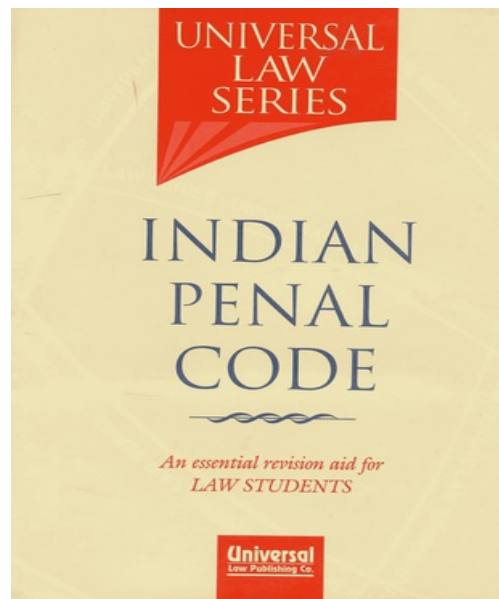
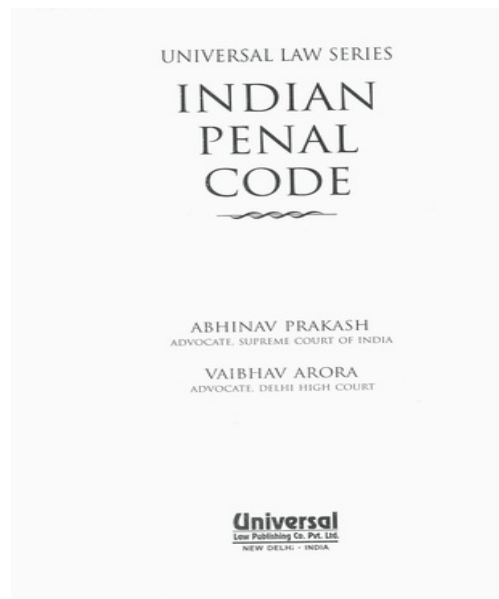


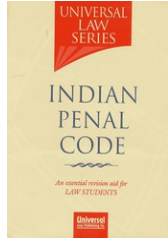
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- Q. X is cultivating agricultural land belonging to Z. A suit is pending 51
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around. Y, a thief, in order to commit theft attempted to scale the wall in the night, came in contact with the wire and was electrocuted. X is charged under section 304A for causing the death of Y. How will you decide?

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CHAPTER 15

PROBLEMS AND SOLUTIONS ON THE INDIAN PENAL CODE

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Chapter 1

OFFENCE

The offence under the Code is basically the creation of a criminal policy adopted from time to time by those sections of the community or person who is/are powerful for their own benefit or to safeguard to his/their own security or comfort.

An offence or a crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large; R. v. Russell, 1933 VLR 532.

The characteristics of a crime or offence:

- (a) It is an act or omission or an act of commission on the part of a human being which is considered as harmful by the State.
- (b) The guilt of accused is determined after the accusation against him has been investigated in legal proceedings in accordance with the provisions of law.
- (c) Such act or omission or commission is subject to punishment administered by the court of law.

Section 40 of the Code reads as under:

40. "Offence"

Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 118, 119, 120, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

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Chapter 2

EXTRA-TERRITORIAL OFFENCES

Clause (1) to section 4 of the Indian Penal Code extends the operative aspects of the Code to any offence committed by an Indian national in any place without and beyond the Indian territory, whereas clause (2) to section 4 deals with an offence committed by any person on any ship, or aircraft registered in India.

Clause (3) of section 4 determines the provision that any person in any place without or beyond India committing offence targeting a computer resource located in India rationalises the extension of criminal jurisdiction of the courts in India, even if the offence is committed outside and beyond India though targeting computer resource located in India.

Section 4(2) provides the admiralty jurisdiction¹ to the Indian courts and the power to try offences committed on any ship, or aircraft registered in India, wherever it might be. Section 4(3) deals with the jurisdiction of Indian courts for the offence beyond India but using or targeting computer resource located in India.

The provisions of section 4 of the Code reads as under:

4.Extension of Code to extra-territorial offences

The provisions of this Code apply also to any offence committed by--

- (1) any citizen of India in any place without and beyond India;
- (2) any person on any ship or aircraft registered in India wherever it may be;
- (3) any person in any place without and beyond India committing offence targeting a computer resource located in India.

Explanation

In this section--

- (a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;
- (b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Illustration

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

1. The jurisdiction to try offences committed on high seas is called admiralty jurisdiction.

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Chapter 3

DESIGN TO COMMIT OFFENCE PUNISHABLE WITH DEATH OR IMPRISONMENT FOR LIFE

Section 118 of the Code determines a special form of abatement by way of did in concealment of a design to commit a crime. This act gives facilities to offenders for the commission of a crime. Such act of concealment in order to be punishable must be an intentional act or at least with the knowledge that it might help the commission of a crime; Queen v. Jhugroo, (1865) 4 WR (Cr) 2.

Section 118 of the Code reads as under:

118. Concealing design to commit offence punishable with death or imprisonment for life

Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life;

voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

If offence be committed--if offence be not committed

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

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Chapter 4

PUBLIC SERVANT CONCEALING DESIGN TO COMMIT OFFENCE WHICH IT IS HIS DUTY TO PREVENT

Section 119 of the Code is applicable only to public servants. This provision enhances penalties to public servants whose duty is to prevent the commission or omission of crime and the offence is committed by himself. It means a public servant would be liable to more punishment only if he conceals a design to commit an offence which he is under an obligation or duty bound to prevent.

Section 119 of the Code reads as under:

119. Public servant concealing design to commit offence which it is his duty to prevent

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;

voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design;

If offence be committed.-

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence be punishable with death, etc.-

or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

If offence be not committed.-

or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

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Chapter 5

GENERAL DEFENCE

(A) MISTAKE

Briefly discuss the principle of general defence provided under I.P.C.

Sections 76 and 79 of the Code incorporate the common law principle of *ignorantia facit docti excusat, ignorantia juris non excusat* meaning thereby, ignorance of fact can be excused, ignorance of law can not be. The justification for exemption on the ground of mistake of fact and ignorance of fact is based on the principle that a man who is mistaken or ignorant about the existence of a fact cannot form the necessary intention to constitute a crime and is, therefore, not responsible in law for his deeds.

Section 76 reads as under:

76. Act done by a person bound, or by mistake of fact believing himself bound, by law

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Essential ingredients

Section 76, I.P.C. deals with two classes of cases wherein a person is excused from criminal liability on the ground of mistake of fact, viz.,

- (i) When a person is bound by law to do something and does it;
- (ii) When a person believes in good faith, owing to a mistake of fact and not mistake of law, that he is bound to do something and does it.

However, here 'mistake' should not be confused with ignorance as such; it is a species of ignorance. It can be called as 'temporary ignorance'. Thus, ignorance includes mistake, but mistake does not necessarily include ignorance.

Distinction between 'mistake of fact and 'mistake of law'

Discuss the principle laid down in R. v. Prince

Critically evaluate the ratio of State of Maharashtra v. Mayer Hans George

'Mistake of fact' must be distinguished from 'mistake of law' because while the former is excusable, the latter is not. 'Mistake of fact' can take the following two forms:

- (i) mistake as to true identities;
- (ii) mistake in sensory perceptions such as temporary distortion of imagination.

E.g., a Police Officer who carries warrant for the arrest of 'A', finds 'B' whom he honestly believes to be 'A' and arrests him. He is not guilty of an offence of arresting a wrong person.

In R. v. Prince, (1683) 2 Ch C 154 the following rules are laid down to determine the question of justification of an offence either due to mistake of fact or of law:

- (i) When an act is in itself plainly criminal, but more severely punishable if certain circumstances exist, then ignorance of those circumstances is no answer to a charge for the aggravated offence.
- (ii) If, however, an act is *prima facie* innocent, but in an offence if certain circumstances exist, then ignorance of those circumstances is a good defence to the charge.
- (iii) If the act itself is wrong, and becomes criminal under certain circumstances, the person who commits such a wrongful act cannot argue that he was ignorant of the facts which turned the wrong into crime.

(iv) The state of the defendant's mind must amount to absolute ignorance of the existence of the circumstances which alter the character of the act, or to a belief in its non-existence.

'Mistake of law' does not mean ignorance of law which is no excuse. No court of law will ever accept the plea that the accused did not know the law. If these pleas shall be permitted by the Courts of law then administration of justice would become impossible. In *State of Maharashtra v. Mayer Hans George*, MANU/SC/0194/1964 : AIR 1965 SC 722 the Supreme Court refused to accept the plea of ignorance of the notification issued by the Reserve Bank of India imposing restrictions on the transit of gold to a place outside the territory of India and held the accused (a French National) liable for violating the said notification.

79. Act done by a person justified, or by mistake of fact believing himself justified, by law

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Section 79, I.P.C. is complementary to section 76. This section exempts a man from criminal liability in those cases where by reason of a mistake (or ignorance) of fact in good faith, and not by reason of a mistake of law, a man considers himself justified by law to do an act in a particular way.¹

Distinction between sections 76 and 79

Distinction between section 76 and section 79 should be kept in mind. While in the former, a person is assumed to be bound, in the latter he must have some justification in law. In other words, the distinction between the two sections is the distinction between a real or supposed legal obligation and a real or supposed legal justification in doing a particular act. However, under both sections, there must be a bona fide intention to advance the law manifested by circumstances attending the act which is the subject-matter of the charge. The party charged with the offence cannot simply allege that he had a good motive but he must

1. See Law Commission of India Report (42nd Report, pp. 82-85).

allege and give a prima facie justification of good faith which actuated him to act the way he actually acted and that while doing so he had exerted the best of this judgment.

CASE LAWS

Chirangi Lal case

Discuss the principle laid down in the *Chirangi v. State*

In *Chirangi v. State*, MANU/NA/0110/1952 : AIR 1952 Nag 282 the fact was, one Chirangi lobar lived in village Indar, with his 12-year son (Ghudsai), an unmarried daughter and a nephew. His son was attentive and considerate to his father. One day while Khotla, his nephew, was at work, the appellant took an axe and went with his son to a nearby hillock in order to gather bidi leaves. There he killed his only son with an axe and returned home. When Khotla returned from the fields Ghudsai was not there and Chirangi was asleep with a blood stained axe. On being questioned by his nephew, he told all the story to his nephew that he had killed his son and said that he had become insane. On the following morning the story was told to another person by himself.

Ghudsai's corpse was found on a hillock and Chirangi told that he had killed his son by mistake for a tiger, that two of his sons had died from insanity and he himself was insane.

He was convicted under section 302 for murder of his son.

Issue:

The question arose whether he was entitled to take benefit of mistake or not.

Contentions on behalf of appellant:

It was contended from the side of the appellant that he had become insane and under insanity he considered that he was attacking a tiger.

On behalf of the prosecution it was contended that there was nothing to show that the appellant was insane before or after the occurrence, there was also no allegation that his parents were also mentally affected.

Their Lordship observed that to get the benefit of mistake, the act should be done under insanity and in good faith. According to the medical report the abscess in his leg would have produced temperature which might have caused secondary delusion to magnify the image created by the defect in vision. He further added that Chirangi suffered from Cardio-vascular disorder which would have resulted in a temporary confusion in his mind and the injury on his eye brow could have caused a state of confusion during which he might have inflicted the injuries on his son without being conscious of his actions. The medical evidence showed clearly that Chirangi's existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and not his son.

Decision:

It is abundantly clear from the fact that if Chirangi had for a single moment thought that the object of his attack was his son he would have desisted forthwith. In short, all what happened was that the appellant thought that his object was tiger and not his son. He thought that by reason of mistake of fact he was justified in destroying the deceased, whom he did not regard a human being but as, he thought, a dangerous animal.

The learned judge set aside the conviction and sentence and the appellant Chirangi was set at liberty.

(B) GENERAL DEFENCE: UNSOUNDNESS OF MIND AND INTOXICATION

(i) UNSOUNDNESS OF MIND

Penal laws, which are founded on the principle of Mens Rea show much liberality and a softer attitude towards those persons who cannot think or cannot distinguish between right and wrong or do not understand the meaning or effect of any act which they might do. Penal laws are accordingly enacted in a manner so as to provide an immunity from criminal liability to such persons of unsound mind on the proposition that these persons are disposed of their 'will'. However, the immunity provided in the Penal Code is not so unlimited as to exempt all categories and classes of such persons. An elaborate and nearly fool proof definition or description of 'persons of unsound mind' has been provided in the Code. Section 84, I.P.C. provides immunity to the persons of unsound mind from any Criminal liability. This section reads:

84. Act of a person of unsound mind

Discuss critically the defence of insanity as provided in section 84

Under what circumstances the defence of insanity may be pleaded?

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

According to the section quoted above, a person of unsound mind is the one who is:

- (i) incapable of knowing the nature of the act; or
- (ii) that he is doing what is either wrong or contrary to law.

It means that the alleged unsoundness of mind has to be judged in relation to the moment of time when the act is done. To decide which person belongs to unsound mind, courts of law have interpreted and explained to include the following kinds of persons:

- (i) an idiot;
- (ii) one made non compos mentis (i.e., not of sound mind) by illness;
- (iii) a lunatic or a mad man;
- (iv) one who is under intoxication.

In *Ashiruddin Ahmed v. King*, AIR 1949 Cal 182 it was held by the Calcutta High Court that to enable an accused to get benefit of section 84 he should be able to establish any one of the following three elements, viz.,

- (i) that the nature of the act was not known to the accused, or
- (ii) that the act was not known by him to be contrary to law, or
- (iii) that the act was not known by him to be wrong.

In *Dayabhai Chhagabhai Thakkar v. State of Gujarat*, MANU/SC/0068/1964 : AIR 1964 SC 1563 the apex Court held that in determining whether the accused has established that his case comes within the purview of section 84, the court has to consider the circumstances which preceded, attended and followed the crime. The relevant facts are the motive for the crime, the previous history as to the mental condition of the accused, the state of his mind at the time of the offence, and the events immediately after the incident which throw a light on the state of mind.

In *Sudhakaran v. State of Kerala*, MANU/SC/0901/2010 : AIR 2011 SC 265, the Supreme Court held that where the appellant brutally committed murder of his wife but did not cause any hurt to the child. Rather he made up his mind to ensure that child be put into proper care and custody after murder. Appellant had been treated in a Psychiatric Hospital for 13 days in the year 1985. There was no evidence to indicate that the appellant suffered from mental illness post 1985. The appellant had failed to prove that he was suffering from such mental illness that would enable him to take benefit of section 84, IPC. The appellant convicted and sentenced to rigorous imprisonment for life by the High Court. In appeal by the accused the Supreme Court dismissed the appeal upholding the decision of the High Court.

Same held in *Surendra Mishra v. State of Jharkhand*, MANU/SC/0018/2011 : AIR 2011 SC 627, the Supreme Court held that where the appellant through a pistol shot-dead the deceased. He was not suffering from unsoundness of mind at the time of commission of the offence under section 302 IPC and therefore the Supreme Court dismissed the appeal upholding the decision of the High Court which convicted and sentenced to rigorous imprisonment for life.

(ii) INTOXICATION

Sections 85 and 86 of the Code have crystallised in tabloid form the law relating to intoxication or drunkenness as a defence or plea in mitigating the rigours of the law. However, the law does not protect all sorts of drunkenness; nor does it protect drunkenness as such. Drunkenness can be a habit as alcoholics generally are. Such persons are not protected.

Section 85, I.P.C. provides:

85. Act of a person incapable of judgment by reason of intoxication caused against his will

Under what circumstances the drunkenness can be pleaded as defence?

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

This section lays down the test to determine when a person is said to have caused an act as a result of involuntary drunkenness so as to claim the benefit of exemption. Section 85 gives the same immunity to a person intoxicated involuntarily as section 84 gives to a person of 'unsound mind'. A man in order to claim exemption from criminal liability on the ground of involuntary drunkenness must establish that:

- (i) he was incapable of knowing the nature of the act, or
- (ii) that he was doing what was either wrong or contrary to law, and
- (iii) that the thing which intoxicated him was given to him without his knowledge or against his will.

Section 86, I.P.C. says:

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated

Discuss the drunkenness defence as laid out in Basdev v. State of Pepsu

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Drunkenness was never an excuse for criminal misconduct and indeed the classic authorities broadly assert that voluntary drunkenness must be considered rather as an aggravation than a defence. Section 86, I.P.C. deals with that class of cases wherein a man enters into intoxication voluntarily. It imputes the same knowledge to such a man as he would have had, had he not been intoxicated i.e., knowledge of a sober man with regard to the consequences of his acts. The Supreme Court in *Basdev v. State of Pepsu*, MANU/SC/0027/1956 : AIR 1956 SC 488 laid down the following guidelines:

- (i) The absence of understanding of the nature and consequences of an act, whether produced by drunkenness or otherwise, is a defence to the crime charged;
- (ii) The evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime, should be taken into consideration with other proved facts in order to determine whether or not he had this intent;
- (iii) The evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was effected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

Section 86 says that a person voluntarily intoxicated will be deemed to have the same knowledge as he would have had if he had not been intoxicated. The section does not say that the accused shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. Therefore, there is no presumption, under section 86, with regard to intention. In such cases, his intention would have to be gathered from the facts and circumstances of every individual case, having due regard to the degree of intoxication.

CASE LAWS

T.N. Lakshmaiah case

Discuss the principle laid down in T.N. Lakshmaiah v. State of Karnataka

In *T.N. Lakshmaiah v. State of Karnataka*, MANU/SC/0651/2001 : (2002) 1 SCC 219 the fact was, the accused took his wife and son to the extreme end to show them that Ganga Chukki falls at Shivanasamudra, a picnic spot. He led them downwards telling that he would show the beauty of the falls from a very near point. He is alleged to have pushed down his son from that place who fell on a rock which was 150 feet below. He also tied the saree of her wife around her neck and dragged her to a rock, notwithstanding her pleadings and protests.

The trial court concluded that the accused was guilty for the commission of the crime of murder of his wife and son.

The High Court dismissed the appeal filed by the accused.

The SC observed: "It is admitted that the appellant in this case, has not led any evidence in proof of the plea of insanity. There is nothing on the record to infer that the accused was of unsound mind at or about the time of occurrence. His behaviour at the time and subsequent to the commission of the crime clearly indicates that he knew and was capable of knowing the nature of the act done

by him. At no point of time, his behaviour is shown to be abnormal. We have found no record allegedly showing the appellant to be suffering from any mental disease when he is stated to have applied for bail. The plea raised, on the face of it, is an afterthought and bereft of any substance. We are satisfied that the appellant was sane and understood the implication of the act done by him and in no case was having unsound mind within the meaning of section 84 of the I.P.C., at the relevant time".

The SC further observed:

"We are not satisfied with the submission of the appellant that the prosecution had failed to prove the complete chain of circumstances connecting the accused with the commission of the crime. In its detailed judgment, the trial court has referred to prove circumstances which lead to the only inference of the involvement of the accused in the commission of the crime. Similarly, in its detailed judgment, has referred to relevant evidence and the incriminating circumstances. We do not find any ground to draw any other inference in the present case. There is no substance in this appeal which is accordingly dismissed".

Shrikant A. Bhosle case

Discuss the principle of Shrikant Anandrao Bhosle v. State of Maharashtra

In Shrikant Anandrao Bhosle v. State of Maharashtra, MANU/SC/0835/2002 : (2002) 7 SCC 748 the appellant, a police constable was married with Surekha in the year 1987. On the morning of 24-4-1994, there was a quarrel between husband and wife. While Surekha was washing the clothes in the bathroom, the appellant hit her with a grinding stone on her head which resulted in her death. The appellant was charged for the offence of the murder of his wife.

On production of the evidence, the appellant was found guilty by the sessions court which was affirmed by the judgment of the High Court.

Issue:

Was the commission of offence a result of extreme anger or unsoundness of mind?

Contention of the State:

It was contended by the learned counsel for the state that the prosecution evidence has established that the appellant by nature was an angry person and under a fit of extreme anger, he committed the murder of his wife as there was a fight between them that morning and there is nothing to show that at the relevant time the appellant was under an attack of paranoid schizophrenia.

Decision of the SC:

The SC held: "In the present case, however, it is not only the aforesaid facts but it is the totality of circumstances seen in the light of the evidence on record to prove that the appellant was suffering from paranoid schizophrenia. The unsoundness of mind before and after the incident is a relevant fact. From the circumstance of the case clearly an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. The anger theory on which reliance has been placed is not ruled out under schizophrenia attack. We are unable to hold that the crime was committed as a result of an extreme fit of anger. There is reasonable doubt that at the time of commission of the crime, the appellant was incapable of knowing the nature of the act by reason of unsoundness of mind and thus, he is entitled to the benefit of section 84, I.P.C. Hence, the conviction and sentence of the appellant cannot be sustained".

(C) PRIVATE DEFENCE

Critically evaluate the difference between general defence and private defence

Discuss the ration of *Dominic v. State of Kerala*

Sections 96 to 106 of the Code state the law relating to the right of private defence of person and property. These provisions give authority to a man to use necessary force against an assailant or wrong-doer for the purpose of protecting one's own body and property as also another's body and property when immediate aid from the State machinery is not readily available and in so doing he is not answerable in law for his deeds.

The right of private defence provided by law to a citizen is, however, not punitive, but preventive notwithstanding the fact that punitive measures may thereby result. The protective measures or the preventive means which a citizen is permitted to employ in private defence must be related to the danger ahead.

The doctrine of 'right of private defence' is founded on the following expediencies:

- (i) the society or the State has a duty, no doubt, to protect its citizens against all unlawful attacks and assaults upon their person or property, but it cannot come to a citizen's aid as speedily as a grave situation would normally demand;
- (ii) that where aid of the State is available, it must be obtained; but 'availability' of such aid must be relative to the expediency or necessity of the given situation;
- (iii) that a private citizen whose life is threatened by a grave danger need not wait for the State aid and should try to protect his life and property as best as he can by exercising the means he has at his own disposal.
- (iv) that the right to private defence is protective or preventive and not punitive; therefore this right can be exercised only for protection and prevention and not for punishing the aggressor for that is the task of the State.
- (v) that the right to private defence is always related to time and space. Thus only "when" and "where" the threat to life and property of persons becomes imminent can we exercise the said right and not otherwise. For example, a person is not entitled to go to the house of a person who beat his son or daughter in order to chastise him.
- (vi) the violence used in the exercise of this right must be proportionate to the injury or threat to be averted and must not exceed such limits. This right to private defence cannot be availed of for the sake of self-gratification or for satisfying one's ego or to satisfy one's malicious or sadistic urges.
- (vii) that the right must be exercised when there is real and immediate threat and there is a reasonable apprehension in the mind of a person of such immediate and real danger and not when the danger is remote and unreal.
- (viii) The apprehension must be reasonable and not fanciful. And present and imminent danger (not remote or distant) should be present.
- (ix) The right of private defence commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. This right rests on the general principle that where crime is endeavoured to be committed by force, it is lawful to repeal that force in self-defence. To say that a person could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law.
- (x) The right of defence ends with the necessity for it. Thus, the person exercising such right need not chase the fleeing attacker and then beat him. Similarly, a person is not entitled to go to the house of a person who beat his son in order to chastise him.
- (xi) The law does not require that a person should not exercise his right to self-defence if by running away he

can avoid injury from his assailant.

(xii) The law does not require that a person placed in such circumstances should weigh the arguments for and against and attack 'in golden scales'.

In *Dominic Varkey v. State of Kerala*, MANU/SC/0101/1971 : AIR 1971 SC 1208 the Supreme Court observed:

"Broadly stated, the right of private defence rests on three ideas: Firstly, that there must be no more harm inflicted than is necessary for the purpose of defence; secondly, that there must be reasonable apprehension of danger to the body from the attempt or threat to commit some offence; and thirdly, that the right does not commence until there is a reasonable apprehension". In short, right of self-defence is not available to a person who resorts to retaliation for past injury but to him who is suddenly confronted with the immediate necessity of averting an impending danger not of his creation."

However, the right of private defence is not available in the following situations:

- (i) The aggressors cannot claim this right when he himself create a danger to his own life.
- (ii) There cannot be private defence against a private defence.

RIGHT TO PRIVATE DEFENCE IN GENERAL

According to section 96, I.P.C:

96. Things done in private defence

Explain the principle provided in section 96 of the I.P.C.

Nothing is an offence which is done in the exercise of the right of private defence.

Section 96 is the general provision. It provides that, nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. 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. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record; *V. Subramani v. State of Tamil Nadu*, MANU/SC/0179/2005 : AIR 2005 SC 1983.

DEFENCE OF BODY AND PROPERTY

Section 97, I.P.C. provides for right of private defence of the body and of property in the following words:

97. Right of private defence of the body and of property

Critically evaluate the ratio laid out in *Biran Singh v. State of Bihar*

Every person has a right, subject to the restrictions contained in section 99, to defend--

- Firstly.-- His own body, and the body of any other person, against any offence affecting the human body;

- Secondly.- The property, whether movable or immovable, of himself or of any other person,
- against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

This section 97 provides that subject to the restrictions contained in section 99, every man has a right to defend his own body and the body of any other person, against any offence affecting human body, and to defend his property and the property of any other person whether movable or immovable. Section 97 divides the right of private defence into two parts. The first part deals with defence of person and the second part deals with the defence of property.

To invoke the plea of right of private defence there must be an offence committed or attempted to be committed against the person himself exercising such a right, or any other person. The question of the accrual of the right of private defence, however, does not depend upon an injury being caused to the man in question. The right could be exercised if a reasonable apprehension of causing grievous injury can be established. If the threat to person or property of the person is real and immediate, he is not required to weigh in a golden scale the kind of instrument and the force which he exerts on the spur of the moment; *Parichhat v. State of Madhya Pradesh*, MANU/SC/0158/1971 : (1972) 4 SCC 694.

In *Biran Singh v. State of Bihar*, MANU/SC/0112/1974 : AIR 1975 SC 87 two of the accused, having received simple injuries, ran back to their house, fetched a sword and inflicted fatal blows on the head of the deceased with that sword. The court held that even assuming that the deceased had inflicted simple injuries on the accused, there could be no justification for any of the accused to hit the deceased with a sword on a vital part of the body such as the head. The severity of the injuries could not be said either to have been a matter of chance. The way the accused murdered the deceased was by no means a matter of chance. Their acts bore a stamp of design. The right of private defence, therefore, could not be availed by the accused.

RIGHT OF DEFENCE AGAINST A PERSON OF UNSOUND MIND

Section 98, I.P.C. enlarges the right of private defence and permits it to exercise against person of unsound mind etc. Section 98 reads:

98. Right of private defence against the act of a person of unsound mind, etc

When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Under this section the right of private defence is made available for protection of one person or the body of any other person and of movable or immovable property of self or any other person from any harm or danger from any person whose act would not be an offence by reason of various conceptions provided in the Penal Code. For example the act of a child, under seven years of age (section 82); the act of a child above seven and under twelve years. If he is of immature understanding (section 83); the act of a person of unsound mind (section 84); the act of a person incapable of judgment by reason of intoxication caused against his will (sections 85, 86) or act done under mistake of fact (section 79). The persons mentioned in these sections do not come within the purview of law if they commit any offence, and therefore the right to private defence has also been given to a citizen to protect his body or that of any other person and immovable or movable property of himself or any other person from any harm which may be imminent from such persons as are exonerated by law if they commit any offence.

EXTENT OF RIGHT OF PRIVATE DEFENCE

Section 99, I.P.C. lays down the conditions and limits within which the right of private defence can be exercised. Section 99 provides:

99. Acts against which there is no right of private defence

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised

What are the general restrictions on the right of private defence under sections 99 to 102?

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.--

A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.--

A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

This section gives a defensive right to a man and not an offensive right. The first two clauses provide that the right of private defence cannot be invoked against a public servant or a person acting in good faith in the exercise of his legal duty provided that the act is not illegal. Similarly, clause three restricts the right of private defence, if there is time to seek help of public authority.

What is the extent?

The right of private defence in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of defence¹.

Good faith

Good faith plays a vital role under this section. Good faith does not require logical infallibility but due care and caution². In *Kesho Ram v. Delhi Administration*, 1974 Cr LJ 814 (SC) the Supreme Court held that an immunity " under section 99 cannot be claimed by a public servant, if he acts in good faith and under the colour of his offence, even though legality of the act could not otherwise be sustained.

Time to have recourse to the protection of public authority

No man has a right to take the law into his own hands. Clause 3 to this section lays down that, there is no right of private defence, if there is reasonable opportunity of redress by recourse to the public authority.

Proportionate harm

Discuss the principle of law laid down in *Baljit Singh v. State of Uttar Pradesh*

Clause 4 to section 99 provides that the injury to be inflicted should be proportionate to the harm caused or

attempted to be caused.

In *Bhaja Pradhan v. State of Orissa*, 1976 Cr LJ 1347 the deceased had stolen a goat from the cattleshed of the accused. The accused charged him to recover his property and, in the process of recovering it, assaulted him without knowing that he had struck vital body parts. Held, the accused exceeded the right of private defence. Similarly in *Baljit Singh v. State of Uttar Pradesh*, MANU/SC/0093/1976 : AIR 1976 SC 2273 the Supreme Court held that the actual possession of the disputed land did permit the accused the right to defend the property from being dispossessed. But had the right exercised resulted in fatal injuries to the aggressors, the accused would have exceeded the limit of the lawful exercise of that right.

RIGHT OF PRIVATE DEFENCE TO CAUSE DEATH

The extreme limit of the right of private defence has been provided under section 100, I.P.C. It mentions the situations when the right of private defence of body extends to causing death. Section 100 reads:

100. When the right of private defence of the body extends to causing death

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

1. Second part to section 99, IPC.

2. See section 52, IPC

- Firstly.-- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
- Secondly.- Such an assault as may reasonably cause the apprehension that grievous hurt will - otherwise be the consequence of such assault;
- Thirdly-- An assault with the intention of committing rape;
- Fourthly.- An assault with the intention of gratifying unnatural lust; -
- Fifthly-- An assault with the intention of kidnapping or abducting;
- Sixthly- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Essential ingredients

When and under what circumstance the death can be lawfully cause for private defence?

To invoke section 100, I.P.C. following four conditions must exist:

Firstly, that the person exercising the right of private defence must be free from fault in bringing about the encounter;

Secondly, there must be present an impending peril to life or of great bodily harm, either real or so apparent as to create an honest belief of exceeding (great) necessity;

Thirdly, there must be no safe or reasonable mode of escape by retreat; and

Fourthly, there must have been a necessity for taking the life.

Apprehension of death or grievous hurt cases

In *Somnath Das v. State*, MANU/OR/0046/1969 : AIR 1969 Ori 138 the accused and the deceased were cousins who did not pull on well. A free fight took place between them and subsequently the accused was charged with the murder of the deceased. It was held from the facts as ascertained by the court that the deceased had done nothing as to cause a reasonable apprehension in the mind of the accused that he was threatened either with death or grievous hurt. He had merely picked up a lathi thrown at him by the son of the accused, whereupon the accused felled him with fatal blows. There was, therefore, no reasonable apprehension in the mind of the accused that either death or grievous hurt would befall (happen) upon him, had he not exercised his right of private defence.

101. When such right extends to causing any harm other than death

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Under this section any harm short of death can be successfully inflicted in exercise of right of private defence subject to the restrictions mentioned in section 99 of the Code; *Yogendra Morarji v. State of Gujarat*, MANU/SC/0291/1979 : AIR 1980 SC 660.

DURATION OF RIGHT TO DEFEND THE BODY

Sections 102 to 105, I.P.C. fix the time when the right of private defence commences and the time duration for which it continues.

Section 102, I.P.C. which provides for the commencement and continuance of the right of private defence, says that:

102. Commencement and continuance of the right of private defence of the body

Discuss the principle of *Deo Narain v. State of Uttar Pradesh*

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

In *Deo Narain v. State of Uttar Pradesh*, 1973 Cr LJ 677 (SC), the Supreme Court held that the right of private defence is a 'preventive and not a punitive right'. If after sustaining serious injuries there is no apprehension of further danger to the body, obviously the right of private defence would not be available. But that is to say the appellant could only claim the right to use force after he had sustained assault is a complete misunderstanding of the law embodied in section 102, I.P.C.

PRIVATE DEFENCE OF PROPERTY

Sections 103, 104 and 105, I.P.C. provide provisions for right to private defence for the protection of one's property as also of another's property.

Section 103 says:

103. When the right of private defence of property extends to causing death

Under what circumstance causing death can be lawful during the protection of property?

The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which; occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:--

Firstly.-- Robbery;

Secondly.- House-breaking by night;

-
- Thirdly-- Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;
- Fourthly.- Theft, mischief, or house-trespass, under such circumstances as may reasonably
- cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Under section 103 the right of private defence of property extends, subject to the restrictions mentioned in section 99, to voluntarily causing death when such theft or mischief is committed in such circumstances as may reasonably cause an apprehension that death or grievous hurt will result, if such right of private defence is not exercised; Gurdatta Mal v. State of Uttar Pradesh, MANU/SC/0332/1964 : AIR 1965 SC 257.

Right of defence of property short of death

Section 104, I.P.C. restricts the right of private defence of property, as section 101 puts a check on the right to private defence of the body, to causing any harm short of death in the existence of the right of private defence. Section 104 says:

104. When such right extends to causing any harm other than death

If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

In Natham v. State of Madras, 1973 Cr LJ 608 the Supreme Court held that since it did not appear that the harvesting party was armed with any deadly weapon and there could not have been any fear of death or grievous hurt on the part of the appellant and his party, under section 104, I.P.C. their right was limited to the causing of any harm other than death.

Duration of right to defend the property

Section 105, I.P.C. fixes the time when the right of private defence of property commences and when it comes to an end. This section reads:

105. Commencement and continuance of the right of private defence of property

Under what circumstance the right of private defence commences?

Discuss critically the ratio of Amjad Khan v. State

The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

According to the section, the right of defence of property commences when a reasonable apprehension of danger to the property commences. The continuance depends upon the nature of the offence.

In *Amjad Khan v. State*, MANU/SC/0032/1952 : AIR 1952 SC 165 the Supreme Court held that under sections 102 and 105, I.P.C. the right of private defence commences as soon as a reasonable apprehension of danger to the human body or the property of oneself or another person commences to arise from an attempt or threat to commit an offence, even though the offence may not be committed.

