The aim of the two, functioning in tandem, is to excavate historical facts and apply those facts to rules to adjudicate the case. Daniel J. Boorstin, an American historian observed thus: "The greatest obstacle to true discovery is not ignorance, but rather the illusion of knowledge".[1] This indeed is the most difficult task for the judges who have to extricate themselves from this illusion and try and reach the truth in order to provide justice by adjudicating the case.

The case of *Harendra Rai* v. State of Bihar[2] is a telling commentary on the sordid state of affairs as regards the criminal justice administration. The apex court was constrained to observe that "the three main stakeholders in a criminal trial, namely the investigating officer that is the part of the Police of the State of Bihar, the Public Prosecutor, and the judiciary have all utterly failed to keep up their respective duties and responsibilities cast upon them."[3] The courts - both the trial court and the high court - operated in a perfunctory manner and completely shut their eyes to the manner of investigation, the dubious role played by the Public Prosecutor who were actually on the side of the accused rather than prosecuting him for murder.[4] The eye witness – the mother of the deceased - was abducted and there was a scathing judgment against the accused in a habeas corpus petition which was totally ignored by the courts. The high handedness of the accused who was an influential person continued even after the incident which the court chose to ignore. The accused was held liable under sections 302 and 307 IPC.

The apex court in *Munna Pandey* v. *State of Bihar*[5] had to remind the high court that in a reference to confirm death penalty, it is the duty of the court to

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1 Quoted in *Manoj Kumar Soni* v. *State of M.P.* 2023, SCC OnLine SC 984.

2 (2023) 13 SCC 563.

3 *Id.*, para 121.

4 *Id.*, para 126.

5 2023 SCC OnLine SC 1103.

reappreciate all the evidence. The court also had to state that what is expected is for the truth to emerge, for which the presiding judge must be alive to the happenings and play a proactive role to elicit information and necessary material to reach the truth so that justice is given. The court reminded of Clarence Darrow's words "Justice has nothing to do with what goes on in the court room, Justice is what comes out of a courtroom". [6] The present survey examines the 2023 cases adjudicated by the apex court in this quest for truth in the field of substantive criminal law – the Indian Penal Code, 1860(hereinafter IPC).

II OFFENCES AGAINST HUMAN BODY

Murder

For liability under the murder provisions what needs to be seen is whether the case fails under section 299 and also under section 300 IPC and whether none of the exceptions apply. It may happen that the death is not instantaneous but after a lapse of time. What is important to examine under clause thirdly of section 300 IPC is the nature of injury and whether it was sufficient, in the ordinary course of nature, to cause death. If yes, then the liability is for murder and inadequacy of medical attention is not a relevant factor. In *Prasad Pradhan* v. *State of Chhattisgarh,*[7] the victim died 20 days after the incident yet thirdly of section 300 stood proved and the "death was caused due to cardiorespiratory failures as a result of the injuries inflected upon the deceased"[8] Hence the conviction under section 302 IPC was upheld as the injuries and death were directly linked and the causal inquiry stood proved.

In a case of conviction under section 302 IPC read with section 149 IPC the court iterated on important proposition for fixing liability in *Nand Lal* v. *State of Chhattisgarh*:[9]

> We will first consider the issue with regard to non-explanation of injuries sustained by Accused 11 Naresh Kumar. In *Lakshmi Singh* v. *State of Bihar* [*Lakshmi Singh* v. *State of Bihar*, (1976) 4 SCC 394: 1976 SCC (Cri) 671] , which case also arose out of a conviction under Section 302 read with Section 149IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus : (SCC pp. 401-402, para 12)
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> "*12*. … It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:
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> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

6 *Id*., para 74.

7 (2023) 11 SCC 320.

8 *Id.*, para 31 at 337.

9 (2023) 10 SCC 470, para 25.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

Homicidal deaths require a high degree of proof of guilt of the accused and law demands that the prosecution prove a case beyond a reasonable doubt. So, the Court overturned the conviction in *Sharanappa* v. *State of Karnataka*[10] when last seen together theory was not corroborated by way of any other evidence. Except for the recovery evidence based on accused's confessional statement the prosecution failed to link the weapon with the crime, as no scientific evidence was led, no marks, no fingerprints. Similarly when "no tell-tale signs of the blood was found on the body of the deceased linking it to the metal pellets of the bullet fired from the weapon recovered" during investigation, the accused was acquitted of murder in *Narendrasinh Keshubhai Zala* v. *State of Gujarat*.[11] But where any fact is especially within the knowledge of the accused, it operates as an exception to the rule that prosecution has to prove the guilt of the accused through the operation of section 106 of the Evidence Act, 1872. However, it does not absolve the prosecution from proving the necessary elements pointing to the guilt of the accused. Once that is done, the prosecution can invoke section 106 of the Evidence Act and burden shifts on the accused husband to explain what happened on that day when the wife died, as the Court stated in *Balvir Singh* v. *State of Uttarakhand.*[12] The apex court upheld the conviction of the husband under section 302 IPC.

Culpable homicide not amounting to murder

Section 299 of IPC is the genus and section 300 is the species. The surveyor has been flagging the issue that the courts in most cases do not give a clear-cut reasoning as to their decision to convict under part I or part II of section 304 IPC. Hence, it is heartening to note that in *N. Ram Kumar* v. *State*[13] the judgment of *Anbazhagan* v. *State*[14] has been quoted which laid down principles in para 19 when to convict a person in different parts of section 304. Both these judgments are almost an academic exercise and would be very helpful to students of law. In

10 (2023) 10 SCC 168.

11 2023 SCC OnLine SC 284 (para 16).

12 (2023) 16 SCC 575.

13 2023 SCC Online SC 1129.

14 Appeal No. 2043 and 2023..

Anbazhagan v. *State*[15] the conviction was under 304 Part I by the trial court and the high court. In appeal in the apex court the judge has done an academic exercise which would be very useful for students of laws. Para 60 points 1-10 are a compendium of culpable homicide and culpable homicide not amounting to murder and the court held thus:[16]

> Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is – whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death.

In *Pop Singh* v. *State of M.P.*[17], the trial court had convicted the accused persons under section 304 part I read with section 149 IPC. In appeal the high court confirmed the same. In appeal before the apex court, the accused persons argued that none of the injuries were on the vital parts of the body but only on the hands and legs thus the conviction ought to be under section 325 or 326 IPC. The apex court did not agree with this. Instead, the court held that all the injuries were lacerated wounds which must have been caused by the blunt side of the weapons, andif they had the intention to kill they would have used the sharp side of the weapon, hence altering the conviction to part II of section 304 IPC, *i.e.* act done with the knowledge that the injuries were likely to cause the death of the accused.

Sudden fight

A husband and wife were not in the best of terms and frequent quarrels marked their lives. One such fateful day the husband in an inebriated condition assaulted the wife and she poured kerosene on herself to end her life. The husband lit a match and set her on fire. She suffered 96% burn injuries and her dying declarations were recorded in the hospital by the magistrate wherein she narrated the incident. The husband pleaded exception 4 of section 300 IPC to bring the case under section 304-part II IPC. The court declining the defence was of the opinion that the assault and the fight had taken place and a neighbour had come visiting

15 (2023) SCC OnLine SC 857

16 *Id.*, para 62. See also *Anupam Banerjee* v. *State of W.B*. 2023 SCC OnLine SC 432.

17 2023 SCC OnLine SC 1596.

and it is after the neighbour left that the burning episode happened. The court held that there was sufficient time in between the two acts so the benefit of sudden quarrel and provocation could not be given to the husband. He was held guilty of murder under section 302 IPC. This case is in stark contrast to *Ravi* v. *State of Karnataka*[18] wherein the husband poured kerosene and lit a match and left the wife to die and exception was given to him and conviction was altered to 304 IPC.[19]

The prosecution narrative revealed that initially it was a heated discussion as there has been enmity over land which resulted in a physical assault in a fit of anger. Hence, the conviction was altered to section 304 part I IPC in *Mariappan* v. *State.*[20] What amounts to "cruel Manner is a relative term and would depend on the factual situation."[21]

Cumulative provocation

Cumulative provocation has been a highly contested issue. This becomes significant where, in the patriarchal set up, the male adult, uses his position to dominate the family dynamics and often indulges in repeated violent behaviour. The courts have not been very forthcoming in outrightly recognizing cumulative provocation but have factored it in through oblique reference. One such case involved a wife giving blows with a stick on the head and legs to her husband, on his refusal to give money to their daughter to attend a NCC camp, which resulted in his death. The wife was convicted under sections 302 and 201 IPC both the by trial court and the high court. On appeal the apex court took into account the fact that "it will also be necessary to take into consideration the background in which the offence took place. There used to be persistent quarrels between the deceased and the appellant. In one of such incident, the leg of the appellant was fractured."[22] The court altered the conviction to section 304 part I IPC.

In a case where the father-in-law allegedly killed the son-in-law, the court took note of the fact that the deceased was an alcoholic and used to misbehave with his wife and other family members. The court in this case again brought in the concept of cumulative provocation. The court observed, "it is a case where provocation seems to be brewing up since the deceased shifted to the appellant's house. It acquired enormous gravity with each recurrence of humiliating stances of the appellant's daughter. The fatal occurrence was seemingly the final culmination of loss the power of self-control."[23] It is interesting to note that the court very deftly used the expression "grave and sudden provocation" mentioned in the exception 1 of section 300 IPC when it noted that "the appellant lost his self-control on account of *persistent* provocation and *suddenly* thrashed his son-in-

18 *K Ravi Kumar* v. *State of Karnataka* (2015) 2 SCC 638.

19 *Anil Kumar* v. *State of Kerala* (2023) 1 SCC 327.

20 (2024) 2 SCC 598. See also *Paneer Selvam* v. *State of T.N.* (2023) 10 SCC 265; *Suresh* v. *State of Kerala* 2023 SCC OnLine SC 141.

21 See *Gursewak Singh* v. *Union of India* (2023) 12 SCC 694.

22 *Nirmala Devi* v. *State of H.P.* 2023 SCC OnLine SC 899 para 14.

23 *Markash Jagara* v. *State of Assam* 2023 SCC OnLine SC 1527, para 17.

law with a bamboo stick."[24] The court held it as culpable homicide 'not amounting to murder" without specifying the para under which the offence fell. It is submitted that the court was ruled by familial logic that of father-in-law versus son-in-law – in the imagination of the court murder of the daughter's husband could not have been contemplated by a father! The surveyor assumes this as courts otherwise are very circumspect in factoring in cumulative provocation. [25]

Right of private defence

Right of private defence is a very important right and extends to killing of the aggressor. However, this right is circumscribed and the trier of fact has to see whether the right of private defence can be given or not as it reduces the liability from murder to culpable homicide not amounting to murder. In *Jasbir Singh* v. *State of Punjab*[26] the contention was that since the accused was attacked with *lathis* and he exercised his self defence by using fire arms the right may not be extended to him. The apex court contended that the response to a particular situation would be different from person to person. It is not totally unthinkable that a person would not fire in self defence when he is attacked by 30/35 persons armed with *lathis*. The apex court giving the accused benefit of exception 2 of Section 300 IPC altered the conviction from section 302 IPC to Section 304 part 1 IPC.