RISK OF HARM OF INNOCENT PERSON

Section 106, I.P.C. deals with a case of extreme necessity, in which a person is authorized by law to run the risk of harming even innocent persons in order to protect himself from mortal injury. Section 106 says:

106. Right of private defence against deadly assault when there is risk of harm to innocent person

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Thus, where a person is attacked by a mob which attempt to murder him and he cannot open fire on the mob because they are mixed with some other innocent persons who have nothing to do with the attack on him, then the person is fully entitled to run the risk of causing harm to innocent persons also in the exercise of his right of private defence against an assault.

CASE LAWS

Sher Singh Case

Discuss the principle of law laid out in the State of Haryana v. Sher Singh

In *State of Haryana v. Sher Singh*, MANU/SC/0773/2002 : (2002) 9 SCC 356 the accused armed with weapons viz. bhalas, jalis, gandasis and lathis come to the land to take forcible possession and cattle brought by them were let loose in the fields resulting in damage of the standing crop. Then, the deceased and four others, reached the spot. When the deceased questioned their high handed acts, they started inflicting injuries as a result of which he died.

Decision; The trial court held that there was no justification to cause the death of Bhim Singh in the alleged exercise of the right of private defence because the accused could not have had reasonable apprehension of death or grievous hurt. The High Court observed that the accused were within their rights to inflict injuries on the complaint partly short of causing death in exercise of the right of private defence of property.

The Supreme Court observed "A conspectus of the facts lead to the inevitable conclusion that the accused clearly exceeded his right of private defence and caused much more harm than necessary. He cannot, therefore, claim immunity under the garb of section 97 of the I.P.C. The right of private defence under section 97, I.P.C. is expressly subject to the restriction contained in section 99." Therefore, it was held that, we are of the view that Sher Singh, is liable to be punished under section 326 read with section 322, I.P.C. Accordingly, he is convicted under section 326, I.P.C. and sentenced to undergo R.I. for a period of five years.

Moti Singh Case

In *Moti Singh v. State of Maharashtra*, MANU/SC/0407/2002 : (2002) 9 SCC 494 wherein a situation which pitched up to brim of a communal riot, one person died of a stab injury on the chest. It appeared that he was the only person who sustained fatal injury in the occurrence.

Issue:

Can the appellant legitimately claim the right of private defence in the above situation?

Decision of the SC:

The SC held that section 102 of the I.P.C. says that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or even a threat to cause any offence though the offence may not have been committed and the right continues as long as such apprehension of danger to the body continues. Section 100 of the I.P.C. confers the right of private defence of the body up to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of the acts as may reasonably cause the apprehension that grievous hurt be the consequence of such assault. The crucial factor is not what the accused pleaded, but whether the accused had the cause to reasonably apprehend such a danger. A different plea adopted by the accused would not foreclose the judicial consideration on the existence of such a situation.

The court further held:

"In our considered opinion the appellant, even if the prosecution version that it was he who inflicted the fatal stab on the deceased is to be accepted as correct, it ended in the exercise of right of private defence. As the reasonable apprehension that the grievous hurt would have been inflicted on one of the accused cannot be ruled out on the broad probabilities delineated by the prosecution to the evidence, we are disposed to extend the said right to this appellant. Resultantly, conviction and sentence passed on him cannot be sustained".

Subramani Case

Discuss the Subramani case in the light of State of Bihar v. Mathu Pandey

In Subramani v. State of Tamil Nadu, MANU/SC/0709/2002 : (2002) 7 SCC 210 the appellant had a litigating tenant to the aforesaid and was obstructing delivery of possession of the land to the deceased who had purchased this land. When deceased tried to plough the land, then accused assaulted the deceased with their weapons which resulted in his death.

Decision:

The Supreme Court referred to the case of State of Bihar v. Mathu Pandey, (1970) 1 SCR 358 and held: "It is well-settled that once it is held that the accused had the right of private defence and reasonably apprehended that death or grievous hurt would be the consequence if the right of private defence was not exercised. The right of private defence of property extended under section 103, I.P.C. to voluntarily causing the death of the aggressor subject to restrictions mentioned in section 99, I.P.C. In this case, if the appellants acted in exercise of their right of private defence of property, it can not be said that they committed a criminal act in furtherance of a common intention, because section 96, I.P.C. makes it absolutely clear that nothing is an offence which is done in the exercise of the right of private defence. They did not intend to commit any criminal act or to do anything which may be described as unlawful. Their object was not to kill the deceased but to protect their property."

The court further held:

"Once it is held that the appellants did not exceed their right of private defence, it must logically follow that they cannot be convicted of the lesser offences under sections 324 and 326, I.P.C., because in the same perspective and in the exercise of their right of private defence. They had caused injuries to some to the prosecution witnesses".

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Chapter 6

JOINT LIABILITY

The law relating to joint liability or group liability has been elaborately dealt with and covered by sections 34, 149, 120A and 120B of the Code. The doctrine of combination in crime is, that when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or proceeding severally or collectively, each individual whose win contributed to the wrong doing is in law responsible for the whole, the same as though performed by himself alone¹.

JOINT LIABILITY UNDER SECTION 34, I.P.C.

Discuss the essentials of group liability under section 34, I.P.C.

Section 34, I.P.C. says:

34. Acts done by several persons in furtherance of common intention

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Section 34 of the Code creates no specific offence. It only intends to cover situations in which a criminal act is committed by several persons; and it is not easy to demarcate the extent and quantum of participation by each one of such several persons. In such a situation it was considered proper that all such persons be declared liable for the criminal act done by them jointly. This section embodies the principle of joint liability in the doing of criminal act, the essence of joint liability being the existence of a 'common intention'.

'Common intention' should not be confused with 'similar intention'; it means 'intention common to all. To come within the mischief of this section the following ingredients must be present:

- (a) there must be a common intention to commit a crime;
- (b) such act must be committed in furtherance of the common intention; (c) such act must result in the commission of a crime;
- (d) such common intention must be common to two or more persons;
- (e) such persons (more than two or more) must have done the act or must have participated in the commission of that act.

1. Bishop's Commentaries on Criminal Law (Vol. 1).

Object of the section

Discuss the meaning and scope of the word 'common intention' as used in section 34 of the I.P.C.

Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true contents of the section are that if

two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself; Harbans Singh v. State of Haryana, MANU/SC/0170/2005 : AIR 2005 SC 2989.

Guiding principles of 'common intention'

Discuss the guiding principles of common intention as laid down by the Penal Code in Mahboob Shah v. Emperor

In Mahboob Shah v. Emperor, 721 IA 148 (PC): MANU/PR/0013/1945 : AIR 1945 PC 118 the following principles were laid down by the court:

- (i) Under section 34 of the Penal Code, essence of liability is to be found in the existence of a common intention, animating the accused, leading to the doing of a criminal act in furtherance of such intention.
- (ii) To invoke the aid of section 34 successfully, it must be shown that the Criminal act complained against was done by one of the accused persons in furtherance of the common intention; if this is so then liability for the crime may be imposed on any one of the persons in the same manner as if the acts were done by him alone.
- (iii) Common intention within the meaning of section 34 implies a prearranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done pursuant to the prearranged plan.
- (iv) It is difficult, if not impossible, to procure direct evidence to prove the intention of an individual, in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.
- (v) Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial and if overlooked will result in miscarriage of justice.
- (vi) The inference of common intention within the meaning of the term under section 34 should never be reached unless it is a necessary inference deductible from the circumstances of the case.

'Common intention' is a matter of inference

In Jai Bhagwan v. State of Haryana, 1999 Cr LJ 1634 (SC) it was held that to apply section 34, I.P.C., apart from the fact that there should be two or more accused, two factors must be established:--

- (i) Common intention, and
- (ii) Participation of the accused in the commission of an offence. If the common intention is proved but no overt act is attributed to the individual accused, section 34 will be attracted as essentially it involves vicarious liability, but if participation of the accused in crime is proved and common intention is absent, section 34 cannot be invoked. In every case it is not possible to have direct evidence of common intention. It has to be inferred from the facts and circumstances of each case.

In furtherance of common intention

What is meant by further of common intention discuss in light of Mahboob Shah v. Emperor?

The principle of joint-liability arises out of common intention followed by an act in furtherance of such common intention. This is clearly illustrated by the well-known case Mahboob Shah v. Emperor, 721 IA 148 (PC): MANU/PR/0013/1945 : AIR 1945 PC 118, wherein one Allah Dad was shot dead by a bullet from the gun used by one of the accused who came to rescue their cousin who had been attacked by Allah Dad and shouted for help. The two accused were armed with guns, and each one of them aimed at two different individuals shot from the gun of Wali Shah, the latter only received injuries from a bullet shot by Mahboob Shah. (See the case in detail, infra). Of the three accused, Wali Shah, whose shot killed Allah Dad absconded and could not be brought to trial, and the other two were prosecuted for murder under section 302 read with section 34, I.P.C. The Sessions Judge convicted him of the offence and sentenced him to death. On appeal, their Lordships of the Lahore High Court held that the case fell within the

ambit of section 34, and as to their "common intention", it was said that "common intention to commit the crime which was eventually committed by Mahboob Shah and Wali Shah came into being when Ghulam Qasim Shah shouted to his companions to come to his rescue and both of them emerged from behind the bushes and fired from their respective guns."

Their Lordships of the Privy Council however disagreed with the view of the judges of the High Court. In their opinion there was no evidence of common intention to the evidence that the appellant "just have been acting in concert with Wali Shah pursuant of a concerted plan when he along with him rushed to the help of Ghulam Qasim". In their view the common intention of both was to rescue Ghulam Qasim and both of them picked up different individuals to deal with. Evidence is lacking to show that there was any pre-mediation to bring about the murder of Allah Dad. At the most, they can be stated to have "similar intention but similar intention is different from 'common intention' and one should not be confused with the other.

Their Lordships, therefore, set aside the conviction and sentence of the offence of murder imposed by the High Court.

Prior intention to commit murder

In *Vithal Laxman Chalawadi v. State of Karnataka*, MANU/SC/0861/2010 : AIR 2011 SC 173, the Supreme Court held that where the appellant with two person objected to construction of drain. Evidence shown that three appellants armed with gandasi and other two with dangs caused injuries to deceased. Evidence of Doctor proved

that accused had used blunt side of Gandasi. So prior intention confirmed. Appeal dismissed and Supreme Court upheld the life imprisonment which was given by the High Court.

In *Satyavir Singh Rathie v. State*, MANU/SC/0546/2011 : AIR 2011 SC 1748 the Supreme Court held that where the police officials killed innocent victims on account of common intention to kill a hard core wanted criminal without any identity as criminals. Specific role to each individual accused police party as the firing at car was undoubtedly with a clear intent to annihilate those. No appeal by state against deemed acquitted for offence under section 302/307, 34. The modification of conviction to one under 302/307, 34 by High Court is proper. In furtherance of the common intention of all accused police officials liable to conviction under section 300/34.

Common intention should be prior to the occurrence

Discuss what makes the common intention punishable under law

Discuss the Pandurang's case briefly

In *Pandurang v. State of Hyderabad*, MANU/SC/0048/1954 : AIR 1955 SC 216: 1955 Cr LJ 572 their Lordships of the Supreme Court observed that it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a person can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. The incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis.

In *State of Uttar Pradesh v. Rohan Singh*, 1996 Cr LJ 2884 (SC) the Supreme Court relied on the view of this court in *Pandurang v. State of Hyderabad*, MANU/SC/0048/1954 : AIR 1955 SC 216: 1955 Cr LJ 572, and observed that: "Common intention necessarily implies a pre-arranged plan or prior concert or prior meetings of minds. Thus there is a sharing of the purpose, which is lacking in a case where several persons have the 'same or similar intention'. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan".

Joint-liability in context of free fight

Discuss the application of joint liability in context of free fight in the light of Balbir Singh case

The issue of liability of different members of a group of people divided into mutually antagonistic or hostile groups, especially when there is free fight between them, is one of the most difficult aspects of joint-liability. In *Balbir Singh v. State of Punjab*, MANU/SC/0385/1995 : AIR 1995 SC 1956 a similar question was raised, wherein four persons, each belonging to two groups attacked each other and in the result one person died. Both the trial court and the High Court had held that there was a free fight and every assailant was accountable for his own individual acts committed. However, the Supreme Court held that, in a free fight, there was a movement of body of the victims and assailants and in such a situation it will be difficult to specifically ascribe to one accused the intention to cause injuries sufficient to cause death.

Participation

Participation is a necessary element or condition precedent to a finding of joint-liability. The Supreme Court in *Kantian Ramayya Munipally v. State of*

Bombay, MANU/SC/0050/1954 : AIR 1955 SC 287 observed that, it is the essence of the section 34 that the person must be physically present at the actual commission of the crime. He need not be present in the actual spot, he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or the other at the time the crime is actually committed.

JOINT-LIABILITY UNDER SECTION 149, I.P.C.

Discuss the principle which depreciate the section 34 with section 149

Section 149, I.P.C. provides:

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

This section covers such cases in which several members of an unlawful assembly may be held guilty of an offence if their 'object' is the same though all of them may not have actually participated in doing of that act.

Essential ingredients

Discuss the essential ingredients of section 149

To invoke section 149, I.P.C., the following ingredients must be present:

- (a) There must be an unlawful assembly. What is an unlawful assembly has been explained below;
- (b) There must be five or more persons forming such an unlawful assembly;
- (c) There must be some common object of such an unlawful assembly. Here the word "common" must be distinguished from "similar"; it means "common to all and known to the rest of them and also shared by them".
- (d) There must be a commission of an offence by anyone or more members of such unlawful assembly.
- (e) The commission of such offence by anyone or more members of such unlawful assembly must be in the prosecution of the common object shared by all and each one of the members of such unlawful assembly;
- (f) The offence committed in prosecution of a common object must be such that each one of the members of such unlawful assembly knew was likely to be committed in the prosecution of the common object.

Unlawful assembly: meaning of

Section 141, I.P.C. defines for 'unlawful assembly' in the following words:

In *Sajjan Sharma v. State of Bihar*, MANU/SC/0020/2011 : AIR 2011 SC 632, the Supreme Court held that where firing by unlawful assembly on a villager. Appellant lives in same village as informant but no name in FIR. Appellant's father and brother who seen as members of unlawful assembly were named in FIR. Appellant identified at time of incident but no particular role assigned. Evidence of witness also as one of members of unlawful assembly. Court can't rely upon evidence so appellant acquitted giving benefit of doubt.

In *Shaji v. State of Kerala*, MANU/SC/0544/2011 : AIR 2011 SC 1825, the Supreme Court held that where Murder committed by members of unlawful assembly with arms. Medical evidence showing that injury caused by that member was fatal. All members were not armed. So insufficient to prove common object. Conviction of other accused with aid of section 149 were Improper.

141. Unlawful assembly

Discuss the principle of *Mizaji v. State of Uttar Pradesh*

Will your answer be different if the court acquitted X and Y on the ground that their presence in the group was not clearly established?

An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is--

- First- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or
- Second.- To resist the execution of any law, or of any legal process; or
-
- Third.-- To commit any mischief or criminal trespass, or other offence; or
- Fourth.- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
-
- Fifth.-- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.--

An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

An assembly of five or more than five persons, combined for one or the other purposes indicated in section 141, is declared in law an 'lawful assembly'.

In *Mizaji v. State of Uttar Pradesh*, MANU/SC/0040/1958 : AIR 1959 SC 572 it was held that section 149 has two parts. The liability of a member of an unlawful assembly may arise for an offence committed by any member of the assembly in two ways. The first is where the other member commits an offence, which was in fact the object of the assembly. The second is where the common object to commit an offence was different from the offence which was actually committed:

- (a) The accused X, Y, Z, J and K were alleged to have entered into A's house in order to get forceable possession of the house. With the lathis they were carrying, grave injuries were inflicted on A's limb and he was dragged out of his house to some distance where either J or K shot him dead with a hidden pistol. Advise on the group liability of the persons involved in the case.

(b) A, B, C, D and E armed with a handgun, a spear, a lathi, a sword, and a knife respectively with the common object of taking forcible possession of land from M, N or O enter on the land in their possession. The latter who are in possession try to checkmate instruction and in the fight A alone fires and O is killed. Decide the liability of A, E, C, D and E for the killing of O and refer to precedents.

In such a case the member not actually committing the offence will be liable for that offence only if he knew that such offence was likely to be committed in the course of the prosecution of the common object to commit the offence originally thought of.

The expression "know" does not mean a mere possibility, such as might or might not happen, it imports a high degree of probability. Further, it indicates a state of mind at the time of the commission of the offence and not the knowledge acquired in the light of subsequent events. Under section 149, the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behaviour, at or before the scene of action; *Gajanand v. State of Uttar Pradesh*, MANU/SC/0173/1954 : AIR 1954 SC 695.

Common object: Meaning of

Discuss the meaning of expression "common object"

Section 149 of Indian Penal Code postulates an assembly of five or more persons having a common object i.e., one of those named in section 141, I.P.C. and then doing of the act as by the members of it in prosecution of that object. The basis of constructive guilt under section 149 is mere membership of an unlawful assembly. Under section 149, if the accused is a member of an unlawful assembly, the common object of which is to commit a certain crime, and such a crime is committed by one or more of the members of that assembly, every person who happens to be a member of that assembly would be liable for the commission of the crime being a member of it irrespective of the fact whether he has actually committed the criminal act or not. There is a distinction between the common object and common intention. The common object need not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the assembly gathered before the commission of the crime at the spot itself. There need not be prior meeting of the mind. It would be enough that the members of the assembly which constitutes five or more persons, have common object and that they acted as an assembly to achieve that object. In substance, section 149 makes every member of the common unlawful assembly responsible as a member for the act of each and all, merely because he is a member of the unlawful assembly with common object to be achieved by such an unlawful assembly. At the same time, one has to keep in mind that mere presence in the unlawful assembly cannot render a person liable unless there was a common object and that is shared by that person. The common object has to be found and can be gathered from the facts and circumstances of each case; *Rabindra Mahto v. State of Jharkhand*, I (2006) CCR 44 (SC).

Section 34 and section 149 distinguished

Discuss the features which distinguished section 34 with 149 I.P.C.

Though sections 34 and 149, I.P.C. seem to overlap, yet there is a marked difference between the two.

(a) Section 34 does not create an offence, it merely lays down a rule of law; section 149 creates a definite offence and deals with the punishment of that offence alone. Thus being a member of unlawful assembly is by itself an offence.

(b) Under section 34 common intention is the decisive test, whereas in section 149 common object of the members of an unlawful assembly must be established.

(c) Participation or presence in the criminal act is essential to fix liability under section 34. Membership (not necessarily presence) is the foundation of the liability under section 149.

(d) Section 34 requires two or more persons involved in the commission of the offence. Section 149 requires five or more persons of an unlawful assembly in the commission of an offence.

(e) Section 34 provides for 'common intention' which requires a preconcerted plan or agreement; whereas section 149 speaks about 'common object' does not necessarily require any pre-concert.

CONSPIRACY

A criminal conspiracy is the agreement of two or more persons to do an illegal act or to do a legal act by illegal means. Sections 120A and 120B, I.P.C. deal with criminal conspiracy. While section 120A defines 'criminal conspiracy', section 120B provides punishment for this offence.

Section 120A reads:

120A. Definition of criminal conspiracy

Discuss the principle laid down in section 120A of the I.P.C.

Discuss the ratio of Nalini's case

When two or more persons agree to do, or cause to be done,--

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.--

It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

In *Sushil Suri v. CBI*, MANU/SC/0563/2011 : AIR 2011 SC 1713, the Supreme Court held that where two Chartered Accountants had dishonestly and fraudulently opened several fictitious accounts in some banks with an intention and object to facilitate of bank finance for the purpose other than stated in the loan application. Accused persons submitted to the bank, fake and forged invoices of fictitious/non-existent supplier. Essential ingredient of criminal conspiracy is agreement to commit offence between accused. Commission of crime alone enough to bring about a conviction under section 120B. Appellant with Directors and Chartered Accountant defrauded revenue and in the process cheated the public exchequer of crores of rupees and were convicted under section 120B, 420, 409, 471 of IPC.

In *State (C.B.I./S.I.T.) v. Nalini*, (1999) 5 Supreme 60 (Rajiv Gandhi murder case) the apex Court held that an agreement between two or more persons to do an illegal act amounts to criminal conspiracy. The illegal act may or may not be done in pursuance of the agreement but the very agreement is an offence and is punishable. Everyone of the conspirator need not have taken active part in the commission of each and every one of the conspiratorial acts for the offence of conspiracy to be made out. The prosecution need not necessarily prove what the perpetrators expressly agreed to do and/or caused to be done the illegal act. The agreement may be proved by necessary implication, under section 120B, I.P.C. In the impugned case the accused were charged and convicted under section 120B read with section 302, I.P.C. by the designated Court. The accused appealed to the apex Court to set aside the conviction.

Essential ingredients

Discuss the essentials of section 120A, I.P.C.

The ingredients of section 120A, I.P.C. are as stated below:

- (1) There should be an agreement between two or more persons who are alleged to conspire;
- (2) The agreement should be to do or cause to be done:
 - (i) an illegal act¹, or
 - (ii) an act which may not itself be illegal but be done by illegal means.

Illegal act: Meaning of

The word 'illegal' is defined in section 43 of the Code as 'applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action'; and a person is said to be 'legally bound to do whatever it is illegal in him to omit'.

Reading sections 43 and 120A together it would appear that two or more persons would be guilty of a criminal conspiracy whenever they agree to do or cause to be done acts, which are an offence punishable under the Indian Penal Code or any special or local law, or which are prohibited by law, or which furnish ground for civil action. Leaving the case of punishable offences or other acts prohibited by law aside, acts which might furnish ground for a civil action may be either (a) breaches of contract, or (b) wrongs independent of contract, committed by an individual acting alone or by two or more persons acting in combination. A wrongful act must necessarily be so in two or more acting in concert.

In *Bimbardhar Pradhan v. State of Orissa*, MANU/SC/0024/1956 : AIR 1956 SC 469 the apex Court observed that, it is not necessary that each one of the conspirators should be aware of the acts done by any of conspirators during the course of the conspiracy. The acts done by any of conspirators in furtherance of the purpose the conspiracy are relevant as merely indicative of what the object of the conspiracy was. What is relevant is that there should be one conspiracy to which specific persons were parties and not series or conspiracies, for the liability of each conspirator has to be fixed in relation to the particular conspiracy entered into by him with the others.

PUNISHMENT FOR 'CRIMINAL CONSPIRACY'

Section 120B punishes for the offence of 'criminal conspiracy' in the following manner:

1. See section 43 for definition of 'act'.

120B. Punishment of criminal conspiracy

Discuss the difference between 120 & 120B of I.P.C.

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

This section has classified conspiracy into two classes for the purpose of punishment. The first class is, where the conspiracy is to commit an offence of serious nature i.e., offences punishable with death, imprisonment for life etc. The second class covers conspiracy to commit offences other than those covered under the first category.

CASE LAW

In *Manjit Singh v. CBI*, MANU/SC/0067/2011 : AIR 2011 SC 806, the Supreme Court held that where three accused were being tried by the Designated Court (TADA) and confession of the accused charged for the offence under the

TADA act. Recording information about commission of an offence under TADA and Investigation handed over to CBI by State Government accused role as king pin and co-accused committed offence. There is incriminating evidence against accused. Intention of accused was not to cause terror but to prevent information regarding another crime so dismissal of charges by TADA Court. Supreme Court upheld the conviction of accused under section 302, 120B IPC.

Nandu Rastogi case

Discuss the principle laid down in the Nandu Rastogi's case

In Nandu Rastogi v. State of Bihar, MANU/SC/0851/2002 : (2002) 8 SCC 9 the appellants in the appeals, namely Nandu Rastogi @ Nandji Rastogi and Bal Mukund Rastogi are brothers. They along with one Jagdish Chamar and Mohan Singh were put up for trial before the additional sessions judge. Rohtas who found the appellants and Jagdish Chamar guilty of the offence under section 302/34, I.P.C. and under section 27 of the Arms Act but acquitted Mohan Singh.

They preferred three appeals before the High Court but by a common judgment and order, the High Court dismissed the appeals and affirmed their conviction and sentence. The case came before the Supreme Court.

Decision of the Supreme Court:

The Supreme Court referred to the decision of the SC in Suresh v. State of Uttar Pradesh, wherein it has been observed that, to attract the applicability of section 34 of the Code, the prosecution is under an obligation to establish that there existed a common intention which requires a prearranged plan because a man can only be variously convicted for the criminal act of another, if it must have been done in furtherance of common intention.

The apex Court further observed:

"To attract the section 34, I.P.C. it is not necessary that each one of the accused must assault the deceased. It is enough if it is shown that they shared a common intention to commit the offence and in furtherance there of each one played his assigned role by doing separate acts, similar or diverse. We, therefore, entertain no doubt that all the five persons who come to the shop of the informant had a common intention to commit the murder of Shankar Rastogi and they acted pursuant to a prearranged plan. The facts clearly are consistent with the hypothesis of their acting in furtherance of a common intention. They have, therefore, rightly convicted with the aid of section 34, I.P.C.

Chandra Bihari case

Discuss critically the ratio laid in Chandra Bihari case.

In Chandra Bihari Gautam v. State of Bihar, MANU/SC/0322/2002 : (2002) 9 SCC 208 the appellants accompanied by 300-400 persons, armed with deadly weapons like guns, attacked the house of Ganesh Singh. Bholi was shot dead and Nawlesh Singh, Shiv Narain Singh, Kedar Singh, Sanjay Singh and Ajay Kumar were burnt alive inside the room where they were hiding.

The trial court convicted the three accused under section 302 of the I.P.C., and sentenced to death.

The High Court upheld the conviction of the three accused but sentence awarded to them was committed from death sentence to imprisonment for life. They preferred the appeals to the Supreme Court.

Decision of the Supreme Court: It was observed that, section 149 has two parts, first part deals with the commission of an offence by a member of an unlawful assembly in prosecution of the common object of that assembly and the second part deals with the liability of the members of the unlawful assembly who knew that an offence was likely to be committed in prosecution of the object for which they had assembled. In the present case, the appellants, along with others, have been proved to have formed an unlawful assembly, the common object of which was to commit murder and arson and in prosecution of the said common object they raided the house of the informant, armed with guns and committed the offence. The appellants were also proved to have hired the services of some extremists for the purpose

of eliminating the family of the complainant.

In the instant case, the prosecution established the existence of the common object of the unlawful assembly for attracting the applicability of section 149 of the I.P.C. and the mere fact that no overt act had been attributed to each of the accused persons was not sufficient to hold that charge under section 149 of the I.P.C. had not been proved against them.

It was held that the appellants had been rightly convicted for the commission of various offences and hence their appeals were dismissed.

Nallabothu Venkaiah's case

Discuss the Nallabothu Venkaiah's case

In Nallabothu Venkaiah v. State of Andhra Pradesh, MANU/SC/0692/2002 : (2002) 7 SCC 117 the accused formed themselves into an unlawful assembly and caused the death of the deceased by hurling bombs and causing bodily injuries by axes, knives and spears.

The trial court convicted the accused 1, 3, 4, 5, 7, 8 and 10 under section 302 read with section 149, and sentenced to suffer imprisonment for life.

The High Court, confirmed the conviction of the accused 1 under section 302, I.P.C. The present appeal has been preferred by accused 1, the appellant.

Issue before the Supreme Court: Whether the appellant could be convicted under section 302, I.P.C. (simplicitor) without aid of section 149, I.P.C. in the absence of substantive charge under section 302, I.P.C.?

Decision of the Supreme Court: On an analytical reading of a cetera of decisions of this court, the following broad propositions of law clearly emerges:--

(a) The conviction under section 302 simplicitor without the aid of section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence;

(b) Wrongful acquittal recorded by the High Court, even if it is stood, that circumstances would not impede the conviction of the appellant under section 302 read with section 149, I.P.C.; (c) Charge under section 302 read with the aid of section 149 could be converted into one under section 302 read with section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved.

It was held that the acquittal of the other accused rendered by the High Court, was wrong and based on misappreciation of record clearly establish the guilt of the appellant beyond reasonable doubt for causing the death of the deceased.

Chapter 7

ATTEMPT TO COMMIT A CRIME

The word 'attempt' clearly conveys with it the idea that if the attempt had succeeded, the offence charged would have been committed¹. In other words, attempt is the direct movement towards the commission of an offence after preparations have been made. Once an 'act'² enters into the arena of attempt, criminal liability begins, because attempt takes the offender very close to the successful completion of the crime and so it is punishable in law like a completed offence. An attempt, creates alarm which of itself is an injury, and the moral guilt of the offender is the same as though he had succeeded. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is at present an intent coupled with some overt act in execution thereof.

'ATTEMPT' UNDER THE CODE

Define the word "Attempt" as denoted in the I.P.C.

The Indian Penal Code has not defined attempt to commit a crime but has dealt with attempt in four different ways:

(i) Firstly, the commission of an offence and the attempt to commit it are dealt with in the same section, the extent of punishment being the same for both the offence as well as its attempt. These are--

(i) offences against the State, such as, waging or attempting to wage war against the Government of India (section 121);

(ii) assaulting or attempting to assault the President of India, Governors of States, etc., with intent to counsel or restrain the exercise of any lawful power (section 124);

(iii) sedition (section 124A), waging or attempting to wage war against any Asiatic Power in alliance with the Government (section 125), public servant taking gratification (section 161), dacoity (section 391), etc.;

(ii) Secondly, attempts to commit offences and commission of specific offences have been dealt with separately, and separate punishments have been provided for attempt to commit such offences from those of the offences committed.

1. Justice Cockburn.

2. See section 33, IPC wherein word "act or omission" denote as well as a series of acts, as a single act: the word "omission" denotes as well as a series of omissions as a single omission.

For instance, attempt to commit murder, attempt to commit culpable homicide not amounting to murder, and attempt to commit robbery have been dealt with in sections 307, 308 and 393, I.P.C. whereas murder, culpable homicide and robbery are punishable under sections 302, 304 and 392, I.P.C. respectively;

(iii) Thirdly, attempt to commit suicide is made punishable under section 309, I.P.C; and

(iv) Fourthly, attempts to commit offences in general (except those falling in the above-stated categories) have been made punishable under section 511, I.P.C. However, section 511, I.P.C. is not exhaustive. It leaves unpunished attempts of those minor offences which are punishable with fine only.

SEDITION

Sedition is nothing but libel (defamation) of the established authority of law, i.e., Government. Hence, it is called seditious libel in England. Sedition in the ordinary sense means a stirring up of rebellion against the Government; Kedar Nath v. State of Bihar, MANU/SC/0074/1962 : AIR 1962 SC 955. However, in law it has a technical meaning and includes all those acts and practices which have for their object to excite discontent or dissatisfaction towards the

Constitution or the Government, or Parliament to create public disturbance, or to lead a civil war, and generally all endeavours to promote public discord and disorder¹.

Section 124A, I.P.C. defines the offence of sedition as under:

124A. Sedition

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.--

The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.--

Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.--

Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Essentials of sedition

According to section 124A, I.P.C. the following are three essentials of sedition:

1. Bringing or attempting to bring in hatred or contempt or exciting or attempting to excite dissatisfaction towards the Government of India.

1. Webster's Dictionary (3rd Edn., p. 652).

2. Such act or attempt may be done (i) by words, either spoken or written, or (ii) signs (iii) visible representation.

3. The act must be intentional.

Hatred or contempt: Meaning of

Hatred implies an ill-will, while contempt implies a low opinion. In other words, hatred and contempt are the state of mind in relation to the object. The hatred and contempt in order to be punishable under this section must relate to the State or the Government. Hatred and contempt towards the Government may be created by writing, imputing to the Government base, dishonourable, contemptuous, malicious motives in the discharge of its duties or by writing that which unjustly accuses the Government of hostility or indifference to the welfare of the people; *Annie Besant v. Advocate-General of Madras*, AIR 1919 PC 31.

Disaffection: Meaning of

Explanation 1 to section 124A, I.P.C. does not define the word 'disaffection', but simply states that disaffection includes disloyalty and all feeling of enmity. The expression 'disaffection' may be defined as primarily meaning the contrary to affection, and it goes very much towards expressing the same as hatred and dislike. It may cover something, perhaps a little different from the expression hatred, because it includes disloyalty. To urge people to rise

against the Government is tantamount to trying to excite feelings of disloyalty in their minds. Feelings of enmity include ill-will, hostility, feelings of dislike amounting to enmity, and anything of a similar class or character, which can be demonstrated under the expression disloyalty and feeling of enmity; *Narayan Vasudev Phadke v. Emperor*, (1940) 42 Bom LR 861: AIR 1940 PC 379.

Attempt: Meaning of

A person may be charged not only with exciting but also with attempting to excite and both successful and unsuccessful attempts to excite dissatisfaction are placed on the same footing. So, even if a person has only tried to excite the feeling, he could be convicted for this offence; *Queen Empress v. Bal Gangadhar Tilak*, (1897) ILR 22 Bom 112. In *Surendra Narayan Adicharya v. Emperor*, (1911) ILR 39 Cal 522, it was held that sending through the post a packet containing a copy of the manuscript of a seditious publication with a covering letter requesting the addressee to circulate it to others, when the same was intercepted by another person and never reached the addressee, constitutes an attempt to commit an offence under this section.

Constitutionality of section 124A

Whether sections 124A and 505, I.P.C. are void in view of the provision of

After the Constitution of India came into operation an important question relating to the constitutionality of section 124A, I.P.C. vis-a-vis Article 19 was raised in a few cases leading to conflicting decisions. There are two divergent views in this regard. In *Tara Singh v. State of Punjab*, AIR 1951 EP 27 section 124A, I.P.C. was struck down as unconstitutional being contrary to freedom of speech and expression guaranteed under Article 19(1)(a).

However, in *Kedar Nath v. State of Bihar*, MANU/SC/0074/1962 : AIR 1962 SC 955 one Kedar Nath Singh, prosecuted before, as Magistrate 1st class, at Begusarai, in the Dist. of Munger, in Bihar. The accused had on 26th day of May 1953 at village Barauni had spoken such words as "Today the dogs of CID are loitering around in Barauni... the people of India drove out the Britishers and today these Congress goondas are ruling the country. These Congress goondas are banking upon American Dollars and imposing various kinds of taxes on the people and thereby sucking the blood of Muzdoors and Kisans. On the strength of the Muzdoors and Kisans the forward Communist Party will expose the deeds of Congress goondas and drive them out. The Congress goondas have setup Vinoba Bhave amidst us as their agent so as to divert the attention of the people from the main problems. This way the accused brought or attempted to bring into hatred or contempt or excited or attempted to excite disaffection towards the government established by the law in the Indian Union and, thereby, committed an offence punishable under section 124A, I.P.C.