Transferred malice

Section 301 IPC makes it abundantly clear that if a person is accidentally shot when the shot is aimed at another person, the accused will be guilty of culpable homicide. And if the plea is intoxication to reduce it to a charge of culpable homicide not amounting to murder, then the twin conditions of Section 86 IPC will have to be satisfied:

(i) The accused was administered a thing which intoxicated him without his knowledge or against his will.

(ii) The intoxication has to be of the level which intoxicated him of knowing the nature of the act committed or likely to be committed by him.

In *Nanhe* v. *State of U.P.*[27], a case of transferred malice the plea of intoxication failed this twin test and the accused was held liable for murder under section 302 IPC.

III SPECIFIC OFFENCES

Kidnapping

Section 364 A was added to the Penal Code to factor in cases of aggravated offence of kidnapping and three essentials need to be proved by the prosecution:

i. Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

24 *Ibid*. Emphasis added.

25 *B.D Khunte* v. *Union of India* (2015) 1 SCC 286. See Jyoti Dogra Sood "Criminal Law" L *ASIL* 2014. At 421-22.

26 2023 SCC OnLine SC 77.

27 2023 SCC OnLine SC 1941

ii. threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or

iii. causes hurt or death to such person in order to compel the government or any foreign state or any governmental organization or any other person to do or abstain from doing any act or to pay a random.

It was reiterated in *Ravi Dhingra* v. *State of Haryana*[28] that after the first condition, the second or third condition has to be proved as the word used is "and". Since these conditions are crucial in changing the contour of the offence from section 363 to section 364A of IPC, they must be analysed strictly. The statement by the kidnapped boy was "one handkerchief and one black cloth were tied on the eyes and said to me they have revolver and they will kill me if (he) raises any voice." After two years, there was an embellishment in the statement, and it read "the occupants threatened me with a knife and pistol and threatened to kill me"[29] The apex court held that the prosecution has not been able to prove ingredients of section 364A IPC beyond a reasonable doubt as intimidation of a child to prevent him from crying and silencing him is not enough. Hence the accused were convicted under section 363 IPC and conviction under section 364 A IPC was set aside.

A boy goes missing and the mother received a ransom call. She had sold a property and the neighbors knew of this financial transaction. A case of kidnapping under section 364-A and 365 IPC was registered. The dead boy of the boy was found. The mobile number from which the ransom call was made was traced to one of the appellants. Clothes and knife were also seized. DNA evidence revealed that the hair in the fist of the child matched with the accused Rajesh Yadav's hair. In spite of the stellar evidence the appellants escaped punishment due to shoddy investigation by the police. The prosecution case was all messed up as there were glaring inconsistencies. The mobile was traced to Om Prakash Yadav and not Rajesh Yadav. There was no record when the appellants were taken into custody, is very important for recovery evidence as the person must be "accused of an offence" under section 27 of the Evidence Act. This case and many other cases showcase shocking lapses and pathetic investigation by the police. The apex court was aghast that despite such glaring infirmities the trial court and high court not only held the accused guilty but also gave them death penalty. The apex court acquitted the accused and made these scathing observations: [30]

> It is high time, perhaps, that a consistent and dependable code of investigation is devised with a mandatory and detailed procedure for the police to implement and abide by during the course of their investigation so that the guilty do not walk free on technicalities, as they do in most cases in our country. We need say no more.

28 (2023) 6 SCC 76.

29 *Id.*, para 28.

30 *Rajesh* v. *State of M.P.* (2023) 15 SCC 221at 543, para 52.

It is submitted that Magistrates have been vested with huge powers guiding investigation but sadly those provisions remain under-utilized in this country.

IV GENERAL DEFENCES

Unsoundness of mind

In IPC in *Sumitra Bai* v. *State of Chhattisgarh,*[31] a father and a daughter were staying at a place to get treatment for a mental ailment of the daughter. The daughter allegedly killed the father with a spade. Insanity defence was pleaded but no evidence, except that she was brought to the house for her treatment of mental illness, was marshaled. It is common knowledge that the threshold of insanity defence is very high – "Incapable of knowing". So, the complete defence was not applicable in the case. However, since the prosecution could not prove the intention of murder the conviction was altered to section 304 part I from section 302.

V OFFENCES AGAINST WOMEN

The year witnessed horrific sectarian violence in the state of Manipur. Women were subjected to grave acts of sexual violence. Mobs used sexual violence as a tool to exert their power and superiority and to send a message of subordination to the other group or community whom they are fighting against. This kind of violence not only violates Part III of the Constitution, but constitutes crime against humanity. The apex court in *Dinganglung Gangmei* v. *Mutum Churamani Meetie*[32] constituted a three-member committee with, *inter alia,* the following mandate.

> i. Enquire into the nature of violence against women that occurred in the State of Manipur from 4 May 2023 from all available sources including personal meetings with survivors, members of the families of survivors, local/community representatives, authorities in charge of relief camps and the FIRs lodged as well as media reports; and
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> ii. Submit a report to this Court on the steps required to meet the needs of the survivors including measures for dealing with rape trauma, providing social, economic, and psychological support, relief and rehabilitation in a time bound manner;
>
> iii. Ensure that free and comprehensive medical aid and psychological care to victims of survivors is provided;

In *Naim Ahmad* v. *State (NCT of Delhi)*[33] a married woman with three children got into a sexual relationship with a neighbour who impregnated her from which a son was born. The man refused to marry her, and the woman pressed rape charges as she averred that consent was taken under a misconception of fact that he would marry her. The child was born in 2011 and she divorced her husband in 2014 leaving her children with the husband, after which in 2015 she filed a rape complaint. The court categorically held that by no stretch of imagination can it be held that

31 2023 SCC OnLine SC 418. See also *Prem Singh* v. *State (NCT of Delhi)* (2023) 3 SCC 372.

32 2023 SCC OnLine SC 965.

33 2023 15 SCC 385.

the prosecuterix gave her consent for the sexual relationship under misconception of fact. It is submitted that false promise to marry which is sought to be made an offence under the BNS 2023 is going to open a pandora's box and the courts may be flooded with rape charges when a consensual relationship goes sour.

A narrative is created that women file false charges against the husband and in-laws. What is never debated or highlighted is that getting the patriarchal and the muscular state into action also becomes a Herculean task for a woman in many cases. A case of bail gives harrowing tale of a woman who was harassed for denying divorce. Due to continuous threats by the husband and in-laws, she wrote a letter to the police commissioner requesting police protection. When nothing happened, she moved the high court and protection orders were passed. Even when the protection order was brought to the notice of the jurisdictional police station, they did not act. She filed another complaint alleging that a contract killer had been hired to eliminate her. Women organizations also came forward alleging collusion of police officials for extraneous consideration. Her worst fears came true and was found dead in her apartment lying in a pool of blood in a supine position. These details in a bail order sends shivers down the spine and speaks for itself the struggles that a woman has to go through.[34]

Murder of wife

In marital union sometimes the relations may become so strained that one of the partners kills the other. When it takes place within the four walls of the house, the assailant gets enough opportunity to plan and execute the offence. Under such circumstances it becomes extremely difficult, if not impossible, for the prosecution to establish guilt if strict principles of circumstantial evidence are insisted upon by the courts. Hence when the wife is murdered and the prosecution is able to prove that shortly before the commission they were seen together and the "accused does not dispute his presence at home at the relevant time and does not offer any explanation how the wife received injuries or offer an explanation then this could be deemed to provide a massive link for completing a chain of circumstances,"[35] once the prosecution discharges the burden of a *prima facie* case they can invoke Section 106 of the Evidence Act and shift the burden on the accused husband to explain what had actually happened on the date the wife died.[36]

Two finger test

In cases of rape, the two-finger test has been outlawed by *Lillu* v. *State of Haryana*[37] in 2013. It is submitted that when the case was of 2000 the two finger test forms part of the record but when an appeal is heard in 2023 would it not have been prudent on the part of the apex court to expunge that part of the medical

34 *Munilakshmi* v. *Narendra Babu* 2023 SCC OnLine SC 1380.

35 *Wazir Khan* v. *State of Uttarakhand* (2023) 8 SCC 597. See also *Balvir Singh* v. *State of Uttarakhand* 2023 SCC OnLine SC 1621.

36 *Id.*, para 61.

37 (2013) 14 SCC 643.

report. In *Mahak Chand* v. *State of Haryana*[38] the two-finger test has been mentioned in para 5 and then in para 6,quoting the report which *inter alia* mentions that "the patient was habitual to sexual intercourse because her Labia Minora was hypertrophied and admitted two fingers." The case had enough evidence to disprove rape charges and so it is the responsibility of the highest court of the Lords to desist from marshaling sexual history of the prosecutrix through the controversial two finger test part.

Infanticide

Indrakunwar v. *State of Chhatisgarh*[39] deals with a case of homicidal death of a new born baby. This case throws up very glaring stereotypes and prejudices which women without a partner have to face even in criminal justice administration. A new born baby was found dead, and the death was confirmed to be homicidal. The accused appellant was pregnant and the fact was that she lived alone having been deserted by her husband led to the allegation that she was having an affair. The prosecution and the investigation did a shoddy job and based their case on the fact that the deserted woman was pregnant. Woman's body thus became the evidence for crime! Sanjay Karol J castigated this callous attitude and observed thus:[40]

> Thrusting upon a woman the guilt of having killed a child without any proper evidence, simply because she was living alone in the village, thereby connecting with one another two unrelated aspects reinforces the cultural stereotypes and gendered identities.

The court through Sanjay Karol J was not arguing that she was innocent but was making a very important point that the guilt had to be proved through evidence and not by conjectures and surmises based on prejudices and biases. Criminal convictions demand that the prosecution prove a case beyond a reasonable doubt irrespective of the gender of the accused.[41]

Witchcraft

In this age and times, it is shocking that people still believe in witchcraft and women have to pay the price when they are branded as 'diayens' (witch). In *Bhaktu* v. *State of West Bengal*[42] a woman was killed by five accused persons who held a grudge that the woman indulged in witchcraft and was the cause of trouble to the villagers. They took the plea that their intention was not to kill but deter her from practicing witchcraft! In appeal before the apex court, they were held liable for murder under 302 IPC read with section 34 IPC.

38 2023 SCC OnLine SC 1397.

39 2023 SCC OnLine SC 1364.

40 *Id.,* para 33.