Issue Involved:

The main question in controversy is whether sections 124A and 505 of the Penal Code have become void in view of the provisions of Article 19(1)(a) of the Constitution.

Decision:

The Supreme Court held that, the provisions of sections 124A and 505 Penal Code are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution. The restriction imposed by the impugned provisions cannot but be said to be in the interest of the public order and within the ambit of permissible legislative interference with that fundamental right.

It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution and another interpretation would render them unconstitutional, the court would lean in favour of the former Constitution.

The explanations appended to the main body of section 124A make it clear that the criticism of public measures or comment on government action however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken etc., which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section strikes the correct

balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and mischief it seeks to impress. Viewed in that light the provisions of the sections should be so construed as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order or indictment to violence.

Thus, upholding the validity and constitutionality of the section 124A of I.P.C., the Supreme Court dismissed the appeal.

ATTEMPT TO MURDER

Section 307, I.P.C. deals with the offence of attempt to murder. This section reads:

307. Attempt to murder

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.
- (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.
- (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

Therefore, section 307, I.P.C. makes attempt to commit murder punishable up to 10 years of imprisonment, and if hurt is caused, upto life imprisonment with fine.

Essential ingredients

Discuss the essential ingredients of 'attempt to murder' as provided under section 307, I.P.C.

To attract the provisions of section 307, I.P.C. all ingredients of murder short of death must exist, viz,--

- (a) The death of a human being must be attempted.
- (b) The accused must have made the attempt.
- (c) The act must be done with the intention of causing death, or it be done with the intention of causing such bodily injury as
 - (i) the accused knew to be likely to cause death, and
 - (ii) that it was sufficient in the ordinary course of nature to cause death.

(d) The accused attempted to cause such death by doing an act known to him to be so immediately dangerous that it must in all probability cause

(i) death, or

(ii) such bodily injury as is likely to cause death.

In *Om Prakash v. State of Punjab*, MANU/SC/0125/1961 : AIR 1961 SC 1782 the Supreme Court reiterated its earlier view and held that the offence under section 307, I.P.C. is committed, when with the intention to commit murder, the offender does any act or series of acts towards the commission of murder. It is not necessary that the act done must be the last or the penultimate act to be done for committing murder.

Regular and systematic course of starvation which would ultimately result in death amounts to an attempt to murder.

In *Rajendra Harakchand Bhandari v. State of Maharashtra*, MANU/SC/0368/2011 : AIR 2011 SC 1821, the Supreme Court held that where appellant gave blow with sword on the head of victim and victim got 6 injuries and become cordial. Appellants already undergone two and half years sentence which was substantive sentence. The court confirmed conviction under section 307 read with 34. Appeal allowed and time spent in convicting during the trial was reduced.

(Is Euthanasia can be treated as attempt to suicide)

ATTEMPT TO COMMIT CULPABLE HOMICIDE [SECTION 308, I.P.C.]

Section 308, I.P.C. punishes attempt to commit culpable homicide not amounting to murder and in view of the gravity of the offence the Code has made express provision to punish an attempt to commit culpable homicide under section 308, I.P.C. instead of leaving it to be dealt with under section 511, I.P.C. which applies to all attempts to commit offences punishable with imprisonment. Section 308, I.P.C. provides that:

308. Attempt to commit culpable homicide

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

A person is said to have committed an offence under this section, if he does an act with such intention or knowledge and under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder as defined under Exceptions 1 to 5 to section 300, I.P.C. To invoke the section, intention to commit culpable homicide not amounting to murder must be established; *Om Prakash v. State of Punjab*, MANU/SC/0125/1961 : AIR 1961 SC 1782.

ATTEMPT TO COMMIT SUICIDE [SECTION 309, I.P.C.]

Generally speaking, 'suicide' as such is no crime under the Code. It is only attempt to commit suicide that is punishable under section 309, I.P.C. This section reads:

309. Attempt to commit suicide

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

An attempt under section 309, I.P.C. implies at least an act towards the commission of suicide, such as drawing or poisoning or shooting oneself. If A, with an intention to commit suicide, throws himself into a well, he is guilty of an attempt and is punishable under this section; *Emperor v. Mulia*, AIR 1919 All 376, if he is rescued or fails in his attempt.

Attempt must be intentional: The essence of suicide is an intentional self-destruction of life. Thus, if a person takes an overdose of poison by mistake or in a state of intoxication, or in order to evade capture by his pursuers Emperor v. Dwarka Poonja, (1912) 14 Bom LR 146 he is not guilty of attempt to commit suicide.

Is hunger strike an attempt to suicide?

Hunger strike, which is resorted to at times for getting the demands of strikers fulfilled, poses some difficulty in this regard. These cases present difficulty in determining whether the intention of the hunger striker is to kill himself or simply to force the authorities to fulfil his demands.

In Ramsundar Dubey v. State, AIR 1963 All 262 the accused was charged under section 309, I.P.C. for an attempt to commit suicide by resorting to hunger strike. The accused admitted that he had gone on a hunger strike but denied that he had intended fasting unto death. He produced evidence to show that he was taking lemon juice in the morning and evening during the continuance of his fast. The Court below, however, did not believe this defence and reached to the conclusion that the accused actually meant to fast to death unless his demands were conceded.

Setting aside the conviction, the Allahabad High Court held that the evidence in the present case fell short of an attempt to commit suicide. If a person openly declared that he will fast unto death and then proceeds to refuse all nourishment until the stage is reached when he may collapse any moment, then there is an imminent danger of death ensuing and he will be guilty of an attempted suicide under section 309, I.P.C.

In Aruna Ramchandra Shanbaug v. Union of India, MANU/SC/0176/2011 : AIR 2011 SC 1290 this case where the victim was attacked by a sweeper in hospital who wrapped a dog chain around her neck and yanked her back. He sodomised her and twisted the chain around her neck. The next day she found lying on the floor with blood all over in an unconscious condition. Due to strangulation the supply of oxygen to the brain stopped and the brain got damaged. She also had brain stem contusion injury with associated cervical card injury. At the time of incident patient was 36 years old and now she is 60 years of age. In this 36 years it cannot be said to be a living person and there is no possibility of any improvement in her condition. Her body lies on the bed like a dead animal. The prayer of petitioner to stop feeding and let her die peacefully.

Under section 309, IPC a person attempts suicide in a depression stage and he needs help rather than punishment Active Euthanasia using lethal substances or forces to kill terminally ill patient which is illegal under section 302, 304 and suicide is crime under section 306. Patient in coma or permanent vegetative condition and discontinuation of life support and there is no consent to withdraw from life. So person incapable of any response but is able to sustain respiration and circulation cannot be said dead. This case can not be dealt with under section 309, so appeal dismissed.

ATTEMPT [SECTION 511, I.P.C.]

According to Oxford Dictionary of current English the word 'attempt' means seek to achieve or complete (a task or action); to criminal jurisprudence 'attempt' is one of the stages of commission of offence. According to criminal jurisprudence a committed offence passes through four stages which are (i) intention (ii) preparation (iii) attempt and (iv) commission. The I.P.C. section 511 has used the word attempt in this content and has defined it in the following words:--

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment

How do you differentiate preparation for and attempt at commission of a crime?

Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such

fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Thus, section 511 is a general provision of attempt and as section itself says, it applies in all the cases of life imprisonment or imprisonment where there is no express provision regarding the punishment of such attempt has not been expressly provided by the case, the only exception which can be made out from the content of section 511 are the offences punishable with capital punishment and the offence for which specific provision for the punishment of attempt has been provided by the Constitution.

Indian Penal Code did not provide any defence of attempt in order to appreciate the meaning of attempt used by I.P.C. and law laid upon attempt by court are given here to understand the stages of crime and its distinction. Basically there are three stages of a crime and fourth is the result of these three i.e., commission of offence. The first three stages are:

(1) Intention--This is mainly a mental stage and has mostly to do with the mental element. This cannot be tracked down unless some overt act is done by the person who wants to commit the crime. Merely having intention is not punishable in law though in morality this is wrong. The next what follows is the preparation.

(2) Preparation is advanced stage of the commission of crime and in this the overt acts are done. In general, preparation is not punishable because a preparation apart from its motive is generally a harmless act. This provides the clues of one's intention though the general preparation is not an offence nor is punishable under law though there are certain offences in which preparation is also punishable under law. The preparation is followed by;

(3) Attempt which basically means final implementation with the intention to get the desired result.

The law which divides the intention and the attempt is very thin. Courts advised that precaution should always be taken to demarcate that.

In *Abhyanand Misra v. State of Bihar*, MANU/SC/0124/1961 : AIR 1961 SC 1698 the appellant applied for M.A. examination at Patna University as private candidate and admit card for examination was issued. In the meantime University came to know that appellant's application was forged, it was held:

"What was claimed by the appellant was that what he did merely came under the preparation and not attempt."

The court observed:

"There is a thin line between the preparation and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence".

Thus it was held that an action said to be an attempt if the commission fails not due to any lack on the part of accused but due to reason beyond his control.

The law of attempt was more further explained in *Malkiat Singh* case given below:

In *Malkiat Singh v. State of Punjab*, MANU/SC/0534/1969 : AIR 1970 SC 713 their Lordships of the Supreme Court distinguished between preparation for the commission of an offence and an attempt to commit an offence. This was a case, where a truck loaded with paddy destined for Delhi was intercepted at Samalkha, about 40 miles from Delhi and about 18 miles from the Delhi-Punjab border at the relevant time. The export of paddy was banned under the Punjab Paddy (Export Control) Order. The case of the prosecution was that the driver made an attempt to transport paddy from Punjab to Delhi and thereby, he was guilty of an attempt to commit an act which was an offence under the Act. Holding the act of the driver to be a mere preparation for the commission of an offence, their Lordships observed:

The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence and secondly, to have done an act which constitutes the *actus reus* of a criminal attempt.

The court has developed three principles to test the attempt--

- (i) The proximity rule or test
- (ii) Doctrine of *locus paenitentiae*
- (iii) Impossibility test

(i) The proximity rule or test.--

In order to designate an act as an attempt, it must be sufficiently near to the accomplishment of the substantive offence that the act of the accused should be considered proximate.

In the case of *R. v. Raisat Ali*, (1881) 7 Cal 352 the Calcutta High Court considered the case where the prisoner had given an order to pay 100 forms similar to those formerly used by the Bengal Coal Company. The first proof of the forms was also corrected by the accused. At about the stage when the accused was to make the final corrections and alternations to the printed form to make them appear exactly like the originals, he was arrested and charged with attempting to make false document under section 464, I.P.C. However, the Court held him not to be guilty as the attempt could be said to have been completed only after the seal or the signature of the company had been affixed. Consequently, the act done was not an act towards making one of the forms a false document, but if the prisoner had been caught in the act of writing the name of the company upon the printed form and had completed a single letter of the name, then, in the words of Lord Blackburn, 'the actual transaction would have commenced which would have entered in the crime of forgery and he would have been held guilty of the attempt to commit forgery'.

(ii) Doctrine of *locus paenitentiae*.--

This refers to an act amounting to mere preparation if a man on his own accord gives it up before committing the offence. This principle was explained by the Supreme Court in the *Malkiat Singh's* case given below:

In *Malkiat Singh v. State of Punjab*, MANU/SC/0534/1969 : AIR 1970 SC 713 the accused, driver and cleaner, were intercepted at Samalkha barrier post in Punjab, which is about 14 miles from the Punjab-Delhi border, driving a truck containing 75 bags of paddy. They, along with others, were charged with the offence of attempting to export paddy in violation of the Punjab (Export) Control Order, 1959. The Supreme Court acquitted the accused observing that the test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind, and does not proceed further in its progress, the acts already done would be complete harmless.

(iii) The impossibility test.--

The principle of impossibility test is provided in the illustrations to the section 511, I.P.C.

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Chapter 8

CULPABLE HOMICIDE AND MURDER

Offences like 'culpable homicide' and 'murder' are mentioned under Chapter XVI of the Indian Penal Code, relating to offences affecting the human body. This Chapter clearly indicates the importance attached to the preservation and protection of right and liberty - the two most precious and important rights guaranteed under Article 21 of the Constitution of India. Let us discuss the meaning and scope of word 'homicide'.

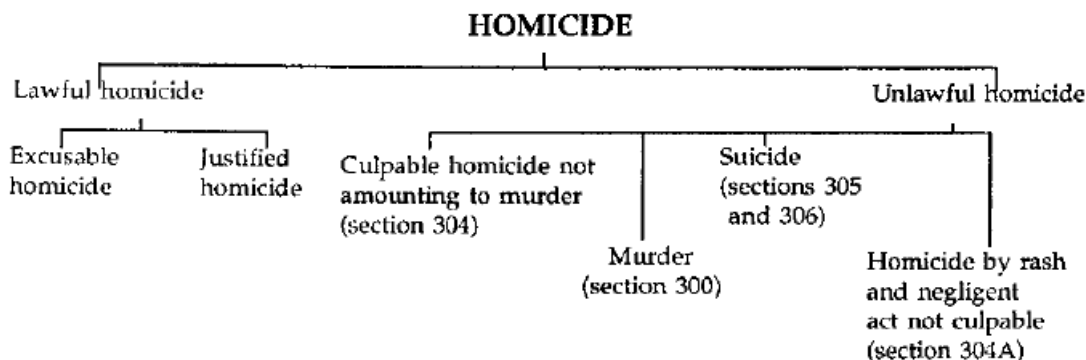
MEANING AND SCOPE OF 'HOMICIDE'

Critically evaluate the principle relating homicide under I.P.C.

Homicide is the highest order of bodily injury that can be inflicted on human body. The word 'homicide' comes from the Latin words 'homo' and 'cide' where 'homo' means man and 'ride' means 'I cut'. Homicide means the killing of a human being by a human being¹. However, every case of killing of a human being is not culpable (liable). There may be cases where the law will not punish a man for committing homicide, e.g., the death of a child in mother's womb is not homicide. If any part of the child in the womb has been brought forth, the death of living child may amount to culpable homicide, even though the child may not have breathed or been completely born².

CLASSIFICATION OF HOMICIDE

Homicide may be divided into the following heads:



1. See Stephen's A History of the Criminal Law of England, (1883) Vol. III, p. 1.

2. Explanation III to section 299 of Indian Penal Code.

CULPABLE HOMICIDE

Section 299 of the Indian Penal Code defines the term 'culpable homicide' in the following manner:

299. Culpable homicide

A, a Physical Training Instructor was acting as a referee in a friendly hockey match being played between class XI and class XII. X, an ex-student of the school, arrived on the ground and was very anxious to play the game but was not allowed by A. X snatched a hockey stick from a player and struck a blow on A's head with considerable force. A fell down and died instantaneously. What offence has been committed? Would it make any difference if A died due to failure to give prompt medical aid or due to head injury after 10 days in the hospital?

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.--

A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.--

Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.--

The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Ingredients of culpable homicide

'Culpable homicide' according to section 299, I.P.C. has the following ingredients:

1. Causing of death of a human being;
2. Such death must have been caused by doing an act;
3. The act must have been done:
 - (i) with the intention of causing death;
 - (ii) with the intention of causing such bodily injury as is likely to cause death; or
 - (iii) with the knowledge that the doer is likely by such act to cause death.

ANALYSIS OF SECTION 299

Assuming that the accused person had no intention to cause the death of the deceased, but had only the intention to cause bodily injury, explain when the accused may be held guilty of murder, culpable homicide not amounting to murder, or only voluntarily causing grievous hurt

Section 299 provides that, culpable homicide has wider spectrum than that of murder. Let us examine each phrase of this section one by one.

1. Whoever causes death.--

In this phrase, death means death of a human being and it does not include death of an unborn child. The offence of culpable homicide is complete as soon as any person is killed by the accused whose mental state is of the kind mentioned in ingredient No. 3 stated above, i.e. where the accused causes death by doing an act either with intention of causing such bodily injury which was likely to cause death or with the knowledge that

he was likely by such act to cause death.

The death must result as a proximate and not a remote consequence of the act of violence. There should not be the intervention of any considerable change of circumstances between the act of violence and the death. Where the injury caused on the top of the head was simple and the deceased himself did not take it seriously and did not go to the hospital but died three weeks after the occurrence due to sepsis consequent to the bad handling of the wound, this section was held to be not attracted; *Shobha v. Emperor*, AIR 1935 Oudh 446.

2. By doing an act.--

Death may be caused by a thousand and one means, such as by poisoning, drowning, striking, beating and so on and so forth. As per section 32, I.P.C. the word act has been given a wider meaning in the Code inasmuch as it includes not only an act of commission, but illegal omissions as well. Hence, death may be caused by neglect of duty, such as parent not supplying food and medical care to his child, a husband starving his wife; *Om Prakash v. State of Punjab*, MANU/SC/0125/1961 : AIR 1961 SC 1782. Therefore, death caused by illegal omission will also amount to culpable homicide. Where a jailor voluntarily causes death of a prisoner by omitting to supply him food, or a nurse voluntarily causes death of a child entrusted to her care by omitting to take it out of a tub of water into which it has fallen, or a jail doctor voluntarily causes death of a prisoner by omitting to supply him medical care, the gaoler, the nurse or the doctor shall be guilty of murder. A, unlawfully inflicted an injury on D's vital organ certain to result in death if not treated, as B the guardian of D (who was a minor) refused to get him medically treated because he desired A to be hanged for the murder of D. D, succumbed to the injury. Here B, the guardian would be liable for causing the death of the minor because he knew that by illegal omission to provide necessary medical aid he was likely to cause D's death.

3. (i) Intention to cause death.--

To attract the provisions of this section it suffices if the death of a human being is caused whether the person was intended to be killed or not. Intention means the expectation of consequence in question. The intention is an inference of law resulting from the doing of an act.

In *Dibia v. State*, MANU/UP/0172/1953 : AIR 1953 All 373 it was held that, causing serious injury on a vital part of the body of the deceased with the dangerous weapon must necessarily, lead to inference that the accused intended to kill.

An intention also includes foresight of certainty. A consequence is deemed to be intended thought. It is desired when it is foreseen as substantially certain.

(ii) With the intention of causing such bodily injury as is likely to cause death.--

The intention of the offender may not be to cause death, it would be sufficient if he intended to cause such bodily injury which was likely to cause death. The connection between the 'act' and the death caused by the act must be direct and distinct, and though not immediate it must not be too remote.

The expression 'intention to cause such bodily injury as is likely to cause death' merely means an intention to cause a particular injury, which injury is, or turns out to be, one likely to cause death. It is not the death itself which is intended, nor the effect of injury; *King v. Aung Nyug*, AIR 1940 Rang 259. It is not necessary that the consequences of the injury are foreseen, it would be sufficient that there is an intention to cause injury, which injury is likely to cause death.

Grover, J. has rightly emphasised in *Mohammed Hossein's case*, (1864) WR (Cr 131), that "it is indispensable that the death should be clearly connected with the act of violence, not merely by chain of causes and effects, but by such direct influence as is calculated to produce the effect without the intervention of any considerable change of circumstances". The difference between the two expressions 'intention of causing death' and 'intention of causing such bodily injury as it's likely to cause deaths' is a difference of degrees in criminality. The latter is a lower degree of criminality than the former. But as, in

both the cases the object is the same, the law does not make any distinction in punishment.

(iii) With the knowledge that he is likely by such act to cause death.--

Here, knowledge means the personal knowledge of a person who does the act. The word 'knowledge' is a strong word and imports a certainty and not merely a probability. Where the accused kicked the abdomen of B with such violence as to cause fracture of two ribs and rupture of the spleen which was normal B died. It was held that the accused knew that the abdomen is a most delicate and vulnerable part of the human body and should, therefore, be presumed to have kicked with the knowledge that by so kicking he was likely to cause death; *Mansel Pledell v. Emperor*, AIR 1926 Lah 813.

Sometimes even gross negligence may amount to knowledge.--

When a person acts negligently or without exercising the due care and caution, he will be presumed to have knowledge of the consequences arising from his act. Where A had gone to his father-in-law's house to fetch his wife. There was some quarrel between A and his brother-in-law B on the question whether his wife should accompany him by the night train the same day or by the morning train the next day as desired by their in-laws. During the quarrel A lost his temper and gave one blow with a knife on the chest of B which resulted in his death. It was held that A was guilty under the second part of section 304 for culpable homicide not amounting to murder because death was caused by doing an act with the knowledge that it was likely to cause death; *Queen Empress v. Kangla*, (1898) 18 AWN 163.

The intention or knowledge necessary in order to render the killing culpable homicide must be clearly proved by prosecution. The fact that such knowledge is accompanied by indifference whether death or serious injury results or not, makes no difference. Even if such intention is not proved the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his act to cause death; *Ram Kumar v. State of Rajasthan*, MANU/RH/0011/1970 : AIR 1970 Raj 60.

EXPLANATIONS TO SECTION 299, I.P.C.

A saw X lying motionless on the bed-room floor of his wife B's 10m Floor apartment Believing X to be dead and fearing his wife's involvement in the murder, A pushed X out of the window of the room to give an impression of suicide. X died due to multiple fractures and shock on account of the fall from the 10th Floor. Has A committed culpable homicide in terms of section 299, I.P.C.

Section 299, I.P.C. contains three Explanations. Let us discuss them one by one.

Explanation 1.--

A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

The first explanation reproduces the English rule; that an injury which accelerates the death of a dying person is deemed to be cause of his death if he knows that condition of the deceased was such that his act was likely to cause death.

This Explanation speaks that to invoke section 299, I.P.C. the court must be satisfied:

- (i) that the death at the time when it occurred, was not caused solely by the disease; and
- (ii) that it is caused by the bodily injury to the extent, that it is accelerated by such injury.

It is important that the accused knows that condition of the deceased was such that his act was likely to cause death. When the injury inflicted was not such as would cause his death but death resulted from rupture of spleen (which was considerably enlarged) and the accused has no knowledge of his ailment, the accused was held to be guilty of grievous hurt; *Megha Meeah*, (1865) 2 WR (CR) 30.

Explanation 2.--

Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

This Explanation deals with refusal of medical treatment for injury inflicted which could have asserted death as being a defence to the charge cannot be sustained.

In *R. v. Davis*, (1883) 15 Cox CC 174. A gave a blow to D, the injury to inflicted rendered an operation advisable. As a preliminary to the operation, chloroform was administered to D who died during its administration and it was agreed that the patient would not have died but for its administration. A was held liable for manslaughter because he had caused an injury which in the opinion of competent medical men necessitated the operation.

Explanation 3.--

The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

This Explanation provides that causing of death of child in the womb is not homicide. But it would be homicide to cause the death of a living child, if any part of that child has been brought forth though the child may not have breathed or been completely born. Thus, complete birth is not a requisite. Instead of an uncertain period which it would be difficult to define satisfactory and which would in many cases of infanticide, greatly add to the difficulty of proof a definite and readily ascertained point of time (that is, the time, when any part of the child is brought forth) is fixed to denote when the child may become a subject of culpable homicide.

MURDER (SECTION 300)

A, who was speeding past a police checkpoint in his car after committing a robbery, was required to stop by B, a police officer. While B was interrogating A, A suddenly gave a spanner blow on B's head mainly with a view to making good his escape. The spanner blow, given with considerable force, led to skull fracture and severe damage to the brain. B was taken to the hospital where two operations were performed to remove blood clots. B died in the hospital a week after the incident. The doctor certified that the Injury was sufficient in ordinary course of nature to cause death. For what offence can A be prosecuted? Give reasons.

X is cultivating agricultural land belonging to 1. A suit is pending before the Court for recovery of the said land. X alongwith his close ally Y intending to kill Z to keep the disputed land in his possession, plans and set fire to his thatched house by locking it from outside just before midnight and by preventing others from coming to his rescue in response to his "SOS" call amidst the rising fire. Z is roasted alive. What offence X and Y are guilty of.

The word 'murder' has been derived from the Germanic word 'mortna' which means 'secret killing'. According to early Germanic people a distinction was drawn between open killing and secret killing. Under English Law unlawful homicide may broadly be classified into (i) murder; and (ii) manslaughter¹. In Indian context, section 300 of the Indian Penal Code tells when the offence is 'murder' and when it is 'culpable homicide not amounting to murder'. To be more clear, culpable homicide is murder, if the act by which death is caused falls within any one of the four clauses mentioned in section 300, unless of course, the case comes under one of the five exceptions stated therein, the offence will amount to 'culpable homicide not amounting to murder'. To understand the simple but complex looking distinction, let us start our discussion with section 300, I.P.C.

300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done

with the intention of causing death, or--

Secondly.--

If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

Thirdly.--

If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--

Fourthly.--

If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.--

When culpable homicide is not murder.--

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

1. Pollock and Maitland History of English Law, 2nd Edn., Vol. II, p. 487.

The above exception is subject to the following provisos:--

First.--

That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--

That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.--

That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.--

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at V, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.--

Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.--

Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good

faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.--

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--

It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.--

Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Clause 1

In order to attract the provisions of clause (1) of section 300, I.P.C. the prosecution has to prove that very act, that was done with the intention to cause the death of the victim.

A question of intention is always a matter of fact. Once intention of causing death is proved, culpable homicide amounts to murder unless any of the exception is applied; Rajwant Singh v. State of Kerala, AIR 1966 SC 1874. Intention can rarely be proved by direct evidence, when facts are so entertained, determining whether it is culpable homicide and then finding out separately whether it amounts to murder may not be convenient; State v. Rayavarapu Punnayya, 1977 Cr LJ 1.

Where the accused sets fire to the room in which the victim was sleeping and the room was locked from outside and the villagers were prevented from rendering help, the intention to kill is fully made out; Rewalpenta Venkalu v. State of Hyderabad, AIR 1956 SC 171. Intention can also be inferred from the acts of the accused - namely nature of the weapon used, the part of the body where injury is inflicted, the force of the blow, etc. Stabbing wife with the aid of torch, in the middle of the back with such force as to penetrate the spinal cavity - the intention could only have been to kill her; Ghasi Ram v. State of Bhopal, AIR 1952 Bhopal 25.

In Maqbool v. State of A.P., MANU/SC/0472/2010 : AIR 2011 SC 184, in this case the appellant murdered and cash snatched away from deceased. Incident taking place near house of deceased. Evidence by wife and employee were truthfully describing events without exaggeration and can't be discarded on ground of interested witnesses. A faulty investigation where IO failing to collect blood stained earth from place of incident. After three fire on deceased the accused snatch his bag and run away. Appeal dismissed and judgment upheld by the Supreme Court.

Clause 2

This clause deals with cases where the intention is to kill the person even though the injury is not fatal in the ordinary

course of nature but is fatal in the case of that person, by reasons of knowledge of the accused as regards the physical infirmity, disease of the person's sub-normal state of health and his special physical condition; Rahaman Samail v. Emperor, AIR 1939 Lah 2450.

Clause 3

"To hold an accused guilty of murder under clause (3) of section 300, I.P.C., the prosecution must prove that there was an intention to inflict that particular injury, that is to say that the injury was not accidental or unintentional or that some other kind of injury was intended, and that particular injury was sufficient in the ordinary course of nature to cause death." Examine

The third clause of section 300 speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. Sufficiency is the high probability of injury to cause death. Sufficiency is the high probability of death, depending upon the nature of weapon used, on the part of the body where the injury is inflicted or both. If the injury is not such as would cause death i.e. if the probability is not so high the offence will not fall under section 299 or even a lesser offence.

Supreme Court in the case of Virsa Singh v. State of Punjab, MANU/SC/0041/1958 : AIR 1958 SC 465 observed that to bring the case under this part of the section the prosecution must establish objectively:

- (1) That a bodily injury is present;
- (2) That the nature of injury that must be proved;
- (3) It must be proved that there was an intention to inflict that particular bodily injury;
- (4) That the injury inflicted is sufficient to cause death in the ordinary course of the nature (this is purely objective).

Once these four elements are established by the prosecution then the offence is committed under clause 3 of section 300, I.P.C.

Clause 4

Clause 4 of section 300, I.P.C. is usually applied to cases where the act of the offender is not directed against any particular person. What this clause contemplates is the imminently dangerous act which in all probability is done, without any intention to kill a particular person but with knowledge that death is very likely and that such act is done without any excuse. This clause is usually invoked in cases where there is no intention to cause death of any particular individual. The clause is applied in cases where there is such closeness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death. The explosion of a bomb in a crowded room must have been known to the accused that it would cause death and the fact that the accused had no intention of killing a particular person does not take the case outside the preview of clause (4); State of Madhya Pradesh v. Ram Prasad, MANU/SC/0084/1967 : AIR 1968 SC 881.

DISTINCTION BETWEEN SECTIONS 299 AND 300, I.P.C.

"There is a thin line difference between the offence of murder and culpable homicide not amounting to murder because the difference is merely a question of degree of probability of death ensuing." In the light of the above statement explain the distinction between clause (2) of section 299 and clause (3) of section 300 with the help of Illustration and decided cases.

"There is a thin line difference between the offences of murder and culpable homicide not amounting to murder because the difference is merely a question of degree of probability of death ensuing." In the light of the above statement explain the distinction between clause (2) of section 299 and clause (3) of section 300 with the help of illustrations and decided cases.

Dwell on the difference between (a) culpable homicide amounting to murder and (b) culpable homicide not

amounting to murder.

The distinction between sections 299 and 300 was made clear by Melvill, J. in R. v. Govinda, (1876) ILR 1 Bom 342. In this case the accused had knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extraversion of blood on the brain and she died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death.

The accused was liable for culpable homicide not amounting to murder.

For the purposes of comparison and bringing out the distinction clearly section 299 and section 300 may be put as follows:

Section 299	Section 300
A person commits culpable homicide by which the death is caused.	Except in the cases if the act hereinafter excepted is done. Culpable homicide is murder if the act by which death is caused is done.
INTENTION	
(a) With the intention of causing death;	(1) With the intention of causing death;
(b) With the intention of causing such as is likely to cause death;	(2) With the intention of causing such bodily injury as the offender known to be likely to cause the death of the person to whom the harm is caused;
	(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;
KNOWLEDGE	
(c) The knowledge that he is likely by such act to cause death.	(4) With the knowledge that the Act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

(1) Section 300 begins with the words "except in the cases hereinafter excepted culpable homicide is murder." This means that culpable homicide is not murder if the case falls within any of the exceptions mentioned in section 300.

(2) Whenever there is an intention to cause death it would always be a case of murder unless the case falls within one of the exceptions to section 300.

(3) The essence of distinction between clause (b) of section 299 and clause (2) of section 300 lies in the knowledge on the part of the offender that the person harmed is likely to die. The offence is murder if the offender knows that the particular person injured is likely, either from peculiarity or constitution, or immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death. The distinction is made clear by illustration (b) to section 300. This clause is intended to meet cases of emerged spleen and liver which may be easily ruptured by a blow of no great violence in which case the degree of criminality depends upon the knowledge of the offender of these facts. Clause (b) of section 299 postulates no such knowledge.

(4) A comparison of clause (b) of section 299 with clause (3) of section 300 would show that the offence is culpable homicide if the bodily injury intended to be inflicted is likely to cause death; it is murder if such injury is sufficient in the ordinary course of nature to cause death. The distinction is fine but appreciable. The decision of most of the doubtful cases depends on a comparison of these two clauses. The word "likely" means

"probably". When the chances of a thing happening are greater than its not happening, we say the thing will "probably" happen. When the chances of its happening are very high, we say that it will "most probably" happen. An injury sufficient in the ordinary course of nature to cause death only means that "death will be the most probable result of the injury having regard to the ordinary course of nature". The expression does not mean that death must result. Thus the distinction between clause (b) of section 299 and clause (3) of section 300 would depend very much upon the degree of probability or likelihood of death in consequence of the injury. As Melvill, J. has observed: "Practically it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or stick on a vital part may be likely to cause death", a wound from a sword on a vital part is sufficient, in the ordinary course of nature, to cause death. It may be pointed out that it is not so much the nature of the weapon used as the nature of the injury inflicted that would determine the difference here made. The weapon may be the same, but it may cause injuries of different proportions. It depends upon the constitution of the man, the part of the body injured and the degree of violence used.

(5) Clause (c) of section 299 and clause (4) of section 300 appear to apply to cases in which there is no intention to cause death or bodily injury but knowledge that the act is dangerous and, therefore, likely to cause death. Both clauses require knowledge of the probability of the act causing death. Clause (4) requires knowledge in a very high degree of probability.

(6) The distinction between the offences of culpable homicide and murder is the presence of special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These attitudes are stated in section 300, I.P.C. as distinguishing murder from culpable homicide not amounting to murder; *Subhash Shamrao Pachunde v. State of Maharashtra*, IV (2005) CCR 316 (SC).

(7) The following factors are necessary:--

- (i) That the act is imminently dangerous;
- (ii) That in all probability it will cause death or such injury as is likely to cause death; and
- (iii) That the act is done without any excuse for incurring the risk.

Whether the offence is culpable homicide or murder, depends upon the degree of risk of human life. If death is likely result, it is culpable homicide; if it is the most probable result, it is murder.

PUNISHMENT FOR MURDER

The penal section of section 300 is section 302. Section 302 reads:

302. Punishment for murder

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Therefore, section 302 provides two alternative punishments for murder,

viz.,

- (i) Death sentence; or
- (ii) Imprisonment for life.

The legislature has left to the court to award the appropriate punishment in a case of murder as it deem fit.

In *Bachan Singh v. State of Punjab*, MANU/SC/0111/1980 : AIR 1980 SC 898 the Supreme Court by a majority of four to one held that, the provision of death penalty as an alternative

punishment for murder under section 302 of I.P.C. is not unreasonable and is in the public interest. The court laid down the following propositions:--

- (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the offender is also required to be taken into consideration along with the circumstances of the crime.

(iii) Life imprisonment is the rule and the death sentence is the exception. In other words, the death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and (provided and only provided) the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and taking into account all the relevant considerations.

(iv) A balance sheet of aggravating and mitigating circumstances have to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance struck between the aggravating and the mitigating circumstances before the option is exercised.

EXCEPTION TO THE OFFENCE OF MURDER

What are the exceptions to the offence of Murder?