41 See also *Vahitha* v. *State of Tamil Nadu* (2023) 11 SCC 338.

42 (2023) 10 SCC 749

Right of adolescents

In *Right to Privacy of Adolescent, In re*,[43] the court took specific note of the highly objectionable observations of the High Court of Calcutta wherein they pontificated as follows:[44]

It is the duty/obligation of every female adolescent to:

(i) Protect her right to integrity of her body.

(ii) Protect her dignity and self-worth.

(iii) Thrive for overall development of her self transcending gender barriers.

(iv) Control sexual urge/urges as in the eyes of the society she is the looser when she gives in to enjoy the sexual pleasure of hardly two minutes.

(v) Protect her right to autonomy of her body and her privacy."

The apex court cautioned the courts that they are not supposed to air their personal view while adjudicating the cases as those views were in complete violation of Article 21 of the Constitution which, *inter-alia*, guarantees rights of the adolescents.

VI JOINT CRIMINAL ENTERPRISE

Unlawful assembly

In a joint criminal enterprise, the criminal law invokes constructive liability and that is what is envisaged in the provisions relating to unlawful assembly under the Indian Penal Code, 1860. And this constructive liability needs to be proved in case of unlawful assembly. The court cannot simply presume a person who is proved to be present near riotous mob or has joined or left at any stage that mob is guilty of every act committed by the mob from beginning to end.[45]

In *Surendra Nath* v. *State of Rajasthan,*[46] FIR was lodged against five persons on the allegation that they attacked the deceased with lathis resulting in his death. The police filed chargesheet only against two persons. On an application under section 319 Cr PC 1973 the high court directed the trial court to try the other three accused as well. The three accused remained untraceable and out of the other two one died during pendency of the case and hence a separate trial of one accused commenced resulting in conviction and was sentenced *inter alia,* to undergo life imprisonment under Sections 302 IPC read with 149 IPC by the trial court. On appeal the high court (which has earlier directed the three accused to be also tried) held that no case under Section 149 IPC is made out and held that the fatal below was given by the accused who had died and the appellant before them thus cannot be convicted of murder and held him liable under Section 323 IPC. The original informant - the brother of the deceased victim filed an appeal in the apex court. The court discussed in detail the contour of unlawful assembly and held thus:[47]

43 2023 SCC OnLine SC 1877

44 *Id.*, para 30.3.(underline supplied by apex court)

45 *Javed Shaukat Ali Qureshi* v. *State of Gujarat* (2023) 9 SCC 164.

46 2023 SCC OnLine SC 400.

47 *Id.*, para 10.2.

> The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under s. 149 if it can be held that the offence was such as the members knew was likely to be committed.

The court quashed the judgment of acquittal under section 302/149 IPC passed the high court and upheld the trial court judgment.[48]

Common intention

In a case where the accused persons came together armed and assaulted the victim and left the place together the conviction for murder under section 302 IPC read with section 34 was rightly upheld.[49] The contention in *Chandra Pratap Singh* v. *State of M.P.*[50] was that when charge was altered from section 149 to section 34 the accused was not informed (the lawyer was absent). Ideally it was not such an anomaly which could not be rectified but since the incident dated back to 1987 the court desisted from sending it to the high court for fresh hearing and dealt with the case and held that section 34 was not made out and acquitted the accused of section 302 IPC, while confirming the conviction under section 201 IPC for which they had enough proof.

A wife held her brother-in-law while the husband hit him on the head four times resulting in death. The man was held liable under section 302 IPC while the wife was acquitted. The apex court in *State of M.P.* v. *Jad Bai*[51] held that it is clear from the prosecution version that "If the respondent would not have caught hold of the deceased … the original accused No.1 might not have been able to cause injuries on the head of the deceased."[52] It was held that Jad Bai (the wife) participated actively in the commission of the offence and common intention to kill the deceased was formed at the spur of the moment. She was convicted under Section 302 IPC read with 34.

48 See also *Parshuram* v. *State of M.P.* 2023 SCC OnLine SC 1416; *Naresh* v. *State of Haryana* (2023) 10 SCC 134.

49 See *Ram Naresh* v. *State of U.P.*, (2023) 1SCC 443.

50 (2023) 10 SCC 181.

51 (2023) 6 SCC 552.

52 *Id*. at 557.See also *Maheshwari Yadav* v. *State of Bihar* 2023 SCC OnLine SC 1665.

VII INCHOATE OFFENCES

Abetment

Abetment to commit suicide is punishable under Section 306 IPC and cruelty is punishable under section 498A. It is axiomatic to mention that cruelty has been delineated by way of an explanation under section 498A, which, *inter alia*, mentions that cruelty means 'any willful conduct which is of such a nature as is likely to drive the women to commit suicide." This being so, it has to be differentiated from section 306 IPC which must conform to the requirement of Section 107 IPC. This requires that the accused must either incite or encourage the individual to take life, conspire with others to ensure that the persons commit suicide or acts in a way (or fails to act) which directly result in person's suicide. The two sections cover different fields and when a woman commits suicide due to cruelty, it does not necessarily amount to offence under Section 306 IPC.[53] Similarly, instigation for suicide cannot be imputed to a lender of money who allegedly demanded his money and used abusive language and assaulted the deceased. The act was not even proximate to the date of suicide, and hence conviction under Section 306 IPC was termed as abuse of process in *Mohit Singh* v. *State of Uttarakhand.*[54]

Attempt

Fault element is an important ingredient of any crime. More so in an attempt case where the physical element falls short of complete commission of crime, it is the fault element which is decisive. It was reiterated in *Sivamani* v. *State*[55] that grievous or life-threatening injury is not a *sine qua non* for a conviction under Section 307 IPC. What is to be ascertained is to see "whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section". If not, the conviction would be under Section 323 and 324 IPC and not a case of attempt to murder under section 307 IPC.[56]

Conspiracy

A bomb blast in Lajpat Nagar Market in 1996 left 13 dead and injured 38 persons. In *Mohd. Narshad* v. *State (NCT of Delhi),*[57] the court reviewed the evidence thoroughly and overturned the Delhi High Court acquittal of two of the accused. The apex court gave life imprisonment without the possibility of parole to the four individuals charged with bomb blast. The court expressed strong displeasure at the delayed handling of the case and remarked that the case did not receive the promptness that should have been there given the seriousness of the case. The court held that the incident was a result of international conspiracy against India and held the four accused liable for criminal conspiracy to carry out blast in the capital city of Delhi.

53 See *Kamalakar* v. *State of Karnataka* (2023) 15 SCC 544. See also *Kushibai* v. *State of Karnataka* 2023 SCC OnLine 575.

54 (2024) 1 SCC 417.

55 2023 SCC OnLine SC 1851.

56 *Id.*, para 9 quoting *State of Madhya Pradesh* v. *Saleem* (2005) 5 SCC 554.

57 2023 SCC OnLine SC 784.

Death by consuming spurious liquor has occurred much too often in this country. In a case of illicit liquor seven people died, 11 were blinded and many persons suffered injuries. The main kingpin and his associates were held guilty under Sections 302, 307 and 326 IPC read with Section 120 B IPC. The present appeal in *Sanjeev* v. *State of Kerala*[58] was by A10 and A11 who had allegedly supplied methyl alcohol and were held liable under conspiracy. The court held that the argument that the appellants were in no way connected with the deaths in untenable since it was established that the appellant visited the house of the kingpin A1 in the presence of other accused persons and methyl alcohol was supplied to and stored at the residence of A1 with the knowledge that the substance was harmful. Furthermore the appellant was running the affairs of the firm which procured methyl alcohol and fabricated record of sale to different entities. Hence, they were held responsibility for causing deaths as offence of conspiracy stood established.

VIII MISCELLANEOUS

Delay

A case under section 498 A and 304 B of 1995 came to be decided by the apex court in the year 2023. The court after 28 years reached a finding that "Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convince the accused under section 304 B and 498A IPC. The cause of death as such is not known."[59]

Mandatory imprisonment

When an offence mandates punishment of imprisonment, the delay in trial or the fact that the accused was a woman should not influence the sentencing decision. The court in *Razia Khan* v. *State of M.P.*[60] sentenced the appellant to undergo simple imprisonment for one month and pay a fine of Rs. 25000/-.

In pre-POCSO era, a man raped a minor girl while on parole. The girl subsequently gave birth and DNA confirmed the paternity of the man. The accused pleaded for reduction in sentence as per the proviso to Section 376 IPC (as it existed then). The court categorically mentioned that "Marriage of the victim with the accused, even if it is true, cannot be taken as special reason to reduce the sentence." Rape of a minor is a very serious crime and cannot be condoned under any circumstances.[61]

Fine valuation

Many offences prescribe fine with imprisonment. Judgments also prescribe default sentence in the court of defaulting on fine. The courts, however, will have to be circumspect while deciding the amount of fine.

58 2023 SCC OnLine SC 1470

59 *Charan Singh* v. *State of Uttarakhand* 2023 SCC OnLine SC 454, para 23.

60 (2023) 8 SCC 592.

61 *Siddaruda* v. *State of Karnataka* 2023 SCC OnLine SC 585.

Plea of juvenility

The plea of juvenility can be claimed at any stage. The object of the Juvenile Justice Act, 2015 is to reclaim the child who comes in conflict with law. And that is why the Act factors in, *inter alia*, supervision of any fit facility providing reformative services etc. under section 18 of the JJ Act 2015 in cases of heinous offence committed by child below the age of 16. In *Karan* v. *State of M.P.*[62] the plea of juvenility was claimed at the apex court by the accused after the sessions court and then the high court has affirmed the death reference. The court ordered his release as he had already served five years as the maximum period of institutionalization as opposed to the maximum of three years prescribed in the Act. It is submitted that the trial court which has the opportunity to see the demeanour of the accused should have been more alive to the fact of juvenility. Moreover, the prosecution as officers of court must be bound by the principle of fair disclosure. It seems highly improbable that they did not have an inkling of the accused being a juvenile. By keeping him incarcerated for five years the State lost the opportunity of counseling and reforming the child![63]

Language

The accused could not read or write Marathi and was only conversant with Hindi language. Yet evidence was recorded in Marathi. The court observed that "it is apparent that statutory safeguards in reference to the language have not been complied with, causing prejudice to the accused.[64]

IX SENTENCING

Judicial discretion is a very important facet of criminal justice administration. Discretion arms the judge to tweak the punishment while upholding conviction for a proscribed conduct. In a case the court convicted the accused section 304-part II IPC and sentenced him the "rigorous imprisonment of 7 years".[65] The highest constitutional court of the country upheld the conviction but on the quantum of punishment held as follows:[66]

> The Sessions Court while imposing the sentence had also taken into consideration the fact that the appellant-accused was the only son of his aged parents. Having regard to the said findings recorded by the Sessions Court and confirmed by the High Court, this Court is of the opinion that the interest of justice would be met if the sentence imposed on the appellant-accused is reduced to the extent of 05 years in place of 07 years.

62 (2023) 5 SCC 504.