As discussed earlier, section 300, I.P.C. after laying down the cases in which culpable homicide becomes murder, states certain exceptional situations under which, if murder is committed, it is reduced to culpable homicide not amounting to murder punishable under section 304, I.P.C. and not under section 302, I.P.C. The five exceptions specified in this section are special exceptions in addition to the general enumerated in Chapter IV of the Penal Code. The five special exceptions are; (1) Provocation; (2) Right to Private defence; (3) Public servant exceeding his powers; (4) Sudden fight; and (5) Consent.

The abovementioned extenuating circumstances do not offer complete vindication of the conduct of the accused. But they do reduce the impact of gravity of the offence since dictates of humanity and reason prescribe such cases as fit grounds for mitigation.

PROVOCATION (Exception 1)

Exception 1 to section 300, I.P.C. reads:

Exception 1.--

When culpable homicide is not murder.--Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:--

Firstly.--

That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--

That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.--

That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Essential Ingredients

What are the essential ingredients of exception 1 to section 300 I.P.C.?

The Code has listed under Exception 1 to section 300, I.P.C. the circumstances under which the offence of murder will be reduced to 'culpable homicide not amounting to murder' punishable under section 304, I.P.C. if the murder is committed or provocation adduced by the deceased. The following conditions must be complied with in order to invoke the benefit of this clause:--

- (1) The deceased must have given provocation to the accused.
- (2) The provocation must be such as would deprive any reasonable man of his power of self-control over himself.
- (3) The act of killing of the accused must have been done when he was deprived of his power of self-control by the grave and sudden provocation. It must be done under the immediate impulse of provocation.
- (4) The offender must not have reflected, deliberated or cooled, between the provocation and the mortal stroke. Thus, there must not be sufficient time for the passion caused by the provocation to cool down and reason to reassert its control; *Datta Gem v. State of Maharashtra*, MANU/SC/0102/1973 : AIR 1974 SC 387.
- (5) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

The First exception is however subject to three exceptions:

- (a) Where the accused courts provocation or merely uses it as an excuse for assaulting another. In other words, provocation must come to him and he must not seek to get provocation.
- (b) Where the act is legal but is done in an illegal manner which offers sufficient provocation, killing in pursuant there is no murder.
- (c) A person who acts in the exercise of his right of self-defence performs a legal act and may provoke another and if he retaliates on account of the provocation so received, it will not be an extenuation of this crime.

Explanation to Exception 1

The Explanation makes it clear that the question whether the provocation is sudden or grave enough to prevent the offence from amounting to murder is a question of fact i.e. whether a reasonable person in the circumstances of a particular case would have committed the offence under a grave and sudden provocation.

K.M. Nanavati's case

Discuss the law laid down by the Supreme Court in K.M. Nanavati case

On A's reaching home after a long absence his wife confessed that she had developed intimacy with his friend and was carrying his child in her womb. A was shocked but did not display any external signs of his shock. However, he did neither eat or drink anything nor talked to any one thereafter. Three hours after the incident, A drove his wife to her mother's house and left her there. From there he went to his friend's house and on his opening the door shot him without any argument Can A successfully plead grave and sudden provocation mitigation. Argue with the help of decided cases

In *K.M. Nanavati v. State of Maharashtra*, MANU/SC/0147/1961 : AIR 1962 SC 605 the fact of the case was, the accused, a naval officer was charged with the murder of Prem Ahuja, a businessman of Bombay, for having illicit intimacy with his wife, Sylvia. On coming to know from his wife about the illicit relationship with the deceased, he went to the ship, took from the stores a semi-automatic revolver and six cartridges on a false pretext, loaded the same, went to the flat of Ahuja to his bedroom and shot him dead after a heated exchange of words.

Issues Involved:

'In the present context the only question relevant for our purpose is whether the appellant was deprived of

power of self-control by sudden and grave provocation, thus covering the offence under Exception I to section 300, I.P.C.?

Decision:

It was contended on behalf of the appellant that the act of Ahuja, namely the seduction of Sylvia, gave provocation though the fact of seduction was communicated to the accused by Sylvia. For the ascertainment of the suddenness of the provocation it is not the mind of the person who provokes that matters but that of the person provoked is decisive. On behalf of the State it was argued that though a confession of adultery by a wife may in certain circumstances be provocation by the paramour himself, under different circumstances it has to be considered from the standpoint of the person who conveys it rather than from the standpoint of the person who gave it. It was further contended that even if the provocation was deemed to have been given by Ahuja, and though the said provocation might have been grave it could not be sudden, for the provocation given by Ahuja was only in the past.

It was observed that--

- (i) The test of 'grave and sudden provocation' is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed, would be so provoked as to lose his self control.
- (ii) In India, words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first exception to section 300 of I.P.C.
- (iii) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence; and
- (iv) The fatal blow should be clearly traced to the influence of passion arising from the provocation and not after the passion has cooled down by lapse of time, or otherwise giving the accused room and scope for premeditation and calculation.

It was held that, between 1.30 P.M. when he left his house, and 4.20 P.M. when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. His conduct clearly showed that the murder was deliberate and calculated one. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. Conviction of the accused under section 302, I.P.C. and sentence of imprisonment for the life was upheld.

RIGHT TO PRIVATE DEFENCE (Exception 2)

Exception 2.--

Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 2 to section 300, I.P.C. is applicable to those cases wherein a person exceeds the right of private defence. If the excess is intentional, the offence is murder, if unintentional, it is culpable homicide not amounting to murder.

It is a cardinal principle of the law of right of private defence that the accused must be free from fault in bringing about an encounter; there must be present an impending peril to life or of great bodily harm, either real or apparent. The right of private defence is purely preventive and not punitive or retributive; Kirpal Singh v. State, AIR 1951 SC 137.

Four cardinal conditions must have existed before the taking of the life of a person is justified on the plea of self-defence; Firstly the accused must be free from fault in bringing about the encounter; Secondly, there must be present an impending peril to life or of great bodily harm either real so apparent as to create honest belief of an existing necessity; Thirdly, there must be no safe or reasonable mode of escape by retreat; and Fourthly, there must have been a necessity for taking life; Balbir Singh Balwant Singh v. State of Punjab, 1959 Cr LJ 901 (SC).

Jassa Singh case

Discuss the ratio laid down by the apex Court in Jassa Singh case.

In Jassa Singh v. State of Haryana, MANU/SC/0008/2002 : (2002) 2 SCC 481 the fact of the case was, dispute of land arose between deceased Surmukh Singh and the accused Jassa Singh @ Jaswant Singh (appellants). At about 6.00 p.m. when Surmukh Singh and Narinder Singh were sitting on the boundary of the held, all the appellants came there. While appellants Jassa Singh, Bakha Singh and Sukha Singh were armed with guns, other accused persons were having gandasis with them. Labh Singh and Jassa Singh made exhortations to kill Surmukh Singh, the Sarpanch. Gurmukh Singh and his deceased brother, Surmukh Singh made an appeal to the appellants not to pick up a quarrel and that they may settle the dispute in court. But the appellants advanced towards the tractor driven by Gurvinder Singh and Jassa Singh fired a shot at Surmukh Singh. The appellant Bakha Singh also fired a shot at Surmukh Singh. Surmukh Singh fell down on the ground.

The appellant Sukha Singh also fired a shot at Surmukh Singh with his 12 bore gun.

The appellants Jassa Singh, Kabul Singh, Jeet Singh, Labh Singh, Lakha Singh, Sarang Singh, Satnam Singh and Swaran Singh started attacking Surmukh Singh with their gandasis. The appellants Bakha Singh and Sukha Singh fired shots at others also and some of them took shelter behind the ridge of the field. Thereafter, all the accused persons went away from the scene. Contended that the appellants were entitled to exercise their right of private defence as Surmukh Singh and others had trespassed into the property possessed by Jassa Singh and caused mischief by destroying the standing crops.

Issue:

Does the act of the appellant persons comes within the Exception 2 to section 300 of I.P.C.?

Decision:

It was held by the Supreme Court that, Right of private defence is a valuable right and it is basically preventive in nature and not punitive. Sections 96 to 104 lay down the general principles governing the right of private defence. Section 96, I.P.C. lays down that nothing is an offence which is done in the exercise of the right of private defence and section 97 proceeds to divide the right of private defence into two parts--the first part relating to private defence of his own body, and the body of any other person, against any offence affecting him and the second part deals with the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass. Here the matter is concerned with the private defence of property. Section 103, I.P.C. states that the right of private defence may even extend to causing death, but this right of private defence can be exercised only as against certain criminal acts which are enumerated in that section. The right of private defence of property would extend to causing death only in the case of robbery, breaking into house by night; mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as place for the custody of property. It is further stated that in the case of theft, mischief or house-trespass these offences must have been committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence. Though private defence is available in respect of criminal trespass or mischief as against the property owned by himself or of any other person, but criminal trespass is not enumerated as one of the offences under section 103, I.P.C. Therefore, the right of private defence of property will not extend to the causing of death of the person who committed such acts, if the act of trespass is in respect of an open

land. Only a house-trespass committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence is enumerated as one of the offences under section 103.

In this case, the appellants went to the place of occurrence with guns and deadly weapons. This clearly indicated that there was premeditation on the part of the appellants and from the acts committed by the appellant, it is evident that they had intention of doing more harm than was necessary for the purpose of self-defence. Therefore, the acts committed by the appellants will not come within Exception 2 of section 300, I.P.C. so as to make it culpable homicide not amounting to murder.

CULPABLE HOMICIDE WHEN PUBLIC SERVANT EXCEEDS HIS POWERS (Exception 3)

Write short note on culpable homicide when public servant exceeds his powers

Exception 3.--

Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

This exception has been provided to protect a public servant or a person aiding a public servant, if either of them exceeds the power given for the advancement of public justice. This exception clause will not apply if the act is illegal or against public policy and not authorised by law, or the person glaringly exceeds the power given to him by law. However, to invoke this exception it must fulfil the following:

- (1) The person accused must be a public servant.
- (2) He must believe in good faith that the act which resulted in the death was lawful and necessary for the due discharge of his duties.

Where a suspected thief who has been arrested by a police officer escapes by jumping down from the train from its off side and the police officer finding

that he is not in a position to apprehend him, shoots at him but in doing so hits the fireman and kills him; it was held that the case is covered by exception 3 to section 300, I.P.C. and the accused is guilty of culpable homicide not amounting to murder; *Dukhi Singh v. State*, MANU/UP/0109/1955 : AIR 1955 All 379.

SUDDEN FIGHT (Exception 4)

Exception 4.--

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--

It is immaterial in such cases which party offers the provocation or commits the first assault.

In this exception, if the death is caused without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in cruel or unusual manner. It is immaterial in such cases which party offers the provocation or commits the first assault. The conditions necessary for the application of this exception; *Subhash Shamrao Pachunde v. State of Maharashtra*, IV (2005) CCR 316 (SC), are:--

- (i) There must be a sudden fight;
- (ii) The act must have been committed in a heat of passion;
- (iii) The act must have been committed without pre-meditation;

- (iv) The accused must not have taken undue advantage;
- (v) The accused should not have acted in a cruel manner; and
- (vi) The fight must have been with the person killed.

Sukhbir Singh case

Discuss critically the law laid down in Sukhbir Singh case

In *Sukhbir Singh v. State of Haryana*, MANU/SC/0116/2002 : (2002) 3 SCC 327 the fact of the case is, one Gulab Singh brother of the deceased, had come to his brother's residence where they were smoking hukka and chatting. Ram Niwas, son of Lachhman (deceased) was sweeping the street in front of his house with a broom and that some mud splashes stuck Sukhbir Singh at a time when he was passing in the street. Sukhbir Singh felt offended and is alleged to have abused Ram Niwas. When Sukhbir Singh and Ram Niwas were abusing each other, Lachhman separated them and gave two slaps to Sukhbir Singh. Sukhbir Singh went away declaring that a lesson would be taught to them. After sometime all the 9 accused persons came at the spot. Sukhbir Singh, Behari and Ram Chander, accused were carrying bhalas, accused Pala, Tara and Baijit were carrying gandasas and accused Kidara, Darya and Raj were carrying jailwas. Sukhbir Singh challenged Lachhman to come out so that a lesson could be taught to him. When Lachhman proceeded towards the door of his house saying that the matter should not be aggravated and as soon as he reached the door of his house, accused Sukhbir Singh gave two thrust-blows with his bhala on the upper-right portion of his chest. Lachhman fell down, whereafter accused Ram Chander caught hold of the legs of Lachhman and dragged him out in the street. Accused Behari gave a bhala-blow on the left side of the chest of Lachhman.

Issue; Whether under the facts and circumstances of the case the accused can avail that benefit of Exception 4 of section 300 of I.P.C.?

Decision:

It was held by the Supreme Court that, to avail the benefit of Exception 4, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally a man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the courts that a fight is not per se palliating circumstance and only unpremeditated fight as such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception.

In the instant case, concededly, there was no enmity between the parties and there is no allegation of the prosecution that before the occurrence, the appellant and others had premeditated. As noticed earlier, the occurrence took place when Sukhbir Singh got mud splashes on account of sweeping to the street by Ram Niwas and a quarrel ensued. The deceased gave slaps to the appellant for no fault of his. The quarrel appeared to be sudden, on account of heat of passion. The accused went home and came armed in the company of others though without telling them his intention to commit the ultimate crime of murder. The time gap between the quarrel and the fight is stated to be a few minutes only. According to Gulab Singh when Sukhbir Singh was passing in the street and some mud got splashed on his clothes, he abused Ram Niwas. They both grappled with each other whereupon Lachhman (deceased) intervened and separated them. Accused Sukhbir had abused Lachhman who gave him two slaps. The said accused thereafter went to his home after stating that he would teach him a lesson for the slaps which had been given to him. After some time he, along with other accused persons, came at the spot and the fight took place. His own house is at a different place. There is a street in between his house and the house of Lachhman (deceased). On the northern side of his house, the house of the appellant is situated. Similarly Ram Niwas has stated that after the quarrel the accused went

towards his house and within a few minutes he came back with other accused persons. It is, therefore, probable that there was no sufficient lapse of time between the quarrel and then fight which means that the occurrence was "sudden" within the meaning of Exception 4 of section 300, I.P.C.

Suresh Chandra case

In *Suresh Chandra v. State of Uttar Pradesh*, MANU/SC/0435/2005 : AIR 2005 SC 3120, it was argued that the incident had happened without any premeditation or prior concert, upon a sudden quarrel and the resultant attack on the victims was unintentional and therefore, the offence would appropriately fall under Exception 4 punishable under section 304, Part I or II.

It was held by the apex Court that, though there was absence of premeditation and it was a case of sudden fight, that is not sufficient to bring the offence committed by the accused within the purview of Exception 4. The further requirement of Exception 4 that the offender should not have taken undue advantage or acted in a cruel or unusual manner should be satisfied. The very fact that accused used the firearms in the course of a frivolous quarrel, would demonstrate beyond doubt that the appellants acted in a cruel manner and it would further demonstrate the intention to cause death or at any rate, to cause a bodily injury of the nature mentioned in clause thirdly of section 300, Such intention is writ large on the acts done by the accused. Thus, it is a case in which clauses I to III of section 300, I.P.C. are attracted and Exception 4 would not come to the rescue of the accused.

Dhirabhai case

Discuss the law laid down by the Supreme Court in Dhirabhai case.

What do you mean by expression 'undue advantage' as used in the provision?

In *Dhirajbhai Gorakhbhai Nayak v. State of Gujarat*, MANU/SC/0500/2003 : (2003) 9 SCC 322 the fact of the case is, Dahiben and the deceased were staying in Dhastrupura in the city of Sural with her two sons Dhanesh and Narendra. About 10 days prior to the date of occurrence the accused (appellant) had taken his small daughter to the in-law house and had kept her there. On his return, the deceased scolded him for leaving a small child at a distant place and the accused was very angry for this interference in his personal matters and that led to quarrels--first verbal and then physical. Subsequently, on the date of occurrence at about 1.30 p.m. when the deceased was sitting in a temple the accused warned him and challenged him, saying that if he wanted to fight he was ready for the same. This resulted in exchange of words and a fight. Residents of the locality and Dahiben separated them. In the evening Nanabhai a friend of the deceased came to the house of the deceased and told Dahiben that since a quarrel was going on in the house, he would take the deceased for seeing a movie. Dahiben agreed and both Nanabhai and the deceased went to see a movie late at night. As it was midnight when they got back the deceased slept in the verandah of the house while Dahiben and Dhanesh slept inside the house. At about 4.00 a.m. in the morning on hearing shouts for help Dahiben opened the door and went outside. In the meantime Dhanesh also woke up and he joined his mother outside the house. They saw the deceased in bleeding condition. They also found the accused-appellant delivering blows on the deceased. Dahiben called out his name and asked him as to why he was doing this and if there was any problem that could be sorted out in the morning. The appellant on hearing this immediately ran away. Dahiben went out and asked for help from the neighbours. Many of them came to her house. The deceased was taken to the hospital where he breathed his last at about 4.45 a.m.

Issue:

Whether Exception 4 of section 300 is applicable in this case?

Decision:

The Supreme Court observed that, for bringing in Exception 4 in operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The fourth Exception of section 300, I.P.C. covers act 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 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. There is provocation in Exception 4 as in Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation and it is difficult to apportion the share of blame, which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to section 300, I.P.C. is not defined in I.P.C. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden or not, must necessarily depend upon the proved facts of each case.

For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

It was held that the Exception 4 of section 300 has no application to the facts of the present case.

For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression 'undue advantage' as used in the provision means "unfair advantage".

It was held that the Exception 4 of section 300 has no application to the facts of the present case.

DEATH BY CONSENT (Exception 5)

Exception 5.--

Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Mere, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

This last exception to section 300, I.P.C. deals with causing death by consent which is nowadays very popular in terms of 'euthanasia' (mercy killing). The exception is justified on the ground that a man's life is not only valuable to himself, but also to the State.

The infliction of harm with the consent of the sufferer falls in the general exception (Sections 87 to 93) but under those sections death cannot be consented to. But under this exception if death consented to, then in such a case the person who kills shall be guilty of culpable homicide but not murder. The person giving such a consent must be above 18 years of age. This exception has to be strictly construed. Unless all the facts and circumstances are taken into

account by the person who consents to be killed this Exception cannot be invoked. The consent must be unconditional.

Dasrath Paswan case

In *Dasrath Paswan v. State of Bihar*, MANU/BH/0071/1958 : AIR 1958 Pat 190 the accused was a student of class X. He had failed at the annual examination for three years in succession. The accused was very upset and depressed. He took his last failure so much to heart that he decided to end his life and informed his wife, an illiterate woman of about 19 years of age, of his decision. His wife asked him first to kill her and then kill himself. In accordance with the pact the accused killed his wife first, but was arrested before he could kill himself. It was held by the Supreme Court that, the deceased was above the age of 18 years and that she had suffered death with her own consent. The deceased did not give the consent under the fear of injury, nor under misconception of fact, but voluntarily, and so the case would fall under Exception 5 to section 300, I.P.C.

CULPABLE HOMICIDE BY CAUSING DEATH OF PERSON OTHER THAN PERSON WHOSE DEATH WAS INTENDED (SECTION 301)

301. Culpable homicide by causing death of person other than person whose death was intended

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Principle of Transfer of Malice

Section 301, I.P.C., embodies the principle of transfer of malice or transmigration of malice/motive e.g. Where A aims a shot at B in order to kill him but it misses B and hits some other person C, whether within sight or out of sight, A is deemed to have hit C with the intention to kill and the case will be covered under this section.

In *Shankarlal Kachrabhai v. State of Gujarat*, MANU/SC/0083/1964 : AIR 1965 SC 1260 the Supreme Court held that, if the accused shoots at a particular person with the intention of killing him though under a misapprehension of his identity, shoots another the ingredients of sections 299 and 300 of I.P.C. are satisfied. Similarly, there will be no difference when the injury intended for one falls on another by accident. If 'A' makes a thrust at 'B' meaning of kill, and 'C' throws himself between, receives the thrust and dies, 'A' will be liable for killing 'C' as though he had intended to kill 'C'.

PUNISHMENT FOR MURDER (SECTION 302)

Section 302, I.P.C. is the penal section of murder; it reads:

302. Punishment for murder

Discuss the provision in I.P.C., provides for the punishment for murder

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Therefore, section 302 provides two alternative punishments for murder, viz., death sentence or imprisonment for life. The legislature has left to the Court to award the appropriate punishment in a case of murder according to its wisdom.

In *Bachan Singh v. State of Punjab*, MANU/SC/0111/1980 : AIR 1980 SC 898 the Supreme Court by a majority of four to one held that, the provision of death penalty as an alternative punishment for murder under section 302 of I.P.C. is not unreasonable and is in the public interest. The court laid down the following propositions:--

- (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
- (ii) Before opting for the death penalty the circumstances of the offender is also required to be taken into consideration along with the circumstances of the crime.

(iii) Life imprisonment is the rule and the death sentence is the exception. In other words, the death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and (provided and only provided) the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and taking into account all the relevant considerations.

(iv) A balance sheet of aggravating and mitigating circumstances have to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance struck between the aggravating and the mitigating circumstances before the option is exercised.

In *Rameshbhai Chandubhai Rathod v. State of Gujarat*, MANU/SC/0075/2011 : AIR 2011 SC 803, the Supreme Court held appellant taking the girl with him on his bicycle. Appellant made an extra-judicial confession that he had raped and killed the child. Dead body recovered from the place of incident. High court dismissed the appeal and confirmed the death sentence. Case fell within the category of the rarest of rare cases. Deceased was a helpless child of tender age and the accused being a watchman in the building, was in a position of trust and as the murder and rape was brutal, so the death sentence was the only adequate one. At the same time the gravity of the offence, the behaviour of the appellant and the fear and concern such incidents generate in ordered society, cannot be ignored. Supreme Court confirm the conviction and commute the death sentence into that of life imprisonment.

In *Chirra Shivraj v. State of Andhra Pradesh*, MANU/SC/0992/2010 : AIR 2011 SC 604 the Supreme Court held that where deceased received burn injuries and FIR registered under section 307. Due to septicemia on account of burn injuries deceased expired and second FIR registered under section 302, IPC. It was no necessity to register anew FIR. It was a mistake by SHO but no prejudice had been caused to accused. There were no defect in entire investigation so no possibility to acquittal of accused. Dying declaration before judicial officer sufficient for conviction.

PUNISHMENT FOR CULPABLE HOMICIDE NOT AMOUNTING TO MURDER (SECTION 304)

304. Punishment for culpable homicide not amounting to murder

Discuss the provision in I.P.C., provides for the punishment for culpable homicide not amounting to murder

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 304, I.P.C. creates no offence but prescribes the punishment for culpable homicide not amounting to murder and draws a distinction in the penalty to be inflicted.

(a) when the act would have amounted to murder but for its having fallen within one of the Exceptions to section 300, I.P.C., and

(b) in those cases when there is knowledge that death will be a likely result but intention to cause death or bodily injury is absent.

The sentence varies according to the offenders' intention or knowledge, ranging from imprisonment for life to a mere fine.

Elements of section 304.--

Section 304, I.P.C. divides the offence of culpable homicide not amounting to murder into two categories according to intensity and gravity of the crime for the purpose of awarding sentence. In one case, (which is more serious and more

grave in nature) the liability is proved on the basis of intention to be inferred from all the circumstances; whereas in the other case (of less serious nature) liability does not depend on intention.

That is to say, in Part I to section 304, I.P.C. intention is the basis of liability for determining the guilty. It applies where the accused causes bodily injury with the intention to cause death or with intention to cause such bodily injury as is likely to cause death.

On the other hand, in Part II to section 304, I.P.C., knowledge is the basis of punishment. It comes into operation when the death is caused by doing an act with the knowledge that it is likely to cause death as stated in clause (3) to section 299, I.P.C.

In *Gurdial Singh v. State of Punjab*, MANU/SC/0074/2011 : AIR 2011 SC 840, in this instant case three appellants armed with gandasi and other two with dangs caused injuries to deceased. Weapons used for common use which are normally carried by villagers. Accused had used Gandasi from its blunt side confirmed by the doctor. No prior intention to commit murder; incident happened all of sudden when deceased objected to construction of drain by accused. All accused are liable for offence under section 304, Part 1 read with section 34, IPC. Trial Court convicted and sentenced to life imprisonment. The High Court dismissed the appeal, but the Supreme Court's view that they have already undergone about 5 years of sentence, so keeping in view sentence of 5 year is sufficient.

In *Dayal Das v. State of Rajasthan*, MANU/SC/0326/2011 : AIR 2011 SC 1361, where Supreme Court held that Culpable Homicide not amounting to murder where death caused by consuming illicit liquor. It is nowhere mentioned in entire evidence that liquor was purchased by deceased from shop of accused. When liquor consumed by deceased at shop of accused was not sent for chemical examination, conviction of accused cannot be sustained on the basis of statement that deceased was seen drinking liquor at shop of accused. Supreme Court have no hesitation at the conclusion that both Trial Court and High Court erroneously read the statement and unfortunately led to the conviction of the appellant. Appeal allowed and conviction of appellant set aside.

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Chapter 9

HOMICIDE BY RASH OR NEGLIGENT ACT

The Original Penal Code had no provision for punishment in those cases where a person causes death of another by negligence. That is to say, liability for causing death was limited only to cases of murder and culpable homicide not amounting to murder. To fill this gap, section 304A was inserted in the Penal Code by the Indian Penal Code (Amendment) Act 27 of 1870 to cover those cases wherein a person causes the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. Section 304A, I.P.C. deals with homicide by rash and negligent act.

Section 304A, I.P.C. reads:

304A. Causing death by negligence

Q. Explain the terms negligence and rashness under IPC

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Essential Ingredients

Explain the doctrine of contributory negligence

To bring a case of homicide under section 304A, I.P.C. the following conditions must exist, viz.:

- (i) There must be death of the person in question;
- (ii) The accused must have caused such death; and
- (iii) That such act of the accused was rash and negligent and that it did not amount to culpable homicide.

This section applies where there is a direct nexus between the death of a person and the rash or negligent act. The act must be the causa causans, it is not enough that it may have been the causa sine qua non.

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to its consequences i.e. without belief in the result of such doing.

Criminal negligence, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to a particular individual, which having regard to all

Explain the terms negligence and rashness under IPC

the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted; *Bala Chandra v. State of Maharashtra*, MANU/SC/0042/1968 : AIR 1968 SC 1319.

A rash act is primarily an overhasty act and is opposed to a deliberate act, even if it is partly deliberate act; it is done without due thought and action. An illegal "omission" if negligent, may come under this section.

The doctrine of contributory negligence does not apply to the criminal liability. Where there is ample proof that the accused had brought about the accident by his own negligence and rashness, it does not matter whether the deceased was deaf, or drunk, or in part contributed to his own death.

However, this section does not apply to the following cases:

- (i) death is caused with any intention or knowledge (voluntary commission of offence),

- (ii) in other words, the act must not amount to culpable homicide,
- (iii) death has arisen from any other supervening act or intervention which could not have been anticipated.
- (iv) in other words, death was not the direct or proximate result of the rash or negligent act,
- (v) death occurred due to an accident e.g., where an accused on dark night believing a man to be a ghost killed him; Waryam Singh v. Emperor, AIR 1926 Lah 554.

In Juggan Khan v. State of Madhya Pradesh, MANU/SC/0078/1964 : AIR 1965 SC 831 it was held by the Supreme Court that, a great care should be taken before imputing criminal negligence to a professional man acting in the course of his profession. A doctor is not criminally responsible for a patient's death unless his negligence shows such disregard for life and safety as to amount to a crime against the State. Where the accused, who was registered as a Homeopath, administered to the patient suffering from guinea worm, 24 drops of Stramonium and a leaf of Datura without studying its effect and the patient died of poisoning. It was held that the accused was guilty under section 304A.

Distinction between Rash and Negligent Act

What is the distinction between rash and negligent act?

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; Blyth v. Birmingham Waterworks Company, (1856) 11 Ex Ch 781.

Rash and Negligent driving

Q. What do you mean by rash and negligent driving?

Q. X started from Delhi on his car to go to Gurgaon, at about 11.00 p.m. He was driving at a reasonable speed and quite carefully. But unfortunately on the way he knocked down two coolies who were lying and sleeping on the road itself. X is prosecuted for causing death of the two coolies by rash and negligent driving under section 304A, I.P.C. Can X be convicted? Discuss

A person driving a motor car is under a duty to control the car; he is prima facie guilty of negligence if the car leaves the road and dashes into a tree. It is for the person driving the car to explain the circumstances under which the car came to leave the road. Those circumstances may have been beyond his control and may exculpate him, but in the absence of such circumstances the fact that the car left the road is evidence of negligence on the part of the driver. But, if the driver is not rash, he is not liable for the death of a person who, while suddenly crossing the road, comes under the wheels of his vehicle.

The mere fact that a fatal motor run-over accident took place would not by itself be enough to make the driver liable under section 304A. In order to impose criminal liability on the accused, it must be found as a fact that a collision was entirely or at least mainly due to rashness or negligence on the part of the driver. It is not sufficient if it is only found that the accused was driving the vehicle at a fast speed; State v. Hari Singh, MANU/RH/0018/1969 : AIR 1969 Raj 86. Some of the major criteria for deciding rashness or negligence are: width of the road, the density of the traffic and the attempt to overtake other vehicles and the going on the wrong side; Shakila Khader v. Nausher Gama, MANU/SC/0168/1975 : AIR 1975 SC 1324. An error of judgment on the part of the driver would not make him liable under section 304A. While driving a bus at a moderate speed its driver suddenly noticed a child attempting to cross the road. The driver swerved the bus to extreme right to dodge the child but it was hit by the bus and died. The fact that the driver tried to dodge the child indicated that the accident happened due to an error of judgment and not negligence; Syed Akbar v. State of Karnataka, 1979 Cr LJ 1375.

Similarly, the Supreme Court in *Mohd. Aynuddin v. State of Andhra Pradesh*, 2000 Cr LJ 3508 held that merely because a passenger fell down from the bus while boarding it and died, presumption of negligence cannot be drawn against the bus driver.

The death must be the direct result of the rash or negligent act of the accused and the act must be sufficient cause. A person entering the land of an other is a trespasser but it does not entitle the owner or the occupier to inflict upon him personal injury by direct violence. The same principle governs the infliction of injury by indirectly doing something on the land, the effect of which he must know was likely to cause serious injury to the trespasser. The court observed that the naked live wire in the present case in truth was like "an arrangement to shoot a man without personally firing the shot". Though the trespasser enters the property at his own risk, the occupier is not entitled to do wilfully acts such as set a trap or set a naked wire.

Mohd. Aynuddin case

In *Mohd. Aynuddin v. State of Andhra Pradesh*, 2000 Cr LJ 3508: MANU/SC/0455/2000 : (2000) 7 SCC 72 the fact was, a passenger, while boarding a bus fell down therefrom as the vehicle moved forward. The driver of the bus was found guilty of culpable negligence. All the three courts the trial Court, the Session Court and the High Court convicted him under section 304A.

Issue:

What is the Culpable negligence on the part of the driver in the above accident?

Decision:

The apex Court observed and held that, rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution.

In the present case, the possible explanation of the driver is that he was unaware of even the possibility of the accident which happened. It could be so. When he moved the vehicle forward his focus normally would have been towards what was ahead of the vehicle. He is not expected to move the vehicle forward when passengers are in the process of boarding the vehicle. But when he gets a signal from the conductor that the bus can proceed he is expected to start moving the vehicle. Here no witness has said, including the conductor, that the driver moved the vehicle before getting a signal to move forward. The evidence in this case is too scanty to fasten him with criminal negligence. Some further evidence is indispensably needed to presume that the passenger fell down due to the negligence of the driver of the bus. Such further evidence is lacking in this case. Therefore, the court is disabled from concluding that the victim fell down only because of the negligent driving of the bus. The corollary thereof is that the conviction of the appellant of the offence is unsustainable.

Cherubin Gregory case

In *Cherubin Gregory v. State of Bihar*, MANU/SC/0080/1963 : AIR 1964 SC 205 the fact of the case was that the deceased was residing near the house of accused. The wall of the latrine of the house of the deceased had fallen down and so the deceased along with others started using the latrine of the deceased. The accused protested against their coming there. The oral warnings, however, proved ineffective and so he fixed up a naked live electric wire in the passage to latrine so that no trespasser may come and use the latrine. There was no warning that the wire was live. A trespasser who manages to enter the latrine without touching the wire, happens to receive a shock while coming out and dies soon. The trial and the appellate court convicted and sentenced the appellant under section 304A.

Issue:

Whether the appellant is guilty of rash and negligent act under section 304A, I.P.C. or not?

Decision:

On behalf of the appellant it was contended that the deceased was a trespasser and that there was no duty owned by the appellant towards the trespasser and, therefore, he could not be said have committed the crime. Repelling this contention the Supreme Court held that the act of the accused was an actionable wrong. The mere fact that the person entering a land is a trespasser does not entitle the owner or occupier to inflict on him personal injury by direct violence or indirectly by doing something on the land, the effect of which he must know was likely to cause serious injury to the trespasser.

It is, no doubt, true that the trespasser, enters the property at his own risk and the occupier owes no duty to take any reasonable care for his protection, but at the same time the occupier is not entitled to do wilfully acts as set a trap or set a naked live wire with the deliberate intention of causing harm to trespasser or in reckless disregard of the presence of the trespassers. It was further held that the voltage of the current fed into the wire precluded any contention that it was merely a reasonable precaution for the protection of private property, it was a rash act. The court observed that the naked live wire was like "an arrangement to shoot a man without personally firing a shot".

Q. X, a notorious smuggler, built a strong house for himself away from the city. The house was fortified by high compound wall around the house and live electric wire ran on the upper edges of the compound wall which used to be activated during the night. Well-lit warning boards with danger signs of high voltage were placed all around. Y, a thief, in order to commit theft attempted to scale the wall in the night, came in contact with the wire and was electrocuted. X is charged under section 304A for causing the death of Y. How will you decide?

X, a notorious smuggler, built a strong house for himself away from the city. The house was fortified by high compound wall around the house and live electric wire ran on the upper edges of the compound wall which used to be activated during the night, Well-lit warning boards with danger signs of high voltage were placed all around. V, a thief, in order to commit theft attempted to scale the wall in the night, came in contact with the wire and was electrocuted. X is charged under section 304A for causing the death of V. How will you decide?

The appeal of the appellant was dismissed and his conviction under section 304A upheld.