63 See also *Pawan Kumar* v. *State of U.P.* (2023) 15 SCC 683; *Makkella Nagaiah* v. *State of A.P.* (2023) 9 SCC 807 and *Narayan Chetanram Chaudhary* v. *State of Maharashtra* 2023 SCC OnLine SC 340.

64 *Prakash Nishad* v. *State of Maharashtra* (2023) 16 SCC 357 per Sanjay Karol J para 44. See f also *Siju Kurian* v. *State of Karnataka* (2013) 14 SCC 63 and *CBI* v. *Narottam Dhakad* 2023 SCC OnLine SC 1069.

65 *Paneer Selvam* v. *State of T.N.* (2023) 10 SCC 265.

66 *Id.,* para 6.

The court speaking through Sanjay Karol J flagged the inconsistent in sentencing when he remarked thus:[67]

> For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of the court in awarding a particular sentence. However, that may be a question of quantum.

Following *Swamy Shraddhananda* case[68] which was later upheld by *Union of India* v. *Sriharan,*[69] the courts can give imprisonment for fixed years without remission, which means modified punishment in the form of fixed terms can be given. This modified punishment can be given even when capital punishment is not imposed or proposed. However, the modified punishment is the prerogative of the constitutional courts i.e. the high courts and Supreme Court. The trial court can only give the punishment prescribed and not modify it.[70]

Principle of proportionality was reiterated by Ravindra Bhat J in *Uggarsain* v. *State of Haryana.*[71] The high court convicted the accused person under section 304 part II IPC read with section 149 IPC. No separate roles were attributed to the accused person and the sentence awarded was "sentence undergone", which ranged from 11 months to 9 years. The apex court while upholding the conviction castigated the high court on sentencing and observed that "the sentencing in this case, to put it wildly is inexplicable (if not downright bizarre)"[72]. The guilty persons were sentenced to five years imprisonment.

Giving maximum sentence warranted by the case in case of a compoundable and non-bailable offence must be accompanied by reasons for exercising that discretion. More so, when by giving maximum punishment for the offence the accused stood disqualified under section 8(3) of the Representation of the Peoples Act, 1950. The judiciary is independent and must conduct itself in a way which does not smack of any political bias or prejudice. The apex court while admitting that persons in public life must show restraint stayed the conviction of two years of Rahul Gandhi under section 499 IPC.[73]

State of Punjab v. *Dil Bahadur*[74] is a compendium on sentencing. In a case of section 304 A, the session court had imposed the punishment of two years

67 *Pramod Kumar Mishra* v. *State of U.P.* (2023) 9 SCC 810, para 13.3. See also *Shiv Mangat Ahirwar* v. *State of M.P.* 2023 SCC Online SC 142.

68 *Swamy Shraddananda* v. *State of Karnataka* (2008) 13 SCC 767.

69 *Union of India* v. *V Sriharan* 2015(13) SCALE 165.

70 *Shiva Kumar* v. *State of Karnataka* (2023) 9 SCC 817. See also *Ravinder Singh* v. *State Govt. of NCT of Delhi* (2024) 2 SCC 323.

71 (2023) 8 SCC 109.

72 *Id.*, para 15.

73 *Rahul Gandhi* v. *Purnesh Ishwar Modi* (2024) 2 SCC 595.

74 2023 SCC OnLine SC 348.

which was reduced to eight months by the high court on a spurious justification that the accused was a poor person who worked as a driver, and his family would suffer upon his prolonged incarceration. On appeal by the state the apex court engaged in a detailed examination and marshaled case law to augment their arguments. The manner in which the car was being driven at high-speed resulting in death of one and injuries to two others made the court to uphold the trial court punishment of two years. It is submitted that two years is too less a punishment given the loss of lives resulting from rash and negligent driving.

The argument of reformation is a facile one as no one can vouch with authority whether a person can be reformed or will not be reformed. It is seen that reformation argument is taken as per the hunch of the beach. In a case where a 14-year-old girl was raped and murdered it was held that benefit of remission may not be extended given the brutality of the offence. The court then added "However still considering the fact that the appellant was 26 years of age when the offence was committed and there may be chances of his reformation, still undue leniency in sentencing may shake confidence.[75] The punishment was altered from the whole of the biological life to a fixed term of 30 years without remission. *Madan* v. *State of U.P.*[76] is a compendium on 'rarest of rare' category. The death penalty jurisprudence has been discussed in detail. After this exercise the court commuted death penalty taking into consideration the fact following facts:[77]

> As per the Prison Conduct Report submitted by the Superintendent, District Jail, Baghpat, appellant Madan is currently 64 years old. He has been in prison for 18 years 3 months. During this entire duration, he has no history of any kind of prison offence. The report further shows that he has not been involved in any form of quarrels or fights in prison. The report shows that he has cordial relations with other prisoners in his barrack and follows the prison rules. The report shows that he spends his time engaging in constructive activities, such as playing games and reading books. He observes the prison timings and assists the prison administration as well. Ihbas has also submitted appellant Madan's Psychological Assessment Report. As per the said report, appellant Madan is maintaining his daily activities adequately and his socio-occupational functioning is unaffected except occasional forgetfulness which could be age related. As per the said report, appellant Madan has voluntarily taken up tasks in prison to keep himself occupied. He has also taken up responsibilities to help younger prisoners to lead a better life in prison.

The court commuted death penalty to life imprisonment to 20 years without remission. In a case of kidnapping and murder the accused was held guilty and

75 *Kashi Nath Singh* v. *State of Jharkhand* (2023) 7 SCC 317 at 320 para 10.