Jagdish Chani case

In Jagdish Chani v. State (Delhi), (1974) 1 SCR 204 the fact of the case was without noticing the flow of the traffic on a highway and without giving any signal the accused, an autorickshaw, driver, abruptly took a turn. The rear of his vehicle was hit by a truck coming from the opposite direction and the autorickshaw was thrown some distance away from the road. A lady standing at the bus stop with a baby in her arms was hit by the autorickshaw. The mother and child received injuries but eventually the child died.

Decision:

The courts below came to the conclusion that the entire occurrence was the result of rash or negligent driving of the accused, he was convicted under section 304A.

Before the Supreme Court the argument was that the death of child could on no rational or logical reasoning be considered to be the direct and natural result of the collision between the truck and the autorickshaw, that it was not the proximate and immediate cause of the death and, therefore, the accused was not liable to be convicted.

The Supreme Court upheld the conviction. But said that the police investigation of the case was far from satisfactory in that it did not record the tyre marks of the two vehicles on the road to judge the approximate speed at which both the vehicles were moving. Eyewitness in these cases have to be examined carefully because such witnesses observe accidents after their attention is drawn to the impact resulting from the collision. Their statements are often influenced by what they imagine must have happened.

In this case it could have been argued that the death of the child was a remote and indirect result of the rash or negligent driving of the accused and not the immediate direct, natural and proximate consequence.

Chapter 10

HURT AND GRIEVOUS HURT

Sections 319 to 338 deal with hurt in various forms. Section 319 defines 'simple hurt' as causing bodily pain, disease or infirmity, and section 321 makes voluntary causing of hurt an offence punishable under section 323, I.P.C.

HURT

Section 319, I.P.C. reads:

319. Hurt

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Ingredients to 'Hurt'

What do you mean by term 'Hurt'? Discuss its ingredients

To constitute hurt (battery under English Law) it is necessary to cause:

- (i) Bodily pain,
- (ii) Disease, or
- (iii) Infirmity to another.

(i) Bodily pain.--

Bodily pain, except so slight a harm of which, no person of ordinary sense or temper would complain of, is covered by the definition of hurt. To cause hurt there need not be any direct physical contact; *Jashanmal Jhamatmal*, AIR1944 Sind 19. Where the direct result of an act is the causing of bodily pain it is hurt whatever be the means employed to cause it.

(ii) Disease.--

A person communicating a particular disease to another would be guilty of hurt. However, there appears to be conflicting judicial decisions with respect to cases of communication of sexual diseases by one to another.

In *Raka v. Emperor*, 1887 ILR 11 Bom 59 the Bombay High Court held a prostitute who had sexual connection with the complainant and thereby communicated syphilis, liable under section 269, I.P.C., for spreading of infection and not of causing hurt, because the interval between the act and disease was too remote to attract sections 319 and 321, I.P.C.

(iii) Infirmity.--

Infirmity means inability of an organ to perform its normal function which may either be temporary or permanent. It denotes an unsound or unhealthy state of the body or mind; such as a state of temporary impairment or hysteria or terror; *Jashanmal Jhamatmal v. Brahmanand Sarupananda*, AIR 1944 Sind 19.

GRIEVOUS HURT

What is grievous hurt and discuss its different kinds?

The Code on the basis of the gravity of the physical assault has classified hurt into simple and grievous so that the accused might be awarded punishment commensurate to his guilt. Though it is very difficult and absolutely impossible to draw a thin line of distinction between the two forms of hurts - simple and grievous - with perfect accuracy, the Code has attempted to classify certain kinds of hurt as grievous.

According to section 320, I.P.C., eight kinds of hurts are designated as grievous, and this section reads:

320. Grievous hurt

The following kinds of hurt only are designated as "grievous":--

- Firstly.-- Emasculation.
- Secondly.- Permanent privation of the sight of either eye.
-
- Thirdly.-- Permanent privation of the hearing of either ear,
- Fourthly.-- Privation of any member or joint.
- Fifthly.-- Destruction or permanent impairing of the powers of any member or joint.
- Sixthly.-- Permanent disfiguration of the head or face.
- Seventhly.- Fracture or dislocation of a bone or tooth.
-
- Eighthly.-- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Dangerous Hurt:

The provisions contained in clause 8 of section 320, I.P.C., are of a general nature. This clause is borrowed from French Penal Code. It refers to three classes of injuries which are not covered under any one of the above clauses 1 to 7 of the section 320. It labels the following hurts as grievous, viz., those:

- (i) which endangers life; or
- (ii) which causes the sufferer to be, during the space of 20 days, in severe bodily pain; or
- (iii) which causes the sufferer to be, during the space of twenty days, unable to follow his ordinary pursuits; State of Gujarat v. Samaj, MANU/GJ/0064/1969 : AIR 1969 Guj 337.

From the above discussions, it is clear that grievous hurt is more serious kind of hurt. It must be a hurt of any of the kinds stated in section 320, I.P.C. and must be caused voluntarily. Sections 321 and 322, I.P.C. define, what is meant by expression "voluntarily causing hurt" and "voluntarily causing grievous hurt" respectively.

321. Voluntarily causing hurt

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

322. Voluntarily causing grievous hurt

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.--

A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not

permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

PUNISHMENT FOR CAUSING HURT OR GRIEVOUS HURT

Section 323, I.P.C. is a general section prescribing punishment for voluntarily causing simple hurt¹. It reads:

323. Punishment for voluntarily causing hurt

Q.Discuss briefly the punishment for hurt and grievous hurt?

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

In *Kailas v. State of Maharashtra*, MANU/SC/0011/2011 : AIR 2011 SC 598, in this case where victim belonging to Bhil Community (ST) had illicit relationship with higher caste person. Four accused went to her house, beat her with fists and kicks and stripped her naked and then got her paraded in naked condition on road of village. Police seized clothes produced by victim in torn condition. Parade of Tribal woman on village road in broad day light is shameful, shocking outrageous. There is no reason to disbelieve prosecution witness and dishonour of victim. There was proper evidence for harsher punishment. Accused convicted by Trial Court under section 452, 354, 232, 506(2) read with 34. Also sentenced under section 323/34 IPC and further convicted under section 3 of SC/ST Act, 1989. But High Court acquitted appellants of the offence under section 3 of the SC/ST Act. but the provisions of IPC were confirmed. Supreme Court surprised that the State Govt. did not file any appeal for enhancement of the punishment awarded by the Trial Court. Supreme Court felt that sentence was too light considering the gravity of offence.

Sections 324 to 338, I.P.C. prescribe severe penalties when hurt or grievous hurt is caused under aggravating circumstance.

Section 324, I.P.C. reads:

324. Voluntarily causing hurt by dangerous weapons or means

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated

1. Ratanlal Dhirajlal Law of Crimes, 24th Edn., Vol. II, (1998), pp. 1593-1599.

substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

This section punishes causing hurt by means of an instrument which, when used as a weapon of offence, may cause death. For instance, a stick becomes a dangerous weapon by reason of an iron knob at its top, and when that part of a stick is used as a weapon of offence it is likely to cause death, and thus the offence committed with such an instrument would fall under section 324, I.P.C.; *Koli Gator Sura v. State of Gujarat*, MANU/GJ/0054/1966 : AIR 1966 Guj 221.

In *Anwarul Haq v. State of Uttar Pradesh*, MANU/SC/0332/2005 : AIR 2005 SC 2382 (2383), paras. 13, 14 it was observed by the Supreme Court that, section 324 provides that "Whoever except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is

deleterious to the human body to inhale, to swallow or to receive into the blood, or by means of any animal" can be convicted in terms of section 324. The expression "an instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this section.

The section prescribes a severer punishment where an offender voluntarily causes hurt by a dangerous weapon or other means stated in the section. The expression "any instrument which used as a weapon of offence is likely to cause death" when read in the light of marginal note to section 324 means dangerous weapon which if used by the offender is likely to cause death.

In *Gopal v. State of M.P.*, MANU/SC/0648/2011 : AIR 2011 SC 2325, this case where free fight between accused and complainant. Accused abused and inflicted knife blow on the Chest of complainant, complainant fell on the ground and died instantaneously. Accused was pelting stones on the injured person. Hurt caused by dangerous weapon proved. Post-mortem report showed death of deceased caused due to syncope on account of shock and hemorrhage caused by stab injury. Homicidal death of deceased due to injuries sustained by accused not explained by the complainant party. Reasons regarding commission of offence were cogent and valid. Five accused were charged and prosecuted for commission of offences punishable under sections 147, 148, 302/149, 323/149 IPC by the Trial Court. High Court disposed two criminal appeals by the common impugned judgment. Judgment upheld but reduced sentenced by the Supreme Court.

Punishment for Grievous Hurt

Section 325, I.P.C. prescribes the punishment for grievous hurt. It reads:

325. Punishment for voluntarily causing grievous hurt

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

According to section 325, I.P.C., the main ingredient of the offence is that grievous hurt should be intended to be caused or the offender should have knowledge that the hurt caused was likely to be grievous. The offence under this section is intermediate between hurt and homicide.

In *Jagga Singh v. State of Punjab*, MANU/SC/0097/2011 : AIR 2011 SC 960, the deceased was taken away by accused and after 15-20 minutes gun shots were heard. Post-mortem examination on dead body of deceased found that there were only lacerated wounds. There was no gun wound and accused entitled to get benefit of doubt. It was alleged that accused persons fired at victim and a gun shot fired hit him in leg. Trial court convicted 7 years rigorous Imprisonment and fine. The appeals of the accused dismissed by the High Court but appeal of the State regarding acquittal of the accused under section 302 read with section 34 was allowed. Supreme court observed that accused cannot be held guilty under section 302 but under section 325 read with 34 IPC sentenced to period already undergone. Accused acquitted.

Grievous hurt by dangerous weapons or means

Section 326, I.P.C. provides that:

326. Voluntarily causing grievous hurt by dangerous weapons or means

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

This section applies to a person who does a substantive act causing grievous hurt by use of dangerous weapons and means. The act of the offender must have been done voluntarily. Where the accused in the course of a fight left the place of incident, brought an axe and inflicted a blow on the head of the injured, he was held liable under section 326, I.P.C. since the injury was grievous in nature; State of Punjab v. Surjan Singh, 1976 Cr LJ 845.

Voluntarily causing hurt to extort property

Section 327 punishes voluntarily causing hurt to extort property, or to facilitate the commission of an offence, or to constrain another to do an illegal act.

Section 327, I.P.C. reads:

327. Voluntarily causing hurt to extort property, or to constrain to an illegal act

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Hurt by poison etc.

Section 328, I.P.C., punishes causing of hurt by means of poison or any stupefying, intoxicating, or unwholesome drug etc. This section is intended to punish persons who rob or ravish people by putting them out of their senses by means of substances mentioned hereinbefore. It reads:

328. Causing hurt by means of poison, etc., with intent to commit an offence

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for causing grievous hurt to extort property

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for causing hurt to extort confession

Section 330, I.P.C. punishes causing of hurt for the purpose of extorting a confession; Pakala Narayan Swami v. Emperor, MANU/PR/0001/1939 : AIR 1939 PC 47. The principal object of this section is to prevent torture by the police. This section reads:

330. Voluntarily causing hurt to extort confession, or to compel restoration of property

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for causing grievous hurt to extort confession

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for causing hurt to deter public servant from his duty**332. Voluntarily causing hurt to deter public servant from his duty**

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for causing grievous hurt to deter public servant from his duty**333. Voluntarily causing grievous hurt to deter public servant from his duty**

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for voluntarily causing hurt or provocation

Section 334, I.P.C. punishes voluntarily causing hurt to a person on provocation. This section reads:

334. Voluntarily causing hurt on provocation

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for causing grievous hurt on provocation**335. Voluntarily causing grievous hurt on provocation**

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.--

The last two sections are subject to the same provisos as Explanation 1, section 300.

Punishment for endangering life of others**336. Act endangering life or personal safety of others**

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may

extend to two hundred and fifty rupees, or with both.

Punishment for causing hurt by act endangering life of others

337. Causing hurt by act endangering life or personal safety of others

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Punishment for causing grievous hurt by act endangering life of others

338. Causing grievous hurt by act endangering life or personal safety of others

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

CASE LAW

Naib Singh case

Q.Critically discuss the law laid down in Naib Singh case

In Naib Singh v. State of Punjab, MANU/SC/0192/1986 : (1986) 4 SCC 401 the fact of the case was, Naib Singh, after an altercation and exchange of abuses, struck Darshan Singh with a danda on the middle of his head. Fortunately, Darshan Singh was wearing a turban which cushioned off the force of blow leaving only a bleeding injury. Medical report suggested that, Darshan Singh had an incised wound 4½ cm bone deep on the top of the middle of his head.

Issue:

Whether the offence of the appellant would fall under clause 7 of section 320?

Decision:

The apex Court observed that, it is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of clause 7 of section 320. What required to be seen is whether the cuts in the bones noticed in the injury report are only superficial or do they effect a break in them.

There can be no doubt from the X-ray report of Dr. Goyal, that there was a partial cut of the skull vault. In the report, Dr. Goyal did not mention the depth of the cut but stated in the witness box on the basis of his experience that it was a deep cut involving the whole of the outer table reaching up to the inner table. When Darshan Singh was discharged from Civil Hospital, Mukstar the external head injury must have healed. It appears from the evidence of Dr. Goyal that there was some callus formation at the seat of the injury. The opinion of Dr. Goyal that there was a deep cut involving the whole of the outer table and reaching up to the inner table is borne out by the white line appearing in the X-ray plate. There is no basis for the inference drawn by the learned magistrate that there was the possibility of a mischief being played during the time that elapsed between the discharge of Darshan Singh from Civil Hospital, Muktsar and his X-ray examination by Dr. Goyal at Faridkot, and that in all probability some wise had been placed before exposing the film to the X-ray equipment, nor can we subscribe to the view that a partial cut of the skull vault is seldom so prominent except when excessive force is used in inflicting the injury. It appears from the evidence that Darshan Singh was putting on a turban when assaulted with the gandasa. What saved him was the turban and it took away the force of the impact leaving a head injury. In this circumstances there can be no doubt that there was a fracture within the meaning of clause seventhly of section 320.

Chapter 11

KIDNAPPING AND ABDUCTION

Sections 359 to 369 of the Code have made kidnapping and abduction punishable with varying degree of severity according to the nature and gravity of the offence. The underlying object of enacting these provisions is to secure the personal liberty of citizens, to give legal protection to children of tender age from being abducted or seduced for improper purposes and to preserve the rights of parents and guardians over their wards for custody or upbringing.

KIDNAPPING

The word 'kidnapping' has been derived from the word 'kid' which means 'child' and 'napping' which means 'to steal'. Thus kidnapping literally means child stealing.

According to section 359, I.P.C. kidnapping can be classified under two heads,

viz.,

- (i) kidnapping from India (Section 360, I.P.C.); and
- (ii) kidnapping from lawful guardianship (Section 361, I.P.C.).

Kidnapping under the Code is not confined to child-stealing. It has been given a wider connotation as meaning carrying away of a human being against his or her consent, or against the consent of some person legally authorised to accord consent on behalf of such person.¹ It happens in the case where a male is below 16 and if a female is below 18 years or in the case of an insane.

Q.Explain the term 'Kidnapping' briefly

KIDNAPPING FROM INDIA

Section 360, I.P.C. defines 'kidnapping from India' and section 363, I.P.C. prescribes punishment for this offence. Section 360, I.P.C. reads:

360. Kidnapping from India

Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.

Q.What do you mean by expression 'kidnapping from India'?

Essential ingredients

To attract this section the following two ingredients must be fulfilled:

- (i) Conveying of any person beyond the limits of India,

1. See Kenny's Outlines of Criminal Law, 19th Edn., (1966), p. 204.

- (ii) Without the consent of that person, or of some one legally authorized to consent on behalf of that person.

Conveying without consent: meaning of

The word 'convey' literally means simply going together on a journey but in popular parlance, it now means carrying a person to his destination. However, mere conveying of a person from one place to another is not criminal. That act becomes criminal if he is conveyed without his consent. A person may be conveyed as much by using force as by inducing him to give his consent by fraud and deception.¹

KIDNAPPING FROM LAWFUL GUARDIANSHIP

Section 361, I.P.C. makes kidnapping from lawful guardianship of a minor under sixteen years of age, if a male, and under eighteen years of age, if a female, an offence.² This section provides:

361. Kidnapping from lawful guardianship

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation

The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception

This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Q.What do you mean by the expression 'kidnapping from lawful guardian'?

Object and scope

The provisions of this and subsequent sections under this head are intended more for the protection of the minors and the persons of unsound mind themselves than for the right of the guardians of such a persons. It may be that the mischief intended to be punished may partly consists, in the violation of infringement of the guardians right to keep their wards under their care and custody, but more important object is to afford security and protection to the wards themselves against seduction or abduction for improper purposes; State v. Harbans Singh Kishan, AIR 1954 Bom 399.

Essential ingredients

Q.What constitutes kidnapping from lawful guardianship?

The following are the essentials of this offence:--

- (1) The offence is committed by "taking" or "enticing" of a minor person or a person of unsound mind.
- (2) The person kidnapped must be:
 - (a) under the age of 16, male or
 - (b) Under the age of 18, if female, or
 - (c) a person of unsound mind.

1. See section 90, IPC which defines 'Consent'.

2. Before 1949 the prescribed age for minor male was 14 and for female 16 years.

- (3) The "taking" or "enticing" must be out of the keeping of lawful guardian of such minor or person of unsound mind.
- (4) The "taking" or "enticing" must also be without the consent the guardian.
- (5) The consent of the minor is immaterial.

The motive of the kidnapper is immaterial, unless it falls within the exception to the section.

Besides, its essential ingredients, the courts have formulated certain guiding principles:

- (1) In case of minor girls this section is attracted irrespective of the question whether she is married or unmarried; *State of Himachal Pradesh v. M. Kala*, AIR 1957-HP 42.
- (2) Consent of the minor is immaterial; *State of Haryana v. Raja Ram*, MANU/SC/0262/1972 : AIR 1973 SC 819.
- (3) The motive or intention of the kidnapper is also immaterial; *State v. Sulekh Chand*, AIR 1964 Punj 83.
- (4) If the kidnapped girl turns out to be under 18 years of age, the kidnapper must take the consequences, even though he bona fide believed and had reasonable ground for believing that she was over eighteen; *R. v. Prince*, 1875 LR 2 CCR 154.

'Taking' or 'enticing': meaning of

Q.Discuss the meaning of Taking and Enticing'

The word 'takes' means cause to go, to escort or to get into possession and the word 'entice' involves an idea of inducement by exciting hope or desire in the other.

The gravity of the offence of kidnapping lies in the 'taking' or 'enticing' of a minor under the specified age out of the keeping of the lawful guardian, without the consent of such guardian. The words 'takes' or 'entice' any minor '....out of the keeping of the lawful guardian of such minor' in section 361 are significant. On a plain reading of this section the consent of the minor, who is taken, or enticed is wholly immaterial; it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of lawful guardian would be sufficient to attract the section; *State of Haryana v. Raja Ram*, MANU/SC/0262/1972 : AIR 1973 SC 819.

The word 'takes' does not necessarily connote taking by force, and it is not confined only to use of force, actual or constructive. It merely means to cause to go, to escort or to get into possession. The mental attitude of the minor is not relevant in the course of taking. Thus where the accused took the minor with him whether she was willing or not, the act of taking was complete and it amounted to taking out of the father's custody within the meaning of this section; *Khalandar Saheb (in re:)*, 1955 Cr LJ 581.

The word 'entice' seems to involve the idea of inducement or allurements by giving rise to hope or desire in the other. This may work immediately or may create continuous and gradual but imperceptible impression culminating after

sometime. Thus, if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offences as defined in section 361, IPC; *Sayyad Abdul Satar v. Emperor*, MANU/TN/0212/1928 : AIR 1928 Mad 588.

"Taking" is a question of fact: In *Jeevan v. Rex*, MANU/OR/0002/1948 : AIR 1949 Ori 22 it was held that the offence under this section is complete when the minor is actually taken from the lawful guardianship and the offence is a continuing one until the minor's return to his guardian. It has been observed "it cannot be maintained that taking which is request to kidnapping must be constituted by a single act. A whole series of acts might together constitute the process of taking and when actually the taking is complete and in what sense the kidnapping has been committed is question of fact. It is unnecessary to specify when the taking started and where it was completed provided we are satisfied that on the evidence in this case there has been taking of the girl by the accused from the keeping of her guardian."

OUT OF THE KEEPING OF LAWFUL GUARDIAN

Meaning of word 'keeping'

"Keeping" means within the protection or care of the guardian. A minor is said to be in the keeping of a person where he depends upon him for his or her maintenance, support or sustenance. It is not necessary that the minor should in

the physical possession of the guardian. It would be sufficient if he is under a continuous control which is for the first time terminated by the act of the accused.

'Lawful Guardian': Meaning of

Q.What do you mean by expression lawful guardianship?

The word 'lawful' is important and must be distinguished from the term 'legal', which means something different.

In *Fatti (Mst.) v. Emperor*, (1911) 12 Cr LJ 211 it was observed that, a lawful guardian is a guardian whose custody is sanctioned by law. A legal guardian is necessarily a lawful guardian, but not necessarily vice versa. For example, a school master or an employer is a lawful guardian and a parent of the minor is a legal guardian. The expression lawful guardian would include a natural guardian, a testamentary guardian appointed by the court, and a person lawfully entrusted with the care and custody of a minor. The guardian is described in this section as a lawful guardian and not as a legal guardian.

A lawful guardian cannot include a person who obtains the care or custody of the minor by illegal or unlawful means. If the minor or lunatic is in the custody of the legal guardian, and he or she is taken or enticed out of the custody of such legal guardian, it would obviously be a case of kidnapping; *State v. Haxbansing Kisansingh*, MANU/MH/0098/1954 : AIR 1954 Bom 339. If the legal guardian entrusts in a formal way the ward to the care of another person, such other person would also be his lawful guardian, and in case the ward is removed from his custody without his consent, the offence would be one of kidnapping.

The words lawful guardian do not necessarily imply that the minor must have been entrusted to such person by someone having a legal duty or obligation to the minor, but it is sufficient that such entrustment is done without illegality by one legally competent to do so; *Mussammat Kesar v. K.E.*, AIR 1919 Pat 27. When a minor is in the keeping of the lawful guardian, the mere fact that a minor leaves the protection of her guardian, does not take her act out of the guardian's keeping.

But where she abandons her guardian with no intention of returning, she cannot be said to be in her guardian's keeping; *R.W. Valliant v. Elazor*, (1924) 30 CWM 215.

ABDUCTION

Meaning of 'Abduction'

Abduction in common language means the carrying away of a person by fraud or force; *Vishwanath v. State of Uttar Pradesh*, AIR 1960SC 67. Section 362, I.P.C. defines 'abduction' as:

362.Abduction

Q.What is Abduction?

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

According to the section 362, I.P.C. abduction takes place when any person by force compels, or by any deceitful means induces another person, to go from any place. Abduction pure and simple is not an offence. It is an auxiliary act not punishable in itself, but when it is accompanied by a certain intention to commit another offence, it per se becomes punishable as an offence. For instance:

- (a) If the intention is that the person abducted may be murdered or so disposed of as to be put in danger of being murdered, section 364, I.P.C. applies;
- (b) If the intention is to confine secretly or wrongfully a person, section 365, I.P.C. applies;
- (c) if the abducted person is a woman and the intention is that she may be compelled, or is likely to be compelled, to marry any person against her will, or may be forced or seduced to illicit intercourse, or is likely to

be so forced or seduced, section 366, I.P.C. applies;

(d) If the intention is to cause grievous hurt, or to dispose of the person abducted as to put him in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, section 367, I.P.C. applies;

(e) If the abducted person is a child under the age of ten years and the intention is to take dishonestly any movable property from its person, section 369, I.P.C. applies.

When no force or deceit is practised on the person abducted, there can be no offence of abduction. For instance, if a minor girl voluntarily goes out of her guardian's protection and meets a person, who treats her well with no compulsion or fraud, such person will not be guilty of abduction; *Arusami Gaundan (in re:)*, MANU/TN/0185/1959 : AIR 1959 Mad 274. Nor can any offence be committed when the woman is a willing party. In view of the definition embodied in section 362, I.P.C. the word 'force' used therein connotes the actual force and not merely a show or threat of force. It would be an offence to carry away a grown-up woman by force against her own will even with the object of restoring her to her husband; *Ailu v. Emperor*, AIR 1925 Lah 512.

Word 'Deceitful': Meaning of

The expression 'deceitful', as used here, has wide connotation to include inducing a girl to leave her guardian's house on a pretext. It also implies the use of misrepresentation by act or conduct.

Abduction is 'continuing offence'

Abduction is a continuing offence and a person is liable not only when a person is first moved from one place to another, but all those who are involved in subsequently moving that person to other place are also liable.

DISTINCTION BETWEEN 'KIDNAPPING' AND 'ABDUCTION'

Q.Explain the difference between kidnapping and abduction

Though, in common language words 'kidnapping' and 'abduction' are used in a similar sense. However, both the words are differently used in law. In the Indian Penal Code we have seen that there are two distinct provisions provided. Let us discuss some of the important distinguishing features of these two expressions in tabular form.

Kidnapping (from Lawful Guardianship) (section 361, I.P.C.)	Abduction (section 362, I.P.C)
1. Kidnapping from lawful guardianship as defined in section 361 is committed, (i) in respect of minors, if male under 16 and if a female under 18 years of age, and (ii) in respect of a person of unsound mind (of any age).	1. Abduction may take place against a person of any age. Likewise, kidnapping from India as discussed in section 360, I.P.C. can take in respect of any person irrespective of his or her age.
2. Kidnapping is the removal of a person from lawful guardianship.	2. Abduction has reference only to the person abducted.
3. Kidnapping is simply taking away of a minor or a person of unsound mind. The means used are not relevant.	3. In abduction, force, compulsion, or deceitful means are used.
4. Consent of person kidnapped is immaterial.	4. Free and voluntary consent of the person abducted condones abduction.
5. Intention of the kidnapper is immaterial for the offence.	5. Intention of the abductor is an important factor in determining guilt of the accused.
6. Kidnapping is a substantive offence.	6. Abduction is not a substantive offence and is not punishable in itself. It is an offence only when done with some other

intent as given in sections 363A, 364, 364A to 369, I.P.C.

7. Kidnapping is not a continuing offence. It is complete as soon as the minor or person of unsound mind is removed from lawful guardianship.

7. Abduction is a continuing offence and continues so long as the abducted person is removed from one place to another.

8. In kidnapping there must be taking or enticing from a lawful guardian.

8. In abduction the question of taking or enticing does not arise.

PUNISHMENT FOR KIDNAPPING

Section 363, I.P.C. provides punishment for the offence of kidnapping from India and from lawful guardian as defined under sections 360 and 361, I.P.C. respectively. Section 363, I.P.C. reads:

363. Punishment for kidnapping

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

According to this section, when 'A' kidnaps any person 'B' either from 'India' or from 'lawful guardianship' shall be punished with imprisonment which may extend to 7 years and shall also be liable to fine.

CASE LAWS

Prakash case

In *Prakash v. State of Haryana*, MANU/SC/0986/2003 : (2004) 1 SCC 339 the fact was, the victim was taken away by the accused appellant who was known to her for fulfilling his lust and her absence was noticed by her octogenarian grandmother. She went out in search of her. After going a short distance she could hear the cries of the victim and rushed to the house of the accused from where her sound was coming. She found the victim naked and the accused appellant lying on top of her. The father of the victim lodged the report on learning about the incident from the victim and her grandmother.

Issue:

Does the conduct of the accused amount to kidnapping within the meaning of section 361, I.P.C.?

Decision:

It was observed by the Supreme Court that, the object of this section 361, I.P.C. seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge of custody of their minor wards. The graveness of this offence lies in taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor... out of the keeping of the lawful guardian of such minor" in section 361 are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control; further, the guardian's charge and control appears to be compatible with the independence of action and movement of the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial; it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

With the above observations, the apex Court held that the conduct of the accused amounts to kidnapping within the meaning of section 361, I.P.C.

S. Vardarajan case

In *S. Vardarajan v. State*, MANU/SC/0081/1964 : AIR 1965 SC 942 the fact was, Savitri was a girl under 18 years of age. She was living with her father studying B.Sc. in Madras.

On hearing that Savitri wanted to marry Vardarajan the accused, who was their immediate neighbour, her father took her to the house of a relation and left there so that for some time she was to be kept as far away from the accused as possible.

On the next day, however, Savitri telephoned the accused and asked him to meet her at a certain place which he did. They then went to a shop to buy Mangalayam, took two witnesses and went to the registrar's office for getting the marriage registered. Afterwards the couple went and stayed in a hotel for a day and later went around the places.

Issue:

The question was whether the accused had taken away the girl from the lawful guardian within the meaning of section 361.

The Supreme Court held:

Whether a minor girl having the capacity to know the full import of what she was doing voluntarily leaves her father's protection and joins another protection, it cannot be said that she had been taken away from the keeping of the lawful guardian. Something more has to be shown in a case of this kind as for e.g., some kind of inducement held out by the accused or an active participation by him in the formation of the intention of the minor to leave the house of the guardian. It would be sufficient if the prosecution establishes that though immediately prior to the minor leaving of father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of these things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she had actually left her guardian's house or a house where her guardian has joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. It may be that the part played by the accused in such a case facilitated the fulfilment of the intention of the girl. The part falls short of an inducement to the minor to step out of the keeping of her lawful guardian and therefore does not tantamount to "taking away".

In the instant case the girl was born on Nov. 13, 1942 and she left her father's house on Oct. 1, 1960. She was therefore a little short of reaching 18 years.

Though she was in the house of her relative, she was still in the lawful keeping of the father. Even so there was no word on the deposition of Savitri that she left the house at the instance or even the suggestion of the accused. She admitted that she herself had telephoned to the appellant to meet her at a certain place and did meet him. It was her decision to marry him. There was no suggestion that the accused had used any force to take her to the Registrar's office for getting the marriage registered. The insistence for marriage came from her and by complying with her wishes he could not be said to have taken her out of the keeping of her lawful guardian. She attained the age of discretion and was on the verge of attaining majority. Here action had all along been consistent, there is nothing to hold that the accused had been guilty of taking her away out of the keeping of her father.

When she willingly accompanied him the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a girl of tender years who was unable to think for herself. She was an educated girl who had lived all her life in a city.

Q.S, a 25-year old young man was the music teacher of a sprightly urban and urbane (courteous) school-going girl T and used to take her to musical performances, with parent's sufferance (implied consent) so that she could learn better. When she was just two weeks away from being 18, her music teacher as usual took her to a 'Musical Nite' where she revealed

Raja Ram case

In *State of Haryana v. Raja Ram*, (1974) 2 SCR 728 the fact of the case was:

In the course of his visits to the house of the prosecutrix's father to render medical aid, Jai Narain, a quack of the village was attracted towards the girl. He persuaded her to accompany him, promising to give her good cloths, food and everything that she wanted. This girl's father noticed his behaviour and asked the accused who lived in the same street as the girl, to persuade and bring her to a pre-arranged place that night.

The accused who sent his daughter, a friend of the girl, to fetch her to his house so that he could take her to Jai Narain and hand over to him. He did according to the pre-arranged plan.

The trial court convicted both the accused under section 366. The High Court maintained the conviction against Jai Narain but acquitted the accused in this case on the ground that the girl left the house on her free will; the accused did not himself take any part in fetching her and that, therefore, she was neither induced nor taken by the accused from the lawful guardianship of her parents.

The Supreme Court Held:

The subject of section 361 seems as much to protect the minor children from being seduced for improper purposes as to protect the right and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor out of the keeping of lawful guardian of such minor" in section 361 are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control. Further the guardian's charge and control appears to be compatible with the independence of section and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On the plain reading of his section the consent of the minor who is taken or enticing is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

In the instant case, the facts are Jai Narain had become intimate with the girl and tried to seduce her. The accused induced her to go with him the pre-arranged place pursuant to that plan he sent his daughter to fetch her to his house. He actually took her that night and handed her over to Jai Narain. All these facts convincingly establish his hand in the act. He cannot escape the conviction of the offence of kidnapping the girl from her father's lawful guardianship. It is not at all necessary for him to have himself gone to the house of the girl to bring her from there. It was sufficient if he had earlier solicited or persuaded her to leave her father's house. The action of the accused was the proximate cause of the girl's going out of her father's keeping. But for his permission she would not have gone out of the house. He actively participated in the formation of her intention to leave the house. Her consent or willingness to accompany the accused would be immaterial and it would have been equally so even if the proposal to go with him had emanated from her.

that her parents wants to marry her with a man whom she does not like and would like to marry him (the music teacher) instead. (This was a welcome news for S who had strong love for her but had felt shy to express it). T persuaded S to take the plunge (get married) the next day in a temple. Next day, she went to T's house instead of going to school from where they went to temple. However, they were caught by the parents of the girl (who were informed by someone) before any ceremony of marriage could take place. Can S be held guilty for any offence?

In *Murugan v. State of Tamil Nadu*, MANU/SC/0566/2011 : AIR 2011 SC 1691, this case the appellant kidnapped a minor girl from her school intention to marry her after giving false information about illness of her mother to her school teacher. A letter written by prosecutrix to police officer where she mentioned that she had love affair with accused and her hospital age was 17 years. Birth certification issued by Municipality shows age about 14 years. Entries of school register and evidence of mother of prosecutrix deposed that prosecutrix was

14 years of age. Evidence showed that prosecutrix was not major on date of incident. High Court had disposed appeals preferred by the appellants against the judgment and order of Trial Court by which appellant had been convicted under section 366 and 376, IPC and awarded the sentence of rigorous imprisonment for 3 and 7 years. Supreme Court upheld the judgment.

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Chapter 12

OFFENCES AGAINST PROPERTY

Offences against property find a prominent place in the Code. The basic element common to the offences under this Chapter can be seen is 'dishonesty', which the Code describes as the intention of causing 'wrongful gain' to one person or 'wrongful loss' to another, but the manner in which dishonesty is exercised, differs in different cases. In view of the wide range of illegal deprivation of property, we shall discuss major offences in this Chapter which affect the property.

THEFT

Section 378, I.P.C. defines 'theft' and section 379, I.P.C. prescribes punishment for theft. Section 378 defines 'theft' in the following manner:

378. Theft.--

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.--

A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.--

A moving effected by the same act which affects the severance may be a theft.

Explanation 3.--

A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.--

A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.--

The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Essential ingredients

Q. What are the essential ingredients to constitute the offence of theft

To constitute theft, the following ingredients; K.N. Mehta v. State of Rajasthan, MANU/SC/0030/1957 : AIR 1957 SC 369, are required:

- (i) The accused must have a dishonest intention to take the property;
- (ii) The property must be movable;
- (iii) The property must be taken out of the possession of another person, resulting in wrongful gain by one and wrongful loss to another;
- (iv) The property must be moved in order to such taking i.e., obtaining property by deception; and
- (v) Taking must be without that person's consent (expression implied).

Dishonest intention

Q. The offence of theft is complete at the time of the dishonest movement of the property.

Q. Illustrate the above statement with the help of illustrations and decided cases.

Intention is the gist of the offence. The taking will not amount to theft unless the intention with which it is taken is dishonest

Intention must be dishonest and it must so exist at the time of taking of the property. Since some moving of the property is essential in order to accomplish taking of it, therefore, the intention to take dishonestly must exist at the time of moving of the property.¹

In *Pyare Lal v. State*, MANU/SC/0152/1962 : AIR 1963 SC 1094, Subha Rao J., observed that "the section 378, I.P.C. may be dissected into its component parts thus: A person will be guilty of theft (1) if he intends to cause a wrongful gain or wrongful loss by unlawful means, of property to which the person gaining is not legally entitled to or to which the person losing is entitled, as the case may be; (2) The said intention to act dishonestly is in respect to movable property; (3) The said property shall be taken out of possession of another person without his consent; and (4) he shall move such property in order to such taking."

Where the accused took a bundle belonging to himself, which was at the time in the possession of a police constable, he was guilty of stealing because the constable had special property in bundle; *Shiekh Hassan*, (1887) Unrep Cr C 343.

In *Queen Empress v. Nagappa*, (1890) ILR 15 Bom 344, it was, however, held that where a person takes another's property believing under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention even though he may cause wrongful loss.

Movable property

The subject of theft must be movable property, i.e., corporeal property of every description except land and things attached to the earth or permanently fixed to anything which is attached to the earth.

Explanation 1 and 2 make it clear that things attached to the land may become movable property after severance from the earth and that the act of severance may itself be theft.² Thus, a thief who serves and carries away is treated like a person, who carries away a thing which had previously been served.

Taking out of possession of another person

Q. Explain the expression "taking out of possession of another person"

To invoke section 378, I.P.C., the property must be in the possession of the prosecution, whether he is owner of it, or is in possession of it in some other manner.

1. See illustration (h) to section 378, IPC.

2. See illustration (a) to section 378, IPC.

Illustration (g) demonstrates that where property dishonestly taken belonged to a person who is dead, and therefore, in nobody's possession, or where it is lost property without any apparent possessor, not the offence of theft but criminal misappropriation is constituted.

A movable property is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need. It would be sufficient if the property is taken against his wish from the custody of a person who has an apparent title, or even colour of right to such property; *Queen Empress v. Ganga Ram Santa Ram*, (1884) ILR 9 Bom 135. Illustration (j) and (k) fully demonstrate that mere physical control of

the prosecutor over the thing taken is quite sufficient, i.e., the person from whose possession, the property is taken, may not be the owner and may have his possession, either rightful or wrongful.

In *Pyare Lal v. State*, MANU/SC/0152/1962 : AIR 1963 SC 1094, Subba Rao J., observed that,

"To commit theft one need not take movable property permanently out of possession of another person with the intention not to return him. It would satisfy the definition if he took away any movable property out of possession of another person though he intends to return it later on."

Taking without consent

The offence of theft is committed if the property of another person is taken away from him without his consent (express or implied) with a dishonest intention. Explanation 5 and illustrations (m) and (n) make it clear that the consent may be expressed or implied and may be given either by the person in possession or by any person having such authority.

In *Parshottam Mahadev Patharphod v. State*, (1962) 64 Bom LR 788 it was held that, the consent obtained by false representations which leads to a misconception will not be a valid consent.

Moving property in order to such taking

The offence of theft is complete when the property is moved in order to such taking even though such thing may be far from passing into the thief's possession. Explanations (3) and (4) show how "moving" could be affected in certain cases. Illustrations (b) and (c) to section 378, I.P.C. elucidate the meaning of Explanation 4.

DISTINCTION BETWEEN THEFT AND 'MISCHIEF'

Q. Discuss the distinction between theft and mischief

Section 425, I.P.C. defines 'mischief' as "type section 425 without explanation". From, the definition of 'theft' as defined in section 378, I.P.C. and 'mischief' as defined hereinbefore one can find only a hair line difference. In *Gajadhar v. State*, 1971 Cr LJ 1361 (UP) it was observed by the Allahabad High Court that, the essential difference between a theft and mischief is that when a person commits mischief he only causes loss to another but does not gain anything himself, while in theft he makes a wrongful dishonest gain of property at the expense of the victim.

PUNISHMENT FOR 'THEFT'

Section 379, I.P.C. is the penal section of section 378, I.P.C. It reads:

379. Punishment for theft.--

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Sekar case

In *Sekar v. Arumugham*, 2000 Cr LJ 1552 (Mad) the fact of the case was, Sekar had availed a loan for a sum of Rs. 4 lakhs towards purchase of Ashok Leyland Lorry. He executed a deed of hypothecation in favour of the bank in terms of which he had hypothecated the lorry in question as security towards the due repayment of the amount borrowed by him. The loan was repayable in 60 monthly instalments. In terms of clause 14(3) of the deed of hypothecation, in event of any default in the payment of the loan instalments, the Bank had the right to seize the lorry. As per clause 15(b) of the said deed, the bank upon seizure of the vehicle was vested with the right to sell the same. When Sekar made default in the payment of loan instalment, the bank seized the said lorry. Aggrieved by this, Sekar filed a complaint for an offence under section 379 on the ground that the vehicle in question had been taken away by the respondent.

Issue:

Under these facts and circumstances, can the respondent be prosecuted for the offence of theft?

Decision: The Madras High Court after dismissing the appeal held that, the lorry financed under hire-purchase and hypothecation when seized by the banker on default in payment of instalments by the hirer, the financier cannot be charged for the offence of theft under section 378 because of absence of mens rea. The right of the owner to get back the vehicle is not affected by the fiction of 'deemed owner' under Motor Vehicles Act. When the respondent has been empowered to seize the lorry under clause 14(3), it cannot be said that the respondent has committed theft of the lorry when the petitioner has committed default in payment of instalments, the bank has right to seize the lorry. Therefore, it cannot be construed as a theft committed by the respondent as such. Again, only the owner of the property can claim right to seize the vehicle and the petitioner cannot claim the right. The bank continues to be the owner of the lorry.

Pyarelal Bhargava case

Q.What are the law laid down in Pyarelal Bhargava case?

In Pyarelal Bhargava v. State of Rajasthan, MANU/SC/0152/1962 : AIR 1963 SC 1094 the fact of the case was:

The accused was a Superintendent in Public Works Department of the State Government. A friend of his wanted a file of Public Works Department under the control of the Chief Engineer for removing certain unfavourable documents and putting documents which were more favourable to him. This was done by the accused. When the tampering was discovered by the officer concerned both the accused were charged with the offence under sections 379 and 465 with section 109, I.P.C.

Both the accused were convicted and sentenced by the trial court. The Sessions Judge maintained the conviction against the accused in respect to section 379. The High Court confirmed the conviction and sentence passed against the accused. The conviction and sentence passed against the second accused were set aside by the High Court.

Before the Supreme Court it was contended that (1) the Superintendent who was incharge of the file could not have taken the file from himself; (2) there was no intention on the part of the accused to take the file dishonestly as he did not receive any wrongful gain nor loss to any other person was caused.

Dismissing the appeal the Supreme Court held:

The accused had been correctly convicted and sentenced for theft. An analysis of the definition of "theft" contained in section 379 shows the following components:

A person will be guilty of the offence of theft if (1) he intends to cause a wrongful loss by unlawful means of property to which the person gaining is not legally entitled or to which the person losing is legally entitled, as the case may be (see sections 23 and 24, I.P.C.); (2) the said intention to act dishonestly is in respect to movable property; (3) the said property shall be taken out of the possession of another person without his consent; and (4) he shall move that property in order to such taking.

In the instant case, it is not correct to say that the accused was in legal possession of the file. The file was in the Secretariat of the Department concerned which was under the charge of the Chief Engineer. The accused was only one of the officers working in the department; (ii) it cannot be said that the accused had not taken the file out of the possession of the department; (iii) to commit the theft one need not take movable property permanently out of the possession of another with the intention not to return it to him. It would satisfy the definition if he took any movable property out of the possession of another person though he intended to return it later on.

There is wrongful loss in this case. Wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled. It cannot be disputed that the appellant unauthorisedly took the file from the office and handed it over to his friend which means he had unlawfully taken the file from the

department and for a short time he deprived the Engineering Department of the possession of the file. The loss need not be caused by permanent deprivation of the property but may be caused even by temporary dispossession, though the person taking it intended to restore it sooner or latter. A temporary period of deprivation or dispossession of the property of another causes loss to the other. That a person will act dishonestly if he temporarily dispossess another of his property is clear by illustrations (b) and (1) of section 378. These illustrations show that a temporary removal of a dog which might ultimately be returned to the owner or the temporary taking of an article with the view to return it after receiving some reward constitutes theft, indicating thereby that temporary deprivation of another person of his property can cause wrongful loss to him. The case clearly falls within the four corners of section 378.

EXTORTION

Section 383, I.P.C. defines extortion in the following manner:

383. Extortion.--

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

While section 384, I.P.C. provides punishment for extortion.

Essential ingredients

Q.What are the essential ingredients to constitute an offence under section 383, I.P.C.?

The offence of extortion consists in:

- (i) Intentionally putting a person in fear of injury to himself or another;
- (ii) Dishonestly inducing the person so put in fear to deliver to any person, property or valuable security.

Putting a person in fear of Injury

For an offence under this section, the extortioner must put another person under fear of injury and thereby dishonestly induce that person to deliver the property. The fear of injury must be of a real nature, so as to unsettle the mind of the man upon whom it is exercised in such a way that the act does not remain voluntary; *Reg v. George Walton*, (1863) 169 ER 1399.

Element of dishonesty

The essence of this offence is dishonest inducement and obtaining delivery of the property in consequence of such inducement. Therefore, an intention to cause wrongful loss or gain is essential; merely causing of wrongful loss would not be sufficient.

Deliver by the person put in fear

Q. Explain the expression "Deliver by the person put in fear"

For an offence under this section actual delivery of property by the person put in fear of injury is essential; *Labh Shankar v. State of Saurashtra*, AIR 1955 Sau 42. Property under this section means both movable and immovable; *Hyderabad State v. Beerappa*, AIR 1951 Hyd 91. Where a person, through fear, offers no resistance to the carrying off his property, but does not deliver any of the property to those who carry it away the offence committed is not extortion but robbery. The offence of extortion is not complete until there is delivery of property by the person put under fear; *Hyderabad State v. Beerappa*, AIR 1951 Hyd 91.

To any Person:

It is not necessary that the threat should be used, and the property received, but one and the same person.

The threat may be used by one person and the property may be received by another person, but the property must be delivered in consequence of such a threat, i.e., the delivery of property to the person who puts in fear of injury to the one who delivers that property is not necessary, it may be delivered to any person at the instance of the former, and in consequences to the threat used. All those persons who use threat and to whom property is delivered, will be liable for offence of extortion.

Valuable Security:

The thing delivered under this section may be any property or valuable security. 'Valuable security' is defined in section 30 of the Code. The latter expression, i.e., any thing signed or sealed denotes that even incomplete deeds may be subject of extortion. For instance, A signs his name on a promissory note in which date and amount etc., are not filled up and delivers it to B, the offence of extortion is committed, because promissory note can be completed and used as valuable security.

Theft and extortion: Distinguished

Q. Explain the distinction between theft and extortion

Though the object of both the offences is common i.e., 'wrongful gain of property'. However, there are few differences between the two as stated below:

1. In theft the offender takes property without the consent of the owner; extortion is committed by wrongfully obtaining of consent.
2. Only movable property may be subject-matter of theft; the property obtained by extortion is not limited only to movable one; even immovable may be the subject-matter of extortion.
3. In theft property is taken by the offender; in extortion the property is delivered to the offender.
4. In theft no force or fear is used or fear is caused in taking property; in extortion the property obtained by intentionally putting a person in fear of injury to that person or any other person and thereby, dishonestly inducing him to part with his property.

Punishment for extortion

Section 384, I.P.C. provides punishment for extortion as follows:

384. Punishment for extortion

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

ROBBERY & DACOITY

Sections 390 to 402, I.P.C. deal with robbery and dacoity. However, for our purpose, we would be dealing with sections 390 (robbery) and 391 (dacoity).

(A) ROBBERY

Robbery is an aggravated form of either theft or of extortion or of both. The essence of the offence of robbery is the presence of imminent fear of violence. A large proportion of robberies is a mixed case of aggravated form of theft and extortion.

Section 390, I.P.C. defines robbery as under:

390. Robbery.--

In all robbery there is either theft or extortion.

When theft is robbery.--

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.--

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.--

The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Therefore, it is clear from the section that the definition under the Code is not exhaustive and related to either theft or extortion. The essence of the offence of robbery is that the offender for committing theft or for carrying away or attempting to carry away the looted property, voluntarily causes or attempts to cause death, or hurt or wrongful restraint.

Q. What do you mean by the term 'Robbery'?

Carrying away

For an offence of robbery, death, hurt, or wrongful restraint may be caused either in committing theft or in order to the committing of them or it may even be caused after committing theft but in order to carry away the property obtained by theft.

For that end:

As explained above, the expression "for that end" indicates that death, hurt or wrongful restraint is caused in order to committing of theft, or in committing theft, or in carrying away property obtained by theft. But if a person causes hurt simply to avoid his capture when he is surprised by the owners while stealing, it would be a case of theft and not of robbery; *Kalio Kerio*, 1872 Unrep Cr C 65.

But where 'C' and 'D' were stealing the mangoes from a tree and were surprised by 'B' whereupon 'C' knocked down 'B' and he became senseless, the offence of robbery was held to have been committed; *Hushrut Sheikh*, (1866) 5 WR (Cr) 85.

Voluntarily causes:

The use of the words "voluntarily causes" in the section is significant because merely causing of incidental injury does not convert the offence into robbery. The injury must be voluntarily caused. For instance in *Edware*, (1943) 1 Cox 32 the accused while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner, who at that moment tried to seize and keep the basket and ran away with it. He was held liable for theft. In a case the accused in snatching a nose-ring of a woman wounded her in the nostril and caused her blood to flow. He was held guilty of robbery; *Tipai Bheer*, (1866) 5 WR (Cr) 65.

Person:

The word 'person' means both natural and judicial persons. Normally dead body of a human being may not be a person but for the purposes of this section the word 'person' does not exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed; *Jamuna Das v. State*, MANU/MP/0036/1963 : AIR 1963 MP 106.

When 'extortion' is 'robbery'

Extortion is robbery in the following conditions¹:

- (i) When a person commits extortion by putting another person in fear of instant death, or instant hurt, or of instant wrongful restraint so that person or to some other person.
- (ii) Such a person, by so putting another in fear, induces the person so put in fear then and there to deliver up the thing extorted; and
- (iii) The offender at the time of committing the extortion is in the presence of the person put in fear.

In the presence of the person:

For extortion to become robbery, it is necessary that the offender must be present before the person put in fear of injury. Explanation to this section clarifies that a person is said to be present if he is sufficiently near to put the other person in fear of instant death, or instant hurt, or of instant hurt or wrongful restraint. The offence of extortion becomes robbery if the offender by reason of his presence is capable enough to carry his threat

1. Illustrations (b), (c) and (d) are the examples of those conditions.

into effect instantaneously. That is the victim delivers his property in-order to avoid imminent danger of injury to himself or to some other person. When injury threatened relates to some other person, such other person would naturally be one in whom the person, robbed is interested and, therefore, in order to avoid injury to that other person he delivers, the thing demanded.

What are the conditions when extortion becomes robbery?

PUNISHMENT FOR ROBBERY

Sections 392, 393 and 394 are the penal sections for robbery and related offences these sections prescribes as follow:

392. Punishment for robbery.--

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393. Attempt to commit robbery.--

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. Voluntarily causing hurt in committing robbery.--

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

In B.A. Umesh v. Registrar General, High Court of Karnataka, AIR 2011 SC

1000 "this case where minor son of deceased after returning from playing with his friends found accused's statement that his mother being possessed by devil, accused had to tie her hands and was going to call a doctor. He also disclosed that while leaving house accused was carrying several things in a bag, including a VCR. He also identified accused in a T.I. Parade. His evidence has remained unshaken on cross-examination and corroborated by evidence of another witness who lived in neighborhood. Identification of accused further strengthened by other witnesses viz.

landlord of accused. Sister of deceased identified articles seized from house of accused. Circumstantial evidence completed in a manner that clearly indicates that no one other than the accused committed offences with which he was charged. Finger-print of accused found on the handle of almirah in room of deceased proves his presence in house of deceased - Evidence also points to commission of rape of deceased by appellant. The Offence committed with extreme depravity and death inflicted on deceased in merciless manner. Offences committed by accused were neither under duress nor on provocation and an innocent life was snuffed out by him after committing violent rape on victim. He did not feel any remorse in regard to his actions, inasmuch as, within two days of incident he was caught by local public while committing an offence of a similar type. Post-mortem report opined that death had occurred due to smothering after commission of sexual assault. Conviction of accused under sections 376, 392 and 302, IPC. Case falls under rarest of rare category. Death penalty awarded by the Trial Court and confirmed by the High Court and when an appeal was preferred to the Supreme Court against the decision of the High Court, it was dismissed by the Supreme Court upholding the decision of the High Court.

Basavegowda case

In *State of Karnataka v. Basavegowda*, 1997 Cr LJ 4386 (Kant HC) the fact of the case was, Basavegowda (husband) about 10 days after his marriage took his wife (Bhagyamma) to one forest under the pretext of going for the wedding of a friend and he threatened to kill her unless she parted with all her ornaments. Bhagyamma, finding no other option, removed all her jewellery valued at around Rs. 11000 and handed the same over to the accused, who wrapped the same in a handkerchief and put it in his pocket.

Issue:

Whether the offence of the accused is punishable under section 384 or was it a case of robbery?

Decision:

The High Court observed and held that, the fact that under normal situations, a wife may even entrust her ornaments to the husband for safe custody or a prudent or careful husband may, for reasons of safety, keep the ornaments with him or under his control and such an arrangement could never lead to the inference that the husband was disentitled to retain the wife's ornaments and that it is a guilty circumstance against him. Particularly in criminal cases, such facts are not to be considered in a vacuum, but must be looked at strictly in relation to the special situation that prevails in that particular case. We have taken note of the fact that Bhagyamma has very clearly stated in her evidence that these ornaments belong to her as they had been made by her father for her wedding. She also states that they were in her custody and on her person and that the accused under threat, took the ornaments away from her. If the custody of the ornaments has come to the accused under these circumstances, then his possession becomes clearly unlawful. We need to add here that ornaments and personal property belonging to a wife necessarily constitute her personal possessions and divesting a wife of these against her wishes or without her consent would clearly bring the case within the ambit of a criminal offence. It is a misnomer to argue that irrespective of such situation, the possession of the wife's personal ornaments by husband still continues to be lawful. In our considered view, the extortion of the ornaments from Bhagyamma under threat and the subsequent recovery of these ornaments from the custody of the accused would clearly make him liable for an offence of extortion. Though the learned SPP submitted that even if the case did not qualify for a conviction under section 392, I.P.C., that on these facts, it would clearly come within the ambit of section 386, I.P.C. because, the ornaments were extorted under the threat of death, we would prefer not to accept the evidence of Bhagyamma without a little dilution because the FIR indicates a slightly less serious situation. It would be more appropriate, therefore, to record a conviction under section 384, I.P.C.

Devassia Joseph case

In *Devassia Joseph v. State of Kerala*, 1982 Cr LJ 714 the brief fact was, victim was employed in a vegetable shop. His job was to go to Tamilnadu, purchase vegetables and bring it in a lorry to Kottayam. On 7-2-1979 he was accompanying the vegetable lorry to Kottayam. A few hours before sun rise the lorry reached the road in front of

Pushpagin Church, south of the Kairthas Junction. He saw a young woman standing on the road in front of the church wearing a saree. He told the driver that she wanted to answer the calls of nature. The driver stopped the lorry and he got down. He followed the woman and ascended the steps leading to Pushpagin Church. Three others appeared on the scene. He lost his Seiko watch, Rupees 3001 cash he had with him and a gold chain, got done in jalaja fashion with a cross, weighing three sovereigns. He cried aloud and come to the road. By the time the driver had left with the lorry. He got into another vehicle and reached Kottayam of first Class, Ettumanoor, which was confirmed by the Session Magistrate Kottayam.

Issue Involved:

Whether the accused made an offence under section 394 read with section 34 of Indian Penal Code?

Kerala High Court Held:

The accused was convicted under section 378 of I.P.C. Further court said that disposing one of a movable without his consent and with a dishonest intention is theft. If, in the act of dispossession, the person in possession of the movable resists and the offender causes or attempt to cause death, hurt or wrongful restraint or fear of instant death or instant hurt or of instant wrongful restraint to any person then the offence will not be theft. The offence will be robbery. If hurt etc. is caused to overcome the resistance in carrying away the same then also the offence will be robbery. So in a case where the victim does not offer any resistance, the dispossession of a movable against his consent will not become an offence of robbery. Only in an offence of robbery. Section 394, I.P.C. will be attracted because the causing of voluntary hurt must be in committing a robbery or in an attempt to commit robbery. So, in a case where the victim does not offer any resistance against the dispossession of movables even if hurt is caused voluntarily, no offence under section 394, I.P.C. can be said to have been committed. In this case, there is no whisper either in the first information statement or in the evidence of victim that resisted when he actually disposed of the movable and cash. So, the offence committed by the accused is only theft and not one under section 394, I.P.C.

(B) DACOITY

Section 391, I.P.C. defines 'dacoity' in the following words:

391. Dacoity.--

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

From the definition under section 391, I.P.C. we can term dacoity as 'gang robbery' because robbery committed by five or more persons is dacoity.

Essential ingredients

- (i) The accused committed or attempted to commit robbery;
- (ii) Persons committing or attempting to commit robbery and persons present and aiding must not be less than five;
- (iii) All such persons should act conjointly.

The word conjointly refers to united or concerted action of five or more persons participating in the act of committing the offence.

Dacoity is different from robbery only in respect of the number of offenders. Abettors present and aiding when the crime is committed are also counted in number. Dacoity includes robbery and because robbery is only aggravated form of theft or extortion, therefore, dacoity includes theft and extortion also. Offering of resistance by the victim is not necessary. Thus, if in a case of dacoity the inmates of a house, seeing the large number of dacoits do not offer any resistance and, therefore, no force or violence is required or used by the dacoits, the offence will not be reduced from

dacoity to theft; Emperor v. Ram Chand, (1932) ILR 55 All 117.

Similarly, where the inmates of a house on simply getting the information that dacoity was about to be committed, left the house and ran away before the attack and several attacked the house and took away property, the offence of dacoity was held to have been committed because the fact of inmates running away was sufficient proof of the fear of hurt or wrongful restraint; Kessoree Pater, (1867) 7 WR (Cr) 35.

Q.What are the conditions when robbery becomes Dacoity?

PUNISHMENT FOR DACOITY

Section 395, I.P.C. provides punishment for dacoity in the following words:

395. Punishment for dacoity.-

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

In Ghure v. State of Rajasthan, MANU/SC/0706/2011 : AIR 2011 SC 2268, this case the accused armed with firearms alleged to have killed two persons, grievously injured one and looted valuable moveable from house of complainant. The Witnesses identifying accused in T.I. parade and Court properly and the Valuables recovered on disclosure made by accused identified by complainant and his family members. Death of deceased proved to be result of gun shot injuries. Evidence of witnesses not shown to be suffering from any material discrepancy. So conviction of accused proper.

In Kusho Mohtan v. State of Bihar, MANU/SC/0151/1980 : AIR 1980 SC 788 it was held that, the accused while carrying away stolen property exploded crackers to frighten the person who wanted to pursue them and conviction is proper under section 395, I.P.C.

CRIMINAL MISAPPROPRIATION OF PROPERTY

The word 'misappropriation' means a dishonest appropriation, and use of another's property for sole purpose of capitalising it for one's own use. Sections 403 and 404, I.P.C. relate to the criminal misappropriation of property. Section 403 defines criminal misappropriation and prescribes punishment for the offence and section 404 deals with misappropriation of a deceased person's property.

Section 403, I.P.C. reads:

403. Dishonest misappropriation of property.--

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Essential ingredients

Q. A, with B's consent, lodged his hundred sheep in B's field overnight and the next morning drove his flock to the market for sale. At the time of the sale when the sheep were counted the presence of an extra sheep belonging to B was brought to A's notice. A sold it with the rest. A is being tried for the theft of B's sheep. Decide

To constitute the offence of misappropriation the following ingredients must be established:

- (1) The accused misappropriated that property and converted the same to his own use dishonestly.
- (2) The movable property belonged to the complainant.

The offence of misappropriation consists in dishonest misappropriation or conversion either permanently or temporarily of movable property which is already in the possession of the offender; Rama Krishna, 1888 ILR 2 Mad 49. No entrustment is required to constitute this offence, Pramode Mategaonkar, (1965) 2 Cr LJ 562 when the property of another person comes into possession of the offender and is dishonestly converted or misappropriated by the offender

to his own use, the offence is committed; Mahabir Prasad Garodia v. State of Assam, AIR 1961 Assam 132.

Dishonest intention:

Criminal misappropriation takes place not when one has innocently come into possession of a thing, but when by subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, he keeps it, after which the retaining becomes wrongful and fraudulent. A man is said to do a thing 'dishonestly' when he does it with the intention of causing wrongful gain to one person or wrongful loss to another person. The offence consists in the dishonest misappropriation or conversion, either permanently or for the time being, of the property which is already in the possession of the offender.

Where 'A' took possession of a stray cattle and it was not shown that the cattle was stolen property, and he dishonestly retained it, he was liable under section 403, I.P.C.; Phulchand Dube, (1929) 52 All 152.

finder of goods:

Under the Code, the intention of the accused at the time the property was taken is taken into account and his subsequent dishonesty does not suffice to make him guilty of this offence. If the intention was not dishonest at the time possession was taken, a subsequent change of intention does not make the possession illegal. Explanation 2 to the section emphasises that in case of a finder of goods, if he has taken all precautions to ascertain the true owner and kept the goods for a reasonable time for restoring it to the true owner, he can use the property for himself, if the true owner is not found. But if he immediately misappropriates the property, he would be liable under this section.

DISHONEST MISAPPROPRIATION OR CONVERSION OF PROPERTY

There must be actual misappropriation or conversion of the things. The word 'appropriate' means to set apart or assign the property to oneself or to another to the exclusion of the owner; P. Durgappa v. State of Mysore, AIR 1956 Mys 40. The words 'converts to his own use' necessarily connote the use or dealing with the property in derogation of the rights of the owner; Ramaswami Nadar v. State of Madras, MANU/SC/0048/1957 : AIR 1958 SC 56. The misappropriation or conversion must be to the accused's own use; Empress v. Sham Singh, 1884 Punj Re (Cr) No. 36, p. 63. When an accused found a thing and merely retained it in his possession, he was acquitted of this offence.

Property must be movable:

The misappropriation must be of movable property and must be in possession of someone. If the property is in nobody's possession or nobody is its owner, no criminal misappropriation can take place with respect to that property.

Joint/Partnership Property

A joint owner of property is not guilty if he takes it out of the possession of another.¹

1. See illustration (c).

A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes, he may be accountable civilly to the other partners, but he does not thereby commit any misappropriation; V. Raghavji Patel v. State of Maharashtra, MANU/SC/0091/1964 : AIR 1965 SC 1433.

DISHONEST MISAPPROPRIATION OF PROPERTY POSSESSED BY DECEASED PERSON

Section 404, I.P.C. provides for dishonest misappropriation of property possessed by deceased person in the following manner:

404. Dishonest misappropriation of property possessed by deceased person at the time of his death.--

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Essential ingredients

- (1) There may be some property movable or immovable.
- (2) Such property was in the possession of the deceased at the time of his death.
- (3) Since the death, such property was not in the possession of any person legally entitled to such a possession.
- (4) The accused misappropriated it or converted it into his own use.
- (5) He did so dishonestly.

If the accused was an employee of the deceased then the punishment for this offence may extend to seven years instead of a term of three years in usual cases of this offence.

Distinction between 'theft' and 'criminal misappropriation'

Q.Discuss briefly the distinction between 'theft' and 'criminal misappropriation'

Theft (section 378)	Criminal Misappropriation (section 403)
1. The object of the offender is to take property from another person's possession, and the offence is complete as soon as the offender has moved the property dishonestly.	1. The offender is already in possession of the property and his possession is not punishable either because he has found it or is a joint owner of it or has acquired it under some mistaken notion.
2. Dishonest intention is sufficiently manifested by a moving of the property or the act of taking.	2. It is the subsequent (dishonest) intention to misappropriate or convert to his own use that constitutes the offence.
3. The moving of property itself is an offence.	3. The moving of property may be perfectly lawful; it is the subsequent dishonest intention that makes it an offence.

Ramaswami Nadar case

Q.Discuss critically the law laid down In Ramaswami Nadar case

In Ramaswami Nadar v. State of Madras, MANU/SC/0048/1957 : AIR 1958 SC 56 the fact of this case was, the appellant used to carry on prize-competitions as the proprietor of the "Lotus Cross Words". Certain persons who had paid money in connection with prize competition No. 92 complained that they had not received their prize money though it had been announced that they had competed for the prize offered. The police, after investigations, submitted a charge-sheet against the appellant that he had dishonestly induced PWs 1 to 3 to complete in his "bumper competition" No. 92 by paying entry fees to the tune of Rs. 2,640 on the representation that the prize winners will get a sum of Rs. 3,10,000 and that on that representation he had collected one lac and fifteen thousand odd rupees from the public but did not utilize any part of the collected amount towards payments of the prize offered. The appellant was charged under section 420, I.P.C. The Presidency Magistrate at Madras acquitted the appellant. On appeal pressured by the State, the High Court allowed the appeal, but did not convict the appellant under section 420, I.P.C., but under section 403, I.P.C. for misappropriation. Hence the appeal by the appellant.

Issues Involved:

On the facts and circumstances of the case whether, misappropriation is clearly established in terms of section 403, I.P.C.?

Decision:

It was contended on behalf of prosecution that the graveness of the charges against the appellant was that inspite of his recent past experience that none of past bumper competitions attracted a sufficiently large number of competitors to yield the guaranteed prize money the appellant had advertised the competition No. 92 with guaranteed money of Rs. 3,10,000 and that inspite of his having collected about one lac and fifteen thousand odd rupees by the way of entry fees none of the prize declared to have been won by prosecution witness 1 to 3 and others had actually been paid. The history of the prize competitions conducted by the appellant showed that he was actuated by a dishonest intention when he collected one lac and fifteen thousand odd rupees by way of entry fees, and did not utilize any part of the collected amount towards payment of the prizes offered.

On behalf of the appellant it was contended that due to insufficient collections in the recent competitions, he was not able to respect all his obligations, so much so that he was forced to close down business owing to the loss on June 22, 1955. And to show his bona fides, he had disbursed over a lac of rupees even after the closure of the business and had settled the claims of six thousand out of seven thousand prize winners. It was contended that on the facts and circumstances stated (above) no case under section 403, I.P.C. was made out.

The court observed that to prove an offence under section 403, I.P.C. the prosecution has to prove that the property was the property of the prosecution witnesses and that the accused misappropriated that sum or converted it to his own use, and that he did so dishonestly. In the present case, the court held, none of these constituent elements of the offence under section 403, I.P.C. can be categorically asserted to have been made out. No doubt, the appellant had promised to award prizes of the total value of Rs. 3,10,000 but mere was no further obligation that the prize money had to come either wholly or in part from the sum collected by him by way of entry fees. There was no express provision in any of the rules and conditions of the "Lotus Cross Word" that there was any

obligation on the part of the appellant to set apart specific sums collected by way of entry fees for disbursement amount to the prize winners. The court rejected the contention of the prosecution that though there was no specific provision anywhere that the money collected by way of entry fees should be reserved for payment to the prize winners the appellant was gone sort of a trustee or bailee and should have seen to it that the collected amount was disbursed amongst the prize winners. The court held that there was neither such collected in a particular way. There being no duty to make appropriation in a particular way, the appellant could not be held guilty of having misappropriated the collection of competition No. 92.

CRIMINAL BREACH OF TRUST

Q. Define the expression the "criminal breach of trust"

Section 405, I.P.C. defines criminal breach of trust. It states that in order to constitute the offence of criminal breach of trust, it must be established that the accused was entrusted with the property or with dominion or power over the property of another and that he dishonestly misappropriated it or converted it to his own use; Challoor Mankkal Narayan Ituravi v. State of Travancore & Cochin, MANU/SC/0091/1952 : AIR 1953 SC 478. Section 406, I.P.C. prescribes punishment in case of a breach of trust and sections 407 to 409, I.P.C. deal with the cases of aggravated forms of criminal breach of trust. Section 406 reads:

406. Punishment for criminal breach of trust.--

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which

may extend to three years, or with fine, or with both.

Essential ingredients

The essential ingredients; Kailash Kumar Sanwantia v. State of Bihar, MANU/SC/0660/2003 : (2003) 7 SCC 399 are:--

- (1) The accused must be entrusted with property or with dominion over property;
- (2) The person so entrusted must--
 - (a) dishonestly misappropriate or convert to his own use that property, or
 - (b) dishonestly use or dispose of that property or willfully suffer any other person to do so.
 - (i) in violation of any direction of law prescribing the mode in which such property is to be discharged.
 - (ii) any legal contract made in discharge of such trust.

Entrustment

Q.Explain the term "entrustment"

To constitute criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use of the property in violation of any legal direction or of any legal contract, and the misappropriation or conversion or disposal must be with dishonest intention. Every payment of money by one person to another does not amount to an entrustment unless there are circumstances attending it from which one can gather that it was an entrustment and not a mere payment; Jairani Devi v. Krishna Kumar, 1985 Cr LJ 64 (All). If the real nature of the transaction is a loan, the fact that the parties in writing call it a trust, would not attract the offence of criminal breach of trust.