76 (2023) 15 SCC 701.

77 *Id.* at 741 paras 89 and 90.

was awarded imprisonment for the rest of his life without remission. The apex court in appeal on sentencing in *Vikas Chaudhary* v. *State (NCT of Delhi)*[78] factored in that the appellant was 18-19 years old at the time of offence and had undergone 17 years of actual sentence.Barring three episodes of aggression before 2012, his behavior had been positive. Regarding the other accused,Vikas Sidhu, again the reports were very encouraging. The bench speaking through Ravindra Bhat J held thus:[79]

> Both appellants in the present case, share some commonalities: they were of young age at the time of offence, hail from educated backgrounds, and they continue to enjoy the love and affection of their families, each of which have a good standing and strong ties within the communities they live in. While the material relating to their lives and social conditions pre-conviction do not offer an explanation as to the cause for commission of offence, it can certainly be said that the material available regarding their conduct post-conviction, remains encouraging. They have applied themselves during the time of incarceration and used their time to contribute meaningfully - for which they have each received commendations. Their psychological and psychiatric evaluations were concluded to be normal, without cause for concern. A strong case is made out in support of the appellants' probability of reform (as already evidenced by their jail conduct), and reintegration into society. The state, too, has not indicated any material to the contrary, regarding this aspect.
>
> In view of the totality of the facts and circumstances, and for the above reasons, this court is of the opinion that it would be appropriate to modify the sentence awarded to both appellants to a minimum term of 20 years actual imprisonment. The appeals are partly allowed in the above terms.

Keeping up the reformation angle, the court made a brilliant observation in *Joseph* v. *State of Kerala*,[80] a case dealing with a petitioner aged 67, who according to prison reports, was hard working, disciplined and reformed. He spent 25 years of actual imprisonment under conviction under sections 302, 376 and 392 IPC. His case repeatedly came up for premature release but was rejected each time by the State Government. Hence the observation and order of release:[81]

> Classifying - to use a better word, *typecasting* convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real *danger* of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed,

78 2023 SCC OnLine SC 472.

79 *Id.,* paras 28 and 29.

80 2023 SCC OnLine SC 1211.

81 *Id.*, para 37.

> *as a starting point*, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, *based entirely on the nature of crime committed in the distant past*, would be to crush the life force out of such individual, altogether.

In a review petition in *Sundar* v. *State*[82] the court dealt with a case of death penalty pursuant to finding the appellant guilty of kidnapping and murder. The court dealt with the intricacies of the evidence and the appraisal by the courts in great detail, and found him guilty. On the issue of death penalty, the court lamented the fact that the courts did not properly inquire into the mitigating circumstances and his potential for reformation. What guided the sentencing in the court was the ghastly nature of the crime and that a girl child was involved. The court was categorical that the sex of the child is of no consequence and the trauma to the child and the parents is in equal measure irrespective of the sex of the child. The court sought details from jail authorities and held as follows:[83]

> On the basis of these details, it cannot be said that there is no possibility of reformation even though the petitioner has committed a ghastly crime. We must consider several mitigating factors : the petitioner has no prior antecedents, was 23 years old when he committed the crime and has been in prison since 2009 where his conduct has been satisfactory, except for the attempt to escape prison in 2013. The petitioner is suffering from a case of systemic hypertension and has attempted to acquire some basic education in the form of a diploma in food catering. The acquisition of a vocation in jail has an important bearing on his ability to lead a gainful life.

The death sentence was commuted to life imprisonment to not less than 20 years without remission.

Mandatory minimum sentences mandate that the courts cannot impose a lesser sentence. One such legislation is Protection of Children from Sexual Offences Act, 2012 where the law calls for stringent punishment. On the argument that "respondent may have moved ahead in life after undergoing the sentence as modified by the High Court" in *State of U.P.* v. *Sonu Kushwaha,*[84] the apex court held that "apart from the fact that the law provides for a minimum sentence, the crime committed is gruesome."[85]

X CONCLUSION

Courts seem to have been swayed by familial logic in deciding cases. Murdering the husband of one's daughter is not perhaps palatable to the courts,

82 2023 SCC OnLine SC 310.

83 *Id.*, para 91. See also *Rajo* v. *State of Bihar* 2023 SCC OnLine SC 1068.

84 (2023) 7 SCC 475.

85 *Id.*, para 14.

which led it to take pains to invoke cumulative provocation to scale down the charge of murder in the case of *Markash Jagara*. The court also brought in history of quarrels in the case of *Nirmala devi* and that her leg was fractured in one such incident to reduce the charge from murder to culpable homicide not amounting to murder. This perhaps is a very significant shift and courts must factor in cumulative provocation is appropriate cases.

Offences against women remain a cause of concern and Manipur violence has been a continuing shame to the country. Women are targeted in sectarian violence as show of power, while they also continue to be held responsible for tragedies and are tried to be taught a lesson against practicing magic and voodoo. On the contrary, when laws are made for them, a strong narrative is created that women misuse cruelty laws to harass the in-laws. This narrative created a scenario wherein the state did not take the matter seriously and the woman ended up losing her life.

Sentencing is another area where the scope of reformation is taken up selectively by lenient benches leading to a kind of arbitrariness in sentencing. The Supreme Court is not one court, it is submitted but at least 13 courts (supreme court sits in two judge benches in ordinary cases) each having its own sentencing policy. It then becomes just a matter of chance/lottery for the convict if his/her case falls before a reformist judge or not.