Section 405, I.P.C. requires doing of something with respect to property which would indicate either misappropriation or conversion or disposal in contravention of any legal contract, express or implied. A mere dispute of civil nature will not attract the provisions of this section; Mohd. Suliman v. Mohd. Ayub, MANU/SC/0090/1964 : AIR 1965 SC 1319.

Dominion over property

For an offence of criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. A person is said to be having a dominion over property when he supervises or exercises control over the property or is in the charge of that property. The inspector of Water Works, whose duty is to supervise and check the distribution of water from the Municipal Water Works is said to be having dominion over the water belonging to his employers. Therefore, if such inspector deliberately misappropriates such water for his own use or for the use of his tenants for which he pays no tax and gives no information to his employees, he would be guilty of criminal breach of trust; Emperor v. Bimal Charan Roy, (1913) 35 All 361.

In Somnath v. State of Maharashtra, MANU/SC/0255/1972 : AIR 1972 SC 1490 the accused, a Traffic Assistant in the office of Indian Airlines Corporation demanded on behalf of the Corporation certain excess amount for trunk charges from the passengers for reservation of seats. After the amount was received, he passed receipts on behalf of the Corporation. He, however subsequently falsified the counter foil receipts and fraudulently, misappropriated the excess amounts. The Supreme Court held that the accused was guilty of criminal breach of trust.

In Joseph Salvaraj A. v. State of Gujarat, MANU/SC/0719/2011 : AIR 2011 SC 2258, Supreme Court quashed the appeal of criminal proceedings. Where complaint was that appellant has failed to pay fees to cable operator for telecasting his channel. Dispute was civil nature. Complaint does not even prima facie make out offences under section 406, section 420, section 506, IPC. Complaint was even made by mediator between cable operator and channel owner who had no locus standi. Prosecution of appellant would only lead to his harassment and humiliation. The appellant for commission of the alleged offences would be clear abuse of the process of law. Appeal allowed and all criminal

proceedings quashed.

BREACH OF TRUST BY CARRIER

Section 407, I.P.C. provides that:

407. Criminal breach of trust by carrier, etc.--

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A carrier is a person who undertakes for hire the conveyance of parcels of goods. A Wharfinger is the owner or occupier of a wharf, which is a platform by the side of which ships may be stationed for loading or unloading. A warehouse keeper is one who keeps a warehouse which is a house to deposit or keep a thing.

CRIMINAL BREACH OF TRUST BY CLERK OR SERVANT

Section 408, I.P.C., punishes criminal breach of trust committed by a clerk or servant. It reads:

408. Criminal breach of trust by clerk or servant.--

Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CRIMINAL BREACH OF TRUST BY PUBLIC SERVANT

Section 409, 7.P.C. is attracted when the offence is committed by a public servant, banker, merchant, factor (a person who does business for another) attorney or agent Section 409 reads:

409. Criminal breach of trust by public servant, or by banker, merchant or agent.--

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Q.What are the difference between "theft" and "criminal breach of trust"?

Difference between theft and criminal breach of trust

Theft (Section 378)

1. In theft, property is moved from the possession of another man with dishonest intention.
2. In theft, the offender comes in possession of the property without the consent of the person in possession.

Criminal Breach of Trust (Section 405)

1. In Criminal breach of trust, the offender is lawfully entrusted with the property and he dishonestly misappropriates it.
2. In criminal breach of trust, possession is derived with the consent of the owner.

Difference between criminal misappropriation and criminal breach of trust

Criminal Misappropriation (Section 403)

1. The property comes into the possession of the accused in some natural manner.

Criminal Breach of Trust (Section 405)

1. The property comes into the possession of the accused either by an express entrustment or by some process.

2. The property comes into the possession of the offender by some causality or otherwise and he afterwards misappropriates it.

2. The offender is lawfully entrusted with the property and he dishonestly misappropriates the same.

CASE LAWS

In V.S. Achuthanandan v. R. Balakrishna Pillai, MANU/SC/0109/2011 : AIR 2011 SC 1037 this case where award of contract for multi purpose hydro Electric power project but accused minister for electricity and higher officials of Electricity Board alleged to have awarded contract at exorbitant rates with ulterior motive. Prosecution has established award of both works of project at a very high and exorbitant rate with special conditions having heavy financial implications, by reducing retention and security amount, by allowing contractor to return only fifty per cent of empty cement bags. Accused persons have abused their official positions. Every person shall be presumed to be innocent unless he is proved guilty by competent Court of law. It is also settled law that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate court should not disturb the finding of acquittal recorded by the trial Court. Accused acquitted.

Kailash Kumar case

In Kailash Kumar Sanwantia v. State of Bihar, MANU/SC/0660/2003 : (2003) 7 SCC 399 the fact was, the appellant went to State Bank of India for taking two bank drafts of Rs. 75,000 each, for that he carried a sum of Rs. 1,50,000 with him. The total amount was handed over to accused Head Cashier, Gautam Bose. The cash peon told him that he would count the money, and return the bag in which the money was carried. The appellant was handed over cash vouchers. As the draft was to be handed over at 2 p.m., he returned to his shop. In the meantime peon of the bank came to his shop and told him the money handed over by him was missing from the cash counter.

Issue:

Whether the accused persons can be convicted under section 409, I.P.C. for criminal breach of trust by a public servant?

Decision:

The apex Court observed that, section 409, I.P.C. deals with criminal breach of trust by a public servant, or by a banker, merchant or agent. In order to bring in application of the said provision, entrustment has to be proved. In order to sustain conviction under section 409, two ingredients are to be proved. They are:

(1) The accused, a public servant, or banker or agent was entrusted with property of which he is duty bound to account for; and

(2) The accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided in section 405, I.P.C. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:

(1) Entrusting any person with property, or with any dominion over property.

(2) The person entrusted

(a) dishonestly misappropriating or converting to his own use that property; or

(b) dishonestly using or disposing of that property or wilfully suffering any other person so as to do in violation--

(i) of any direction of law prescribing the mode in which such trust is to be discharged; or

(ii) of any legal contract made touching the discharge of trust.

The basic requirement to bring home the accusations under section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not; misappropriated in or

converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.

What is to be decided is whether the accused had dishonestly misappropriated or converted to his own use the property entrusted or dishonestly used or disposed of that property. As presented by the prosecution, the money was taken away from the cash counter. It is not the case of the prosecution that money which was given to the accused Gautam Bose and the cash peon to obtain bank drafts was taken away by accountant Gautam Bose or the cash peon Ganaori Sao. Because of intervening situation of the disappearance of cash due to theft by somebody else., the bank draft could not have been prepared and handed over. Even if there is a loss of money, the ingredient necessary to constitute criminal breach of trust are not there. Therefore, the accused persons cannot be convicted under section 409, I.P.C.

Jaikrishandas Desai case

In Jaikrishandas Manohardas Desai v. State of Bombay, MANU/SC/0084/1960 : AIR 1960 SC 889 the fact was, the Textile Commissioner, Bombay, invited tenders for dyeing some cloth. The Parikh Dyeing and Printing Mills Ltd., Bombay submitted a tender for the same and it was accepted by the Textile Commissioner.

The first appellant was the Managing Director and the second appellant was the Director and technical expert of the company. Pursuant to contract 2,51,000 yards of cloth was supplied to the company for dyeing. The company failed to dye the clothes within stipulated period and approx. 1,11,00 yards out of the cloth were dyed and delivered to Textile Commissioner. On the request of company the contract was cancelled by the Textile Commissioner in respect of the balance of cloth and the company was called upon to give an account of balance cloth delivered to it and it was also informed that it would be held responsible for material spoiled and not accounted for. Approximately 130,000 yards of cloth entrusted to the company was not returned to the Textile Commissioner.

The appellants were convicted under section 409, I.P.C. for criminal breach of trust. The present appeal before the Supreme Court is against the decision of the High Court.

Issues involved:

On the facts of the case, whether a simple failure to account is sufficient to bring a case under section 409, I.P.C.?

Decision:

The apex Court observed that in a case of criminal breach of trust under section 409, I.P.C. the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication. Entrustment and failure to account for may lead to an inference of dishonest misappropriation. Simple failure to account for may not be sufficient to bring home the offence of criminal breach of trust. But when a person is unable to account for or renders undue explanation an inference of misappropriation with dishonest intention may readily be made.

In the present case, the court held it was amply clear that the two appellants were liable to account for the cloth over which they held dominion and they failed to account for the same. Therefore, each had committed the offence of criminal breach of trust.

The appeal was dismissed.

CHEATING

Q. Briefly define the term "cheating"?

Howkins defines cheating as, "deceitful practices, in defrauding or endeavouring to defraud another of his own right by means of some artful device, contrary to the plain rule of common honesty". Section 415 of the Code deals with three types of cheating, which is given below by means of a diagram:

Cheating

???(I)

Thus, as stated in the diagram cheating can be committed in three ways,

viz.,

- (1) By fraudulently deceiving and inducing the person so deceived (a) to deliver any property, or (b) to consent to the retention of any property by any person;
- (2) By dishonestly inducing the person to deliver any property or to give consent to the retention of any property; and
- (3) By intentionally inducing the person deceived to do or to omit to do anything which he would not have done, if he was not so deceived and such act of him caused or was likely to cause damage, or harm in body, mind, reputation or property; *Tulsi Ram v. State of Uttar Pradesh*, MANU/SC/0390/1962 : AIR 1963 SC 666.

Essential ingredients of cheating

Q.Discuss the essential ingredient of cheating?

The essential ingredients; *Ram Das v. State of Uttar Pradesh*, AIR 1974 SC

1811 to constitute the offence of cheating are:

- (i) There should be fraudulent or dishonest inducement of person by deceiving him;
- (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) In cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to person induced in body, mind, reputation or property.

Dishonest intention

It is a well-settled principle of law that to hold a person guilty of the offence of cheating it has to be shown that his intention was dishonest at the time of making a promise. Such dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.

Deception

The word 'deceiving' means causing to believe what is false, or misleading as to a matter of fact or leading into error. In *Shyam Sundar Gupta v. State of Uttar Pradesh*, 1985 Cr LJ 1674 (All) it was held that, for the offence of cheating there must be a deception which should precede the fraudulent or dishonest inducement and it must be established that the intention of the accused was dishonest at the time of making the promise.

Where adulterated groundnut oil was sold on the representation that it was pure oil there was deception. In order to convict a person of cheating there must be nexus between the deception practiced and the parting of property. If the connection is too remote there will be no cheating. Thus, taking the price of a thing on representation that it is ready for sale without that thing being ready; or obtaining a thing by a false representation that it will be paid for without any intention whatsoever to pay for it, are examples of deception; *Mahadeo Prasad v. State of West Bengal*, MANU/SC/0181/1954 : AIR 1954 SC 724.

Fraudulent and dishonest

The word 'fraudulently' is defined in section 25 of the Code which says:

25. "Fraudulently".--

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

'Defraud' means 'to deceive'. Therefore, when an act is done fraudulently it means that it is done with the intention to deceive another.

In *Bhagwan Maharaj v. State of Andhra Pradesh*, MANU/SC/0402/1999 : AIR 1999 SC 2332 it was held that the representation made by the accused (Maharaj), that he had divine healing powers through his touches, thereby making the complainant believe that he could cure his little girl of her congenital dumbness through his divine powers was fraudulent and amounted to inducement.

Inducement

Mere deception is not in itself sufficient to constitute cheating. It will be cheating only when on account of the deception practised, the complainant is induced to deliver or part with the property or to do or omit to do certain acts which were detrimental to his interest.

Any Property

The word 'property' has been used in its widest sense in section 415, I.P.C. The property does not have to be a thing which has market or pecuniary value. Thus, documents like passport, admit cards etc. are also property within the meaning of this section.

PUNISHMENT FOR CHEATING

Section 417, I.P.C. prescribes punishment for cheating in the following words:

417. Punishment for cheating.--

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHEATING BY PERSONATION

Section 416, I.P.C. deals with the offence of cheating by personation. This section reads:

416. Cheating by personation.--

Q. What do you mean by 'cheating by personation'?

A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.--

The offence is committed whether the individual personated is a real or imaginary person.

Personation by itself is no offence but when a person fraudulently and dishonestly does a fraudulent act and represents as if he is himself that other person, section 416, I.P.C. will be attracted.

When the accused used the railway season ticket issued in the name of a different person by pretending to be that person, the offence fell under this section; *R. Matameswara (in re:)*, MANU/AP/0056/1956 : AIR 1957 AP 4.

Where the accused representing himself to be B at a University examination, got a hall-ticket under the examinee's name and wrote papers in B's name, it was held that the accused had committed cheating by personation and the offence of forgery was also made out; *Queen Empress v. Shashi Bhushan*, 1893 All WN 96.

Cheating one whom the accused was bound to protect

Section 418, I.P.C. prescribes punishment for cheating by a person standing in a fiduciary capacity to the person cheated. This section reads:

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.-

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Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Where a director of a banking company got placed before the share-holder a balance sheet which he knew to be false and misleading, concealing the true position of the company, he was held liable under this section; Queen Empress v. Moss, (1894) 1 LR 16 All 88.

PUNISHMENT FOR CHEATING BY PERSONATION

Section 419, I.P.C. prescribes punishment for the offence of cheating by personation as under:

419. Punishment for cheating by personation.--

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHEATING INVOLVING DELIVERY OF PROPERTY

Section 420, I.P.C. deals with the offence of cheating which involves delivery of property or destruction of valuable security in the following manner:

420. Cheating and dishonestly inducing delivery of property.--

Q. X asked Y, a cement dealer, to deliver 200 bags of cement at the construction site of his house and promised to pay the price of cement at the time of delivery at the construction site. V sent V, his servant, with 200 bags of cement to deliver to X. X took the delivery telling V that he would reach the shop immediately and pay to the dealer personally. However, X failed to make payment for several days and a report was lodged with the Police by Y. What offence, if any, has X committed? Decide.

Q. Would your decision differ if it is proved that X made all possible efforts to arrange for the payment after taking delivery of cement but failed.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Essential ingredients

The offence of cheating is established when the following ingredients are proved, viz.,

- (1) That the representation made by the accused was false;
- (2) That the accused knew that the representation was false at the very time when he made it;
- (3) That the accused made the false representation with the dishonest intention of deceiving the person to whom it was made; and
- (4) That the accused thereby induced that person to deliver any property or to do or to omit to do something

which he would otherwise not have done or omitted; Mahadeo Prasad v. State of West Bengal, MANU/SC/0181/1954 : AIR 1954 SC 724.

For a person to be convicted under section 420, I.P.C., it has to be established not only that he has cheated some one but also that by doing so he has dishonestly induced the person who was cheated to deliver any property. A person can be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person and wrongful loss to another person. Wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain means a gain by unlawful means of property to which the person gaining is not entitled. These are the facts of the definition of dishonestly and it is enough to establish the existence of one of them; Tulsi Ram v. State, AIR 1953 SC 666.

Theft, Criminal misappropriation and cheating distinguished

Q.Explain the distinction among terms theft, criminal misappropriation and cheating

Theft (Section 378)	Criminal Misappropriation (Section 403)	Cheating (Section 415)
1. The intention is to take dishonestly a movable property out of the possession of another person.	1. The intention is to dishonestly misappropriate or convert to his own use any movable property.	1. It is fraudulently or dishonestly inducing the deceived person to deliver any property.
2. Movable property involved	2. Movable property involved.	2. It may be any property.
3. The property is taken out of the possession of another.	3. The offender is already in possession of the property.	3. The victim is induced to deliver the property.

In Kuldeep Sharma v. State of H.P., MANU/SC/0334/2011 : AIR 2011 SC 1895, this case where the appellant entered into criminal conspiracy with co-accused and prepared false muster roll in which names of casual labourers, who were not engaged, inserted. The Evidence of Meter Reader, Supervisor and Executive Engineer clear that it is appellant who had verified and countersigned muster roll and gave false certificate and on that basis wages were disbursed to labourers. Conviction proper and sentence of appellant already reduced by High Court to one year each for offence under IPC besides P.C. Act while dismissing appeal. Sentence awarded not excessive.

CASE LAWS

Hridaya Ranjan case

In Hridaya Ranjan Prasad Verma v. State of Bihar, MANU/SC/0223/2000 : (2000) 4 SCC 168 the fact of the case was, the appellants executed a registered sale deed in favour of the society and Manish Prasad Singh, an advocate, on behalf of the society handed over three cheques for the sum of Rs. 5.5 lakh. But, the said cheques were dishonoured on account of insufficiency of amount in the Account of the drawer. Appellants made several requests to Mr. Manish for payment of the amount. Finding that Mr. Manish has no intention to pay the amount, the appellants lodged complaint against him.

Issue:

Whether it was a case of breach of contract or cheating?

Decision:

The Supreme Court after convicting the accused for cheating held that, on a reading of the section 420, I.P.C. is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the

inducing must be fraudulent or dishonest. In second class of acts, the inducing must be intentional but not fraudulent or dishonest.

In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. That is the time when the offence is said to have been committed.

Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

Mahadeo Prasad case

In Mahadeo Prasad v. State of West Bengal, MANU/SC/0181/1954 : AIR 1954 SC 724 the fact was, the appellant agreed to purchase from the complainant 25 ingots of tin valued at over Rs. 17,000 odd against payment of cash. After taking delivery of the goods in his godown he disappeared from the place without making payment nor did he pay the price later. On a complaint he was charged with the offence of cheating under section 420, I.P.C.

His defense was that it was the complainant who was anxious to sell his goods because the process of this commodity were falling fast and that he had no intention to cheat but that the complainant lodged the complaint to give it a colour of crime.

Issue:

Whether the appellant had a dishonest intention?

Supreme Court held:

If the appellant at the time he promised to pay cash against delivery had an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating; but if on the other hand he had no intention to pay but merely said that he would do so in order to induce that complainant to part with the goods then a case of cheating would be established.

The complainant had never known the appellant; he did not have any previous dealings with him. He could not have been anxious to sell the goods to the appellant. Even assuming that the market was falling, the complainant would not have trusted the appellant who was an utter stranger and given delivery of the goods to him. There was sufficient evidence to show that at the time of purchase the appellant was in financial difficulties and had taken large overdrafts from banks and had no means of payments for the goods nor any hope of receiving any money for payment to the complainant.

Therefore the whole conduct of the appellant was sufficient to hold that at the time when he took delivery of the goods he had no intention whatsoever to pay. He merely promised to pay cash against delivery in order to induce the complainant to part with the goods.

Sri Bhagwan Maharaj case

In Sri Bhagwan S.S.V.V. Maharaj v. State of Andhra Pradesh, MANU/SC/0402/1999 : (1999) 5 SCC 740 the appellant (Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj) claimed to possess occult faculties and attracted a number of devotees. He represented to have divine healing powers through his touches, particularly of chronic diseases. The complainant approached him for healing his 15-year-old daughter who was congenitally a dumb child. The appellant assured the complainant that the little girl would be cured of her impairment through his divine powers. He demanded a sum of Rs. 1 lakh as consideration to be paid in instalments. The complainant paid some

amount, but even after a long time no change could be seen in the girl.

issue:

Whether accused can be convicted for cheating or it was a case of breach of trust?

Decision:

The Supreme Court observed and held that, if somebody offers his prayer to God for healing the sick, there cannot normally be any element of fraud. But if he represents to another that he has divine powers and either directly or indirectly makes that other person believe that he has such divine powers, it is inducement referred to in section 415, I.P.C. Anybody who responds to such inducement and pursuant to it gives the inducers money or any other article and does not get the desired result is a victim of the fraudulent representation. The court can in such a situation presume that the offence of cheating falling within the ambit of section 420, I.P.C. has been committed. It is for the accused, in such a situation, to rebut the presumption. Therefore, the appellant has committed the offence under section 420, I.P.C.

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Chapter 13

FALSE DOCUMENT OR ELECTRONIC RECORD

Creating a false document or electronic record denotes creation of a document or an electronic record or execution of the document or electronic record and signed such document in electronic form or by electronic signature fraudulently or dishonestly; *Vimla v. Delhi Administration*, MANU/SC/0163/1962 : AIR 1963 SC 1572.

The provisions of section 464 deals with false document as follows:

464. Making a false document

A person is said to make a false document or false electronic record--

First--Who dishonestly or fraudulently--

- (a) makes, signs, seals or executes a document or part of a document;
 - (b) makes or transmits any electronic record or part of any electronic record;
 - (c) affixes any electronic signature on any electronic record;
 - (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,
- with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly--

Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly--

Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

- (a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.
- (b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.
- (c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without S's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of S, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains the these words--"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.--

A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.--

The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3.--

For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of subsection (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

A false document, electronic record or electronic signature can be made in the following manner:

- (a) by making, electronically signing, sealing or executing a document;
- (b) by causing a person, who is innocent, of the contents or nature of the alteration of a document or an electronic record;
- (c) by affixing any electronic signature on any electronic record.

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Chapter 14

CRIMES AGAINST WOMEN

Since the dawn of humanity, particularly after Adam ate the apple, man's fascination for woman has been unbounded, boundless. It has found its manifestation in the adoration as well abuse of woman. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation, rape, etc. are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve teasing, from molestation to rape. Besides, dowry and dowry related murders and suicides are such evils in the society which are putting the society to great shame. As the love for consumerism is increasing, so is greed for dowry. When in-laws fail to get the desired articles, they either murder her or induce her to commit suicide by their persistent cruelty, harassment, taunts, insult and humiliating behaviour. This Chapter is devoted to the 'crime against woman' and we shall discuss each of the offences one by one.

DOWRY AND DOWRY RELATED OFFENCES

Meaning of word 'dowry'

What do you mean by term 'dowry'?

The word 'dowry' has nowhere been defined in the Indian Penal Code. According to the Webster Dictionary, it means "money, goods or estate that a woman brings to her husband at marriage".

According to section 2 of the Dowry Prohibition Act, 1961, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Thus, there are three occasions related to dowry:

(i) before the marriage;

(ii) at the time of marriage; and

(iii) "at the time" after the marriage.

There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the meaning of 'dowry'; *Satvir Singh v. State of Punjab*, MANU/SC/0588/2001 : (2001) 8 SCC 633.

DOWRY DEATH

It is a very pathetic paradox of our contemporary times that on the one hand, marriage is a very cherished and fond dream of a man and his family and yet on the other, the most cruel and heinous crime, brutal death of a bride within the four walls of the matrimonial home culminates from it. This has become such a menacing reality that Parliament had to make dowry related death as crime. In view of this, a new section 304B has been inserted in the Indian Penal Code in the year 1986. Section 304B, I.P.C. reads:

304B.Dowry death.--

Q.What is Dowry death as provided under section 304B I.P.C.?

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--

For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

In the case of death under the above circumstances, the husband and husband's relatives, shall be presumed to have caused a 'dowry death' and shall be liable for the offence unless it is proved otherwise. That is to say, the burden of proof shifts from the prosecution to the accused, unlike other offences where the accused is presumed to be innocent.

Sub-section (2) prescribes a minimum sentence of seven years of imprisonment that may extend to imprisonment for life in the case of dowry death.

It should be noted that, the 'dowry' mentioned in section 304B could be any property or valuable security given or agreed to be given in connection with the marriage.

Essential ingredients

In *Taiyab Khan v. State of Bihar (Now Jharkhand)*, 1 (2006) CCR 23 (SC) the Supreme Court laid down the ingredients of section 304B, I.P.C. in the following manner:

The main ingredients of section 304B, I.P.C. are:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such death should have occurred within seven years of her marriage;
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) Such cruelty or harassment should be for or in connection with demand for dowry;
- (v) Cruelty or harassment should have been meted out to the woman soon before her death.

Evidence in Dowry Death Cases

To prove a 'dowry death' prosecution is to prove the following:

- (a) there was an unnatural death of a woman;
- (b) that woman had been married within seven years preceding her aforesaid unnatural death;
- (c) soon before her death she was subjected to cruelty or harassment--
 - (i) such cruelty or harassment had been caused to her by her husband or husband's other relatives;
 - (ii) that the cruelty or harassment was for or in connection with any demand for dowry.

In all dowry cases, the standard of appreciation of evidence has to be in the light of the provisions contained in section 113A of the Evidence Act.

Meaning of expression 'soon before her death'

Q.What do you mean by expression 'soon before her death'?

It is not enough that harassment or cruelty was caused to the woman with demand for dowry at some time, if section 304B is to be invoked. But it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within few days or even few weeks before it. But the proximity to her death is the pivot indicated by the expression. The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been an aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between the death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide, the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate causes of her death. It is, hence, for the court to decide, on the facts and circumstances of each case, whether the said interval in the particular case was sufficient to snuff its cord from the concept 'soon before her death'; *Satvir Singh v. State of Punjab*, MANU/SC/0588/2001 : (2001) 8 SCC 633: AIR 2001 SC 2828.

Presumption of Dowry Death

It has been stated earlier that since harassment, torture and violence on a married woman occur within the four walls of the matrimonial home, the prosecution case generally depends on circumstantial evidence, and since it is difficult to establish the crime by circumstantial evidence, a rule of presumption has been enacted in Indian Evidence Act vide section 113B, Evidence Act.

Section 304B(1) in the later part mandates the drawing of presumptions that the husband or relatives of the husband of the victim girl have caused her death and this presumption of dowry death corresponds to the presumption as to dowry death envisaged in section 113B of the Evidence Act.

Both section 113B of Evidence Act and section 304B of the I.P.C., have used the expression "shall be presumed".

"Shall presumed" in section 4 of the Evidence Act, means that whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

However, the fact of the matter is that presumption under section 113B, Evidence Act reserves that rule that burden of proof is on the prosecution; *Boora Singh v. State of Uttar Pradesh*, 1992 Cr LJ 2294.

Kans Raj case**Q.Critically examined the law laid down by the Supreme Court in Kans Raj Case**

In *Kans Raj v. State of Punjab*, MANU/SC/0296/2000 : AIR 2000 SC 2324 the fact of the case was, Sunita Kumari married on 9-7-1985 was found dead on 23-10-1988 at the residence of her in-laws at Batala in Punjab. The death was found to have occurred not under ordinary circumstances but was the result of asphyxia. On post-mortem it was found that the deceased had injuries "her person including a ligature mark, 20cm. x 2cm. on the front, right and left side neck, reddish-brown in colour starting from left side of the neck, 2cm., below the left angle of the jaw passing just above the thyroid cartilage and going up to a point 2cm. below the right angle of the jaw." The parents of the deceased were allegedly not informed about her death.

The appellant (*Kans Raj*) father of the deceased filed complaint under sections 302 and 304B, I.P.C., against the deceased's in-laws.

Issue:

Whether the respondents can be convicted under section 304B, I.P.C.?

Decision:

The apex Court observed and held that:

(i) The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that 'soon before her death' she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under section 304B.

(ii) It is contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite to the expression "soon after" as used and understood in section 114, illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates a reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time.

(iii) The expression "otherwise than under normal circumstances" would mean death not in usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury.

It was held that, under the circumstances in the present case, Rakesh Kumar (husband of the deceased) should be convicted under section 304B, I.P.C.

In *Rajbir v. State of Haryana*, MANU/SC/0967/2010 : AIR 2011 SC 568, this case where accused husband found guilty of murdering his pregnant wife for demanding cash amount barely six months after their marriage. Awarded life sentence under section 304B, IPC. High Court has reduced sentence to 10 years rigorous imprisonment. When it is borne out from injuries in evidence of doctor that deceased's head was repeatedly struck and she was also throttled and its case of barbaric and brutal murder. Court directs all trial Courts to ordinarily add S.302 to charge of S.304B so that death sentence can be imposed in heinous and barbaric crimes against women.

CRUELTY BY HUSBAND AND/OR HIS RELATIVES

Vide section 498A, I.P.C. which was inserted in the Code in 1983 as new 'Chapter XXA', wherein a new offence, an offence of cruelty to a married woman by her husband and in-laws has been created. This offence is non-bailable and cognizable only if information is lodged with the Commissioner of Police by the victim or her relative or by a public servant authorized in this behalf.

Object of Adding Section 498A

The object of adding this section is to punish the husband and relatives of the husband who torture and harass a woman with a view to coerce her or any person related to her to meet any unlawful demand or drive the woman to commit suicide.

Section 498A reads as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty.--

Q. What do you mean by 'Cruelty' as defined under section 498A, I.P.C.?

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--

For the purpose of this section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Meaning of word 'Cruelty'

The word 'Cruelty' within the meaning of section 498A, I.P.C. has been explained in the Explanation to this section, which consists two clauses viz., clauses (a) and (b).

The word 'cruelty' means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause a grave injury or danger to life, limb or mental or physical health of the woman. Cruelty also means harassment of the woman with a view of coercing her/or any person related to her to meet any unlawful demand for any property or vehicle.¹

In *Sarla Prabhakar v. State of Maharashtra*, 1990 Cr LJ 407 it was observed that, to attract section 498A, I.P.C., it must be established that the cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide, or the harassment was to compel her to fulfill illegal demand for dowry. It is not every type of harassment or cruelty that would attract section 498A.

The sole constituent of an offence under section 498A, I.P.C., is cruelty which in view of clause (a) to Explanation to this section, means wilful conduct. The word wilful contemplates obstinate and deliberate behaviour on the part of the offender for it to amount to cruelty. Thus mens rea is an essential ingredient of the offence.

Essential Ingredients

Section 498A, I.P.C. has the following essential ingredients:

- (a) that the victim was a married lady (she may also be widow),
- (b) that she has been subjected to cruelty by her husband or the relative of her husband,
- (c) that such cruelty consisted of either--
 - (i) harassment of woman with a view to coerce her for meeting a demand for dowry; or
 - (ii) a wilful conduct by the husband or the relative of her husband of such a nature as is likely to lead the lady to commit suicide or to cause grave injury to her life, limb or health;
 - (iii) that such injury aforesaid may be physical or mental.

Evidence as to Prove 'Cruelty'

To bring home an offence under section 498A, I.P.C., the prosecution is to prove that--

- (i) a woman has been subjected to cruelty as contemplated in clause (a) or clause (b) to Explanation of section 498A;
- (ii) that the woman is or was married;

(iii) that the cruelty has been practiced by her husband or his relatives.

1. Sec Explanation to section 498A, I.P.C.

Wilful conduct: meaning of

Probably, expression "wilful" is not capable of any precise definition. It may be from crude physical injury or harm to subtle device of causing cruelty or harassment to married woman. What amounts to 'wilful conduct' causing cruelty will differ from case to case. A 'wilful conduct' cannot be an accidental happening or an inadvertent act. A wilful conduct implies an intentional act.

Where husband abused and beat his wife, forced her to have a common kitchen with a Harijan family, accused her of adultery and pressurized her to agree for an abortion, and such other acts. It amounted to a wilful conduct of cruelty towards wife; *Rishi Kumar v. State of Haryana*, 1997 Cr LJ 196.

Harassment: meaning of

Under clause (b) of Explanation to section 498A, I.P.C., it is required that there should be a nexus between harassment and unlawful demand for dowry. The word "unlawful demand for any property or valuable security" mean demand of dowry. The clause lays down that when harassment of a married woman takes place by her husband or any of his relatives with a view to get fulfilled any unlawful demand of dowry, it amounts to cruelty. The term 'harassment' is of a wide amplitude. 'Harassment' according to Webster Dictionary is "to subject someone to continuous attacks questions, demands or as other unpleasantness". However, harassment simpliciter is not covered under this clause.

In *Subhash v. State of Haryana*, MANU/SC/1064/2010 : AIR 2011 SC 349, this case where appellant involved in abetment of suicide and harassment for dowry. Evidence of father and brother of victim shows factum of cruelty and behaviour of accused towards deceased has built up during evidence recorded in Court. Oral dying declaration made by victim to them omitted in statements made under section 161, Criminal P.C. Declaration recorded by Magistrate without making efforts to find out as to whether Magistrate of area in which hospital lay was available or not. Endorsement of doctor that deceased was fit to make statement taken by Magistrate after recording dying declaration. Conduct of this witness and manner in which he recorded declaration. Supreme Court of the opinion that the present case is one of no evidence and the possibility that the deceased had been burnt in an accident cannot be ruled out. Order reversed.

Distinction between sections 498A and 304B, I.P.C.

Q.Discuss the distinction between section 498A and 304B, I.P.C.

Section 304B, I.P.C. and section 498A, I.P.C. have been added in the Code to punish dowry related crimes. The provisions are not mutually exclusive. However, the scope of the two sections are different. For example,--

1. Under section 304B, I.P.C. it is the dowry death that is punishable and such death should have occurred within a period of seven years of the marriage; whereas under section 498A, I.P.C. cruelty by husband or relative of husband is punishable and there is no period of limitation of seven years provided for prosecution in such cases. The husband or his relative would be liable for subjecting the woman to 'cruelty' any time after the marriage.
2. Under section 498A, I.P.C. cruelty as such is punishable; but cruelty or harassment of a married woman when it results in death of the woman would attract section 304B, I.P.C.
3. Under section 304B, I.P.C. punishment may extend upto imprisonment of life with a minimum of seven years of imprisonment; whereas under section 498A, I.P.C. punishment may extend upto three years of imprisonment and fine only. 'Cruelty' is a common essential to both the offences and that has to be proved before a person is convicted.
4. The Explanation clause to section 498A, I.P.C. gives the meaning of 'cruelty' but there is no such explanation about the meaning of 'cruelty' under section 304B.

5. Having regard to the common background to these offences the meaning of cruelty or harassment under section 304B will be the same as given in the Explanation clause to section 498A. Thus the offence being of the common background a person charged and acquitted under section 304B, I.P.C. can be convicted under section 498A, I.P.C. for a lesser offence without charge being there, if such a case is made out. However, to avoid technical defect it is proper to frame charges under both sections so that convictions would be made under both. Separate sentences need not be awarded under section 498A, I.P.C. and under section 304B, I.P.C; Pawan Kumar v. State of Haryana, MANU/SC/0104/1998 : (1998) 3 SCC 309.

Interrelation between sections 306 and 498A, I.P.C.

Abetment to commit suicide is dealt with by section 306, I.P.C. When this suicide is preceded by cruelty contemplated in section 498A and the victim is married within a period of seven years preceding the marriage, in view of section 113A, Evidence Act, a presumption may be drawn that the husband of the victim girl or his relatives abetted the suicide. The basic difference that lies between the two sections is that of 'intention'. Under section 498A, I.P.C., cruelty committed by the husband or his relatives drag the woman to commit suicide, while section 306, I.P.C., suicide is abetted and intended; Girja Shankar v. State of Madhya Pradesh, 1989 Cr LJ 242.

What does not amount to cruelty?

What does not amount to cruelty is nowhere provided under the code but various courts in their decisions provided that, the following instances, inter se, do not constitute cruelty:

It has been held that:

- (i) outburst of temper without rancour; Aloka Dey v. Mrinal Kauti Dey, MANU/WB/0088/1973 : AIR 1973 Cal 393.
 - (ii) merely writing love letters to a third party; Pranab Biswas v. Mrinmayee Dassi, MANU/WB/0038/1976 : AIR 1976 Cal 156.
 - (iii) non-payment of interim maintenance; Ginden v. Balelal, MANU/MP/0024/1976 : AIR 1976 MP 83.
 - (iv) of desertion per se; Koushalya Rani v. Vijaya Singh Gehlot, MANU/RH/0072/1973 : AIR 1973 Raj 269.
 - (v) or mere flirtation; P. v. P., MANU/MH/0212/1983 : AIR 1983 Bom 8.
- does not constitute cruelty.

CASE LAWS

Pawan Kumar case

In Pawan Kumar v. State of Haryana, MANU/SC/0104/1998 : (1998) 3 SCC 309 the fact of the case was, Urmil (deceased) and Pawan Kumar (Appellant 1) were married on 29-5-1985. Pawan Kumar was working at Lucknow and had later shifted to Sonapat (Haryana). Within a few days of the marriage Urmil returned home and complained regarding demands of dowry for a refrigerator, scooter etc. by the appellants. These demands were reiterated on subsequent visits. On account of non-fulfilment of these demands, the deceased was allegedly taunted and harassed. These alleged actions ultimately contributed towards a suicidal death. She died of burn injuries on 18-5-1987.

Issue:

Whether Pawan Kumar can be convicted under sections 498A and 304B of I.P.C.?

Decision:

The; apex Court observed and held that, section 304B, I.P.C., makes "demand for dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. When persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the

marriage and it would be a case of demand of dowry within the meaning of section 304B, I.P.C. It is not always necessary that there be any agreement for dowry.

Cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of sections 304B and 498A, I.P.C. Explanation (a) to section 498A itself refers to both mental and physical cruelty. In view of Explanation (a) the argument is, before it constitutes to be a cruelty there has to be will conduct. Again wilful conduct means, conduct wilfully done.

In the present case, on account of not satisfying the demand of the aforesaid goods, right from the next day, she was repeatedly taunted, maltreated and mentally tortured by being called ugly etc. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calls her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. There was a quarrel a day before her death. This by itself, would constitute to be a wilful act to be a cruelty both within the meaning of section 498A and section 304B, I.P.C.

Shanti case

In *Shanti v. State of Haryana*, MANU/SC/0507/1991 : AIR 1991 SC 1226 the fact of the case was that, Smt. Kailash (deceased) was married to Satpal, who was serving in the Army. Shanti is the mother of Satpal. After marriage the deceased was living in her matrimonial home with Shanti. It is alleged that Shanti harassed the deceased all the while after the marriage for not bringing scooter and television as part of the dowry and she was treated cruelly. The marriage of one Munni, (deceased relative) was fixed and her brother went to Mundaliya village twice for bringing the deceased but the accused only taunted him and sent him away without sending the deceased. Ultimately, the father himself went to the home of his daughter, the deceased but she misbehaved with him saying that if he was fond of his daughter he ought to have arranged scooter and television as part of the dowry and he was insulted and pushed out of the house. On April 26, 1988 at about 11 p.m. the father came to know that the deceased had been murdered and was cremated by the two ladies with the help of another three persons.

Issue:

Whether Shanti can be convicted under sections 498A and 304B,

I.P.C.?

Decision:

The apex Court observed and held that:

(i) A careful analysis of section 304B shows that this section has the following essentials:

- "(1) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) such death should have occurred within seven years of her marriage;
- (3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) such cruelty or harassment should be for or in connection with demand for dowry."

(ii) Sections 304B and 498A cannot be held to be mutually exclusive. These provisions deal with the 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 the common background to these offences we have to take that the meaning of "cruelty or harassment" will be the same as we find in the explanation to section 498A under which "cruelty" by itself amounts to an offence and is punishable. Under section 304B as already noted, it is the "dowry death" that is punishable and such death should

have occurred within seven years of the marriage. No such period is mentioned in section 498A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under section 304B can be convicted under section 498A without charge being there, if such a case is made out. But from the point of view of practice procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under section 498A in view of the substantive sentence being awarded for the major offence under section 304B.

(iii) Therefore, sentence of seven years rigorous imprisonment was awarded under section 304B, I.P.C.

Satvir Singh case

Q.Critically examine the law laid down by Satvir Singh case

In *Satvir Singh v. State of Punjab*, MANU/SC/0588/2001 : (2001) 8 SCC 633 the fact was that a young woman, mother of two kids, ran into the train to end her life. She was driven to that action on account of the cruel treatment suffered by her at her nuptial home. Her husband and father-in-law and mother-in-law were convicted by the session court under sections 116, 306 and 498A of I.P.C. But, the High Court made an alteration by substituting section 306 with section 304B of I.P.C. read with section 116 of I.P.C.

Issue:

Whether the appellants can be convicted under section 304B or section 306 or this a case of mere 'cruelty'?

Decision:

The apex Court observed and held that:

(i) It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt to which alone will become an offence is suicide. The person who attempts to commit suicide is guilty of the offence under section 309, I.P.C. whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalize an abetment to the offence of mere attempt to commit suicide.

(ii) Learned Sessions Judge went wrong in convicting the appellants under section 116 linked with section 306, I.P.C. The former is "abetment of offence punishable with imprisonment - if offence be not committed". But the crux of the offence under section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under section 116 read with section 306 of I.P.C.

(iii) The essential components of section 304B are:

(i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage, (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under section 304B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances". It may appear that the former limb which is described by the words "death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by

burns or bodily injury should be treated as falling outside the ambit of the offence.

(iv) Therefore appellants cannot be convicted under section 116, I.P.C. either by linking it with section 306 or section 304B. But, the appellants are liable to be convicted under section 498A.

RAPE

Rape: Meaning of

Q.What do you mean by term "Rape"?

Generally speaking, sexual intercourse by a man with a woman without her consent is rape. The word 'rape' is derived from a latin term 'rapio', which meansCritically examine the law laid down by Satvir Singh caseto seize. Therefore, rape means sexual intercourse with a woman without her consent by force, fear or fraud. In other words, rape is a violence of the private person of a woman. It is an outrage by all canons; Phul Singh v. State of Haryana, MANU/SC/0203/1979 : AIR 1980 SC 249.

The Explanation to the section states that "penetration is sufficient to constitute sexual intercourse, necessary for the offence of rape". The depth of penetration is immaterial as far as the offence under section 376 is concerned; G. Misra v. State of Orissa, AIR 1975 Ori 1978.

It is not necessary to prove the completion of sexual intercourse by the emission of seed; intercourse is deemed complete upon proof of penetration only. The slightest degree of penetration is enough. If penetration cannot be satisfactorily proved, the defendant may be convicted of attempted rape; if the intent is not proved, he may be convicted of indecent assault.¹

Section 375, I.P.C. defines rape in the following words:

375.Rape.--

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:--

- Firstly.-- Against her will.
- Secondly.-- Without her consent.
- Thirdly.-- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- Fourthly.-- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- Fifthly.-- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- Sixthly.-- With or without her consent, when she is under sixteen years of age.

Explanation.--

Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.--

Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

It is clear that 'rape' is forcible ravishment of a woman, and the essence of the crime consists in the act being done

against the will or without the consent of the woman. "A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female"; State of Maharashtra v. Rajendra Jawanmal Gandhi, MANU/SC/1335/1997 : (1997) 8 SCC 386. In Krishna Lal v. State of Haryana, MANU/SC/0147/1980 : (1980) 3 SCC 159, Krishna Iyer, J. observed: "A socially sensitized judge

1. Halsbury's Law of England.

is a better statutory armour against gender outrage than long clauses of a complex section with all the protections written into it".

It may be noted that if the woman is under 16 years of age, it is immaterial that the act be done with her consent or even at the invitation of woman herself, for the policy of the law is to protect children of such immature age against sexual intercourse. This is also known as 'statutory rape'.

A 'man' is defined by section 10 of the Code as a male human being of any age. Thus, a boy above 12 years of age is capable of committing rape under this section, whereas a boy below 12 but above 7 years of age enjoys a qualified immunity.

Essential Ingredients

Q.What are the essential ingredients to constitute an offence under section 375, I.P.C.?

Following are the essential ingredients of section 375, I.P.C.:

- (1) There must be sexual intercourse with a woman by a man;
- (2) Such a sexual intercourse should be under any of the following circumstances:
 - (a) against her will;
 - (b) without her consent;
 - (c) with consent obtained under fear of death or hurt;
 - (d) with consent under misconception of fact that the man is her husband;
 - (e) consent given by reason of unsoundness of mind, intoxication or under influence of any stupefying or unwholesome substance;
 - (f) with a woman under 16 years of age, with or without consent

'Against her will': Meaning of

In State of U.P. v. Chhoteyal, MANU/SC/0053/2011 : AIR 2011 SC 697, this case victim had been kidnapped by two adult males, one of them wielded fire-arm and threatened her and she was taken away from her village. Any alarm at unknown place might have endangered her life. Circumstances made her submissive victim and that does not mean that she was inclined and willing to intercourse with accused. Absence of injury on external or internal part of body of prosecutrix. Prosecutrix was recovered almost after three weeks and sign of forcible intercourse would not persist for that long period. It is wrong to assume that in all cases of intercourse with women against will or without consent, there would be some injury on external or internal part of victim. Evidence of prosecutrix is similar to evidence of injured complainant or witness. Her brother did not lodge report immediately as honour of family was involved. Expression "against her will" and without her consent occurring in clause first and second of section 375. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation. Order reversed.

Without her consent: Meaning of

Q.Explain briefly the term 'consent'

The essence of rape is absence of consent. Consent means an intelligent positive concurrence of the 'will' of the woman. The expression 'without her consent' implies that the woman is incapable of knowing the nature of the act and thus legally unable to give rational consent or being aware of its nature. Section 90, I.P.C. states as to what does not amount to consent under the Code. Section 90, I.P.C. reads:

90.Consent known to be given under fear or misconception.--

A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.--

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.--

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Consent obtained under 'fear'

Clause (3) to section 375 stipulates consent obtained under fear by putting the woman or any person in whom she is interested, in fear of death or hurt is not consent and hence, the act would amount to rape. In *State of Maharashtra v. Prakash*, MANU/SC/0238/1992 : AIR 1992 SC 1275, the victim was a village girl who had gone to her parent's village to attend a fair. The first accused was Prakash, a police constable. He was deputed for bandobust duty in that village. The second accused was a businessman. Both the accused had called out the prosecutrix from her parent's house, took her to the house of the second accused, threatened her that her husband would be placed in custody if she did not sign some papers. Thereafter, both of them committed rape on her. The Supreme Court held that this case would fall under clause 3 of section 375, I.P.C. The accused were convicted to three years rigorous imprisonment.

Where a blind helpless young girl was raped by the accused, it was held that expression "consent" cannot be equated to inability to resist out of helplessness and absence of injuries on the victim also does not by itself amount to consent by her; *Rajinder v. State of Himachal Pradesh*, 2003 Cr LJ NOC 143 (HP).

Consent obtained by 'misrepresentation'

Consent obtained by misrepresentation is no consent. Where the prosecutrix, being above 16 years of age, became a consenting party on promise of marriage and fully knowing the nature and implications of the relationship and did not reveal it to anybody till she became pregnant, it was held that the conviction of the accused for the offence of rape was not proper. Her consent was the expression of a genuine desire and not the result of any misrepresentation; *Uday v. State of Karnataka*, MANU/SC/0162/2003 : AIR 2003 SC 1639.

Consent obtained by 'fraud'

Consent obtained by fraud is also no consent. Where a woman gives her consent on the basis of a false promise of marriage by the man, then her consent is no consent under law; *Addepalli Setti Babu v. State of Andhra Pradesh*, 1994 Cr LJ 1420 (AP). Clauses (4) and (5) to section 375, I.P.C. deal with this aspect of rape.

Consent: When obtained by deceitful means

In *Kamalanantha v. State of Tamil Nadu*, MANU/SC/0259/2005 : AIR 2005 SC 2132 the accused was head of Ashram and alleged to have raped 13 girl inmates of Ashram. It was contended by him that some of the prosecutrixes had consented, therefore, his case does not come within the purview of section 375, I.P.C.

It was held by the Supreme Court that, it is in the evidence of the prosecutrix, that the consent of many of the

prosecutrix had been obtained by deceitful means that if they had sex with the accused they would be cured of asthma or that if they had sex with the accused, it would be service to God or some girls had been raped under threat of dire consequences. The accused had dominion control over the Ashram girls and most of them were orphans and had no alternative place to go. Therefore, it clearly falls within the thirdly clause of section 375, I.P.C. Furthermore, if the consent is obtained by deceitful means or under threat of death or hurt, it is no consent at all and it is without her consent.

Sexual intercourse with a woman under 16 years of age

Sexual intercourse with a woman under 16 years of age will amount to rape, whether it is done with or without consent.

In Harpal Singh v. State of Himachal Pradesh, MANU/SC/0130/1980 : AIR 1981 SC 361 the contention of the defence was that the prosecutrix was used to sexual intercourse and no injury was detected on the private parts of the girl. It was contended that it was a case of consent. However, the Supreme Court held that once it was proved that the girl was below 16 years of age, the question of consent becomes wholly irrelevant. In this case, the Supreme Court held that the entry in the admission register of the school in which the girl was a student and certified copy of the entry of the birth register showed that she was 15 years of age at the time of occurrence. These documents were admissible under section 35, Indian Evidence Act as it was made by the concerned official in the discharge of his official duties.

Conviction without framing of charge

In Jagjit Singh v. State of Punjab, MANU/SC/0044/2005 : AIR 2005 SC 913 it was observed that, no charges were framed against the appellant under section 376, I.P.C. Nor was there any evidence suggesting that the appellant had committed the offence of rape. In these circumstances, it was not possible to sustain the finding of the Trial Court that the appellant was guilty of having committed the offence of rape.

MEDICAL OPINION

The question as to whether an act amounts to rape or not, is not a matter of medical opinion, but a question of law. In Madan Gopal Kakkard v. Naval Dubey, MANU/SC/0509/1992 : (1992) 3 SCC 204 the medical officer on examination of the victim after five days, found an abrasion on the medial side of labia majora and redness around the labia minora, but the hymen was intact admitting tip of a little finger. The medical officer opined that there was absence of signs of full penetration and hence, there was an attempt to rape. The Supreme Court held that the opinion of the medical officer that there was an attempt to rape is not conclusive and held that when there was partial penetration, it is in the legal sense sufficient to constitute rape. In Jagdish Pd. Sharma v. State, 1995 Cr LJ 2501 (Del) the victim was a child about three-and-a-half years. The investigation officer had failed to promptly take steps to get the little girl and the accused medically examined. From the evidence available, it was clear that full sexual intercourse with the child had not taken place. However, there were witnesses, who testified that on hearing the shrieks of the child, they rushed to the place where the incident took place and found the accused lying over a little girl. The child's underwear had been taken off and the accused had also taken off his Pyjama. Under the circumstance, the Delhi High Court convicted the accused for the offence of rape.

DELAY IN LODGING FIR

Generally speaking, unexplained delay in lodging FIR is fatal to prosecution. When, however, a sexual offence is involved, delay stands explained because in Indian society, it brings a scandal to the family of the prosecutrix and the time is unnecessarily wasted to decide if the scandal should be made public. In Shabir Rashid v. State (Delhi), 1969 Cr LJ 1282 (Del) the victim was alleged to have been raped at a place where large number of persons were present but she had not raised any alarm and FIR was lodged after deliberations and consultations. It was held that all facts suggested the failure of prosecution to bring home the guilt of the accused and he was acquitted.

In Puran Singh v. State of Rajasthan, 1985 Cr LJ 54 (Raj) rape was committed on a minor village virgin in broad day light in open field at about 4 p.m. on June 20, 1980, but FIR was lodged on June 22, 1980 at 8 p.m. The father of the victim being an illiterate rustic villager, the delay is explained.

CHARACTER OF RAPE VICTIM

The courts are expected to use self-restraint while recording the findings which have large representation as far as future of the rape victim is concerned and even under implications on the society as a whole, where the victim of the crime is discouraged, the criminal encouraged and in turn crime gets rewarded. Even in cases where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of 'loose moral character' is permissible to be drawn from the circumstance alone. Even if the prosecutrix has been promiscuous in her behaviour earlier she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone; *State of Punjab v. Gurmit Singh*, MANU/SC/0366/1996 : AIR 1996 SC 1393.

BURDEN OF PROOF IN RAPE CASES

In the case of charge for rape, the onus lies upon the prosecution to prove that the sexual intercourse was without the consent or against the will of the woman. It would not be necessary for the defence to prove that the sexual intercourse was with the consent of the woman. It may be noted that it would be no defence that the woman consented after the act.

A woman who has been raped is not an accomplice. Thus, for a conviction for rape, corroboration is not necessary. If the evidence of the victim does not suffer from any basic infirmity and the probabilities factor does not render it unworthy of evidence, as a general rule, there is no reason to insist on corroboration except from medical evidence.

CORROBORATION OF TESTIMONY

In every rape case, the evidence of the rape victim is a very crucial piece of testimony to prove the case against the accused. Now the question arises whether the corroboration is necessary? In *State of Punjab v. Gurmit Singh*, MANU/SC/0366/1996 : AIR 1996 SC 1393 it was held that, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused when her testimony inspires confidence and is found to be reliable. Seeking corroboration of the statement before relying upon the same, as a rule, amounts to adding insult to injury.

In *State of Rajasthan v. Noore Khan*, AIR 2000 SC 1812 it was observed that, there is no rule of law that testimony of rape victim cannot be acted without corroboration in material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being criminal charge. However, if the court of facts may find it difficult to accept the version of the prosecutrix on its face value it may search for evidence, direct or circumstantial which would land assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice would do.

In rape cases it has been seen that corroboration of testimony is very difficult. Therefore, if the prosecutrix is believed to be truthful witness, in her deposition, no further corroboration may be insisted. Corroboration is admittedly only a rule of prudence; *State of Himachal Pradesh v. Lekh Raj*, MANU/SC/0714/1999 : AIR 1999 SC 3916.

"Even if factum of rape is established beyond reasonable doubt, the accused cannot be convicted unless there is reliable and acceptable evidence to come to a conclusion that it was the accused who committed the rape"; *Prahlad Singh v. State of Madhya Pradesh*, MANU/SC/0848/1997 : AIR 1997 SC 3442. Thus, reliable evidence is needed to establish 'rape'.

ATTEMPT TO COMMIT RAPE

Attempt to commit rape is punishable under section 376 read with section 511, I.P.C. In *Prem Narayan v. State of Madhya Pradesh*, 1989 Cr LJ 707 (MP) when accused caught hold of the prosecutrix at the flour mill of her father and forcibly dragged her by the side of bushes and trees, threw her down on the ground and removed her under garments making her naked; and attempted at penetration; the prosecutrix started bleeding from private parts, the offence of

rape or at least attempt to commit rape is proved.

PUNISHMENT FOR RAPE

Q.What are the punishments provided for rape

In 1983 a drastic change was brought about in punishment of rape so as to deter people from committing such a heinous crime by inserting section 376 in the Code. Section 376 has been divided into two sub-sections to fix punishment taking into account gravity and special nature of the case in question. Section 376, I.P.C. provides as under:

376. Punishment for rape taking into account gravity and special nature of the case in the I.P.C?

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,--

(a) being a police officer commits rape--

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.--

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.--

"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.--

"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

According to clause (1) of section 376, I.P.C. a person who is convicted of the offence of rape shall be punished with imprisonment for either description for ataking into account gravity and special nature of the case in the I.P.C.?

term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age in which case, he shall be punished with imprisonment of their description for a term which may extend to two years or with fine or with both:

Clause 2 of section 376 deals with instances of:

- (1) Rape committed by a police officer on a woman in his custody or in the custody of a police officer subordinate to him, within the limits of the police station to which he is appointed to or in the premises of any other police station;
- (2) Rape by a public servant, who taking advantage of his official position, rapes a woman in his custody or in the custody of his subordinate;
- (3) Rape committed on the inmates of any jail, remand home, place or institution by the management or staff of such jail, remand home etc.;
- (4) Rape of a woman in a hospital by the management or staff of the hospital;
- (5) Rape of a pregnant woman;
- (6) Rape of a woman under 12 years of age;
- (7) Gang rape.

Custodial rape

Since consent of the rape victim, express or tacit, has been successfully pleaded as a defence to the offence of rape, most cases of custodial rape escape prosecution, as the defence in most cases is able to establish tacit consent. In *Tukaram v. State of Maharashtra*, MANU/SC/0190/1978 : AIR 1979 SC 185 even apex Court declined to believe that the woman did not consent and reduced the sentence of the rapist. This case led to public agitation, with the result that the law had to be changed. Indian Evidence Act, 1872 was amended and section 114A was inserted by the Criminal Law (Amendment) Act, 1983. Section 114A runs as under:

114A. Presumption as to absence of consent in certain prosecutions for rape

In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

This section provides that in cases of custodial rapes once sexual intercourse by the accused is proved, or the woman gives evidence that she did not consent, the court shall presume that she did not consent.

Gang rape

When a group of persons attempt to rape a woman, and some succeed and some do not, all of them will be liable for the offence.

In *Pramod Mahto v. State of Bihar*, MANU/SC/0416/1989 : AIR 1989 SC 1475, Narayan, J. observed that:

"That Explanation has been introduced by the Legislature with a view to effectively deal with the growing menace of gang rape. In such circumstances it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under section 376, I.P.C"

In *Prem Prakash v. State of Haryana*, AIR 2011 SC 2677, this case where the appellant was driving car in which she was kidnapped and raped in car one after the other by appellant and other two accused. Doctor had also specifically stated that there was possibility that she was subjected to intercourse on date of occurrence. Prosecutrix and her father made to run from pillar to post by police authorities, before their case could be registered. Describes and points towards apathy in functioning of investigating agencies in heinous crimes to which complainant was subjected. One of accused in his statement under section 313 has not stated anything about false implication of appellant on account of land dispute. Gang rape confirmed. Appeal dismissed.

Sexual Intercourse not Amounting to Rape

Sections 376A to 376D of the Indian Penal Code relate to cases where the woman with whom sexual intercourse has been committed has consented but she had consented in such circumstances that she could not have withheld her consent.

376A. Intercourse by a man with his wife during separation

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

376B. Intercourse by public servant with woman in his custody

Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

376C. Intercourse by superintendent of jail, remand home, etc

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1.--

"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.--

The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to

sub-section (2) of section 376.

376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital

Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.--

The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.

Sections 376A to 376D deal with various forms of sexual assault not amounting to rape against women. Section 376A deals with rape of a woman by her husband when she is judicially separated from him or separated under any custom or usage; the punishment provided is imprisonment of either description upto two years and fine.

Sections 376B to 376D deal with inducing or seducing a woman to have sexual intercourse by a public servant, superintendent or manager of jail, remand home or other places of custody or by management or staff of a hospital in whose custody or care the woman might be placed. In all these instances, the offender should have taken advantage of his official position to induce or seduce a woman to sexual intercourse. A punishment of imprisonment upto five years and fine has been provided for, under all these sections.

CASE LAWS

Bodhisattwa Gautam case

Q. What are broad parameters indicated by the Supreme Court in assigning the victim of rape?

In *Bodhisattwa Gautam v. Subhra Chakraborty*, MANU/SC/0245/1996 : (1996) 1 SCC 490: AIR 1996 SC 922 Subhra Chakraborty was a student and the accused (Bodhisattwa) was a lecturer in the same college and a love affair developed between them. With mala fide intention to practise deception on the complainant, the accused gave false assurance of marriage to the innocent complainant and thereby, the accused dishonestly procured sexual intercourse with the complainant. The accused often used to induce the complainant to have biological contact with him, but whenever he was approached by the complainant to complete the marriage ceremony, the accused very tactfully used to defer the marriage, sometimes saying that he was waiting for his parents' formal consent and sometimes saying to cooperate with him till he got government service.

In course of continuation of the affair between the complainant and the accused, the complainant got pregnant twice, once in the month of September 1993 and secondly in the month of April 1994 out of her cohabitation with the accused person. The complainant being worried about her said pregnancy created pressure upon the accused to marry her immediately and to save her from being ruined, but the accused on the plea of his parents' permission went on deferring the marriage. As a result there was a quarrel between the complainant and the accused, whereafter the accused lastly opined for secret marriage to avoid social gathering as he was waiting for his parents' permission.

Issue:

Whether any further order can be passed in the case and Gautam can be compelled to pay maintenance to Subhra during the pendency of the Criminal case?

Decision:

The apex Court observed that;

Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she

rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated Crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights namely the Right to Life contained in Article 21. To many feminists and psychos rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.

The apex Court further indicated the broad parameters in assigning the victims of rape as follows:

- (1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.
- (2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station. The guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- (3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
- (4) A list of Advocates willing to act in these cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer was unavailable.
- (5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court is sought or obtained.
- (6) In all rape trials anonymity of the victims must be maintained, as far as necessary.
- (7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.
- (8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

The Supreme Court held that, having regard to the facts and circumstances of this case, Gautam shall pay to Subhra a sum of Rs. 1000 every month as interim compensation during the pendency of criminal case.

Gurmit Singh Case

In *State of Punjab v. Gurmit Singh*, MANU/SC/0366/1996 : (1996) 2 SCC 384 the victim, a girl below 16 years of age, was going to write her matriculation examination. One car stopped near her. Ranjit Singh came out of the car and caught hold of the prosecutrix from her arm and pushed her inside the car. Jagjit Singh @ Bawa put his hand on the mouth of the prosecutrix, while Gurmit Singh threatened the prosecutrix, that in case she raised an alarm she would be done to death. All the three accused drove her to the tubewell of Ranjit Singh, the accused. She was taken to the 'kotha' of the tubewell. The driver of the car after leaving the prosecutrix and the three accused persons there went away with the car. In the said kotha Gurmit Singh compelled the prosecutrix to take liquor, misrepresenting to her that it was juice. Her refusal did not have any effect and she reluctantly consumed liquor. Gurmit Singh then removed her salwar and also opened her shirt. She was made to lie on a cot in kotha while his companions guarded the kotha from outside. Gurmit Singh committed rape upon her. She raised rousa as she was suffering pain but Gurmit Singh threatened

to kill her if she persisted in raising alarm. Due to that threat, she kept quiet. After Gurmit Singh had committed rape upon her, the other two accused, who were earlier guarding the kotha from outside, came in one by one and committed rape upon her. Jagjit Singh alias Bawa committed rape on her after Gurmit Singh and thereafter Ranjit Singh committed rape on her. Each one of the accused committed sexual intercourse with the prosecutrix forcibly and against her will.

The trial court not only disbelieved the prosecutrix, but quite uncharitably and unjustifiably even characterized her as 'a girl of loose moral' or 'such type of girl' on the basis of medical evidence.

Issue:

Under the above facts and circumstances, whether the offence of rape was committed?

Decision:

The apex Court observed that:

- (i) From the statement of the prosecutrix, it clearly emerges that she was abducted and forcibly subjected to sexual intercourse by the three accused persons without her consent and against her will.
- (ii) We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a Judge. Such like stigmas have the potential of discouraging an even otherwise reluctant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have large repercussions so far as the future of the victim of the sex crime is discouraged - the criminal encouraged and in turn crime gets rewarded. Even in cases, unlike the present case where there is some acceptable material on the record showing that the victim was habitual to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone. Even if the prosecutrix in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the court.

With the above observations, the apex Court convicted all the three accused persons for kidnapping and rape.

Bhupinder Sharma Case

In *Bhupinder Sharma v. State of Himachal Pradesh*, MANU/SC/0825/2003 : (2003) 8 SCC 551 the victim aged about 16 years had gone to Solan in 1998 to purchase medicines for her ailing grandfather. She had gone to Solan for the first time and reached the bus stand at about 2.00 p.m. After having alighted from the bus, she enquired from a lady as to where a particular medicine shop was located. The lady stated ignorance. At this juncture, two persons came there and asked her to accompany them in a three-wheeler as they were both going to the shop concerned. The victim was taken by the two boys, namely, accused Ashish Kanwar and Suresh to an isolated place in a jungle. The three-wheeler was sent back with a direction to come in the evening. After gagging her mouth, she was taken to a house which was below the road. There were four more boys. Three out of those were identified by the victim during the trial. The fourth one, namely, Shanker was not tried as adequate evidence was not available against him. The victim was sexually abused firstly by accused Ashish followed by accused Sunil, Suresh and Ruby. The appellant Bhupinder and Shanker were in the process of taking off their clothes with a view to perpetuate sexual abuse when the victim managed to escape with only a shirt and ran away barefooted. When she reached near the road she saw Chaman Lal, ASI who was accompanied by police officers. Meanwhile, two other persons also came there. They were Charanjit and Balvinder. When the victim described the ghastly incident to them, she was taken to the room where she had been raped, but it was found that all six of them had fled away.

Issue:

Whether an offence of gang-rape was committed?

Decision:

The apex Court observed that:

(i) The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud" or as "the carnal knowledge of woman by force against her will". In the crime of rape, "carnal knowledge" means the penetration to any slightest degree of the organ alleged to have been carnally known by the male organ of generation.

(ii) To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt disbelief or suspicion? The plea about lack of corroboration has no substance.

(iii) In cases of gang rape the proof of completed act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation I in relation to section 376(2)(g) appears to have been done with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under section 376, I.P.C.

With the above observations, the Supreme Court dismissed the appeal and convicted the accused persons for gang rape.

Mathura Case

Q.Critically analyse the Mathura case

In *Tukaram v. State of Maharashtra*, AIR 1991 SC 185 Mathura was living with her brother Gama. She used to visit the house of Nushi for work and there she came into contact with Ashok (relative of Nushi). Their contact developed into an intimacy and both of them decided to marry each other.

On 26th of March 1972, Gama lodged report at police station Desai Gunj alleging that Mathura had been kidnapped by Nushi, her husband Laxman and the said Ashok. The report was recorded by Head Constable Baburao at whose instance all the three persons complained against as well as Mathura were brought to the police station at about 9 p.m. and who recorded the statements of the two lovers. By then it was about 10.30 p.m. and Baburao told them to go after giving them a direction that Gama shall bring a copy of the entry regarding the birth of Mathura recorded in the relevant register and himself left for his house as he had yet to take his evening meal. At that time the two appellants were present at the police station.

After Baburao had gone away, Mathura, Nushi, Gama and Ashok started leaving the police station. The appellants, however, asked Mathura to wait at the police station and told her companions to move out. The direction was complied with. Immediately thereafter Ganpat appellant took Mathura into a latrine situated at the rear of the main building, loosened her underwear, lit a torch and started at her private parts. He then dragged her to a chhapri which serves the main building as its back verandah. In the chhapri he pushed her on the ground and raped her inspite of protests and stiff resistance on her part. He departed after satisfying his lust and then Tukaram appellant, who was seated on a cot nearby, came to the place where Mathura's private parts were fondled. He also wanted to rape her but was unable to do so for the reason that he was in a highly intoxicated condition.

Issue:

Whether the sexual intercourse in question amounts to rape within the meaning of thirdly of section 375?

Decision:

The apex Court observed and held that:

(i) There is no reason to disbelieve Mathura's assertion that after Baburao had recorded her statement, she and Gama had started leaving the police station and were passing through the entrance door when Ganpat caught hold of her and took her away to the latrine. And if that be so, it would be preposterous to suggest that although she was in the company of her brother and had particularly left the police station, she would be so over-awed by the fact of the appellants being persons in authority in the circumstance that she was just emerging from a police station that she would make no attempt at all to resist. On the other hand, her natural impulse would be to shake off the hand that caught her and cry out for help even before she noticed who her molester was. Her failure to appeal to her companions who were no other than her brother, her aunt and her lover, and her conduct in meekly following Ganpat appellant and allowing him to have his way with her to the extent of satisfying his lust in full, makes us feel that the consent in question was not a consent which could be brushed aside as "passive submission."

Secondly, it has to be borne in mind that the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and that such onus never shifts.

(ii) The section itself states in clauses Thirdly and Fourthly as to when a consent would not be a consent within the meaning of clause Secondly. For the proposition that the requisite consent was lacking in the present case, reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that was the reason for her consent. To this aspect of the matter the High Court was perhaps alive when it talked of "passive submission" but then in holding that the circumstances available in the present case make out a case of fear on the part of the girl, it did not give a finding that such fear was shown to be that of death or hurt, and in the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. The fear which clause Thirdly of section 375 speaks of is negated by the circumstance that the girl is said to have been taken away by Ganpat right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate to emerge out of it. The circumstantial evidence available, therefore, is not capable of being construed in no uncertain measure from the inference drawn by it.

(iii) Therefore, the sexual intercourse in question is not proved to amount to rape and no offence is brought home to Ganpat as well as to Tukaram.

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Chapter 15

PROBLEMS AND SOLUTIONS ON THE INDIAN PENAL CODE

Q. 1. A, a child below 7 years of age attacks B by a sword. Before A could cause death or grievous hurt to B, B opened fire by a gun on the child A (below 7 years of age), A is killed. B is prosecuted under section 302 I.P.C. for murder of A. B takes the defence that he killed the child in exercise of 'right of private defence' whereas the arguments of prosecution was that B had no 'right of private defence' because A was under 7 years of age and his act was not an offence and the right of private defence is exercised only against an act which is an offence and not against such an act which does not constitute an offence.

Decide, who will succeed, whether prosecution or defence. Give reasons and also refer to the relevant provision on the point.

Ans.: Defence (accused B) will succeed--section 98, I.P.C.

Reasons:

According to section 98, on which this problem is based, right of private defence is available even against a person, who in law not capable of committing an offence, for example - a child below 7 years of age or a man of unsound mind.

In the present case, A is a child below 7 years of age. Thus, if he had killed B or caused grievous hurt to B, it would have not been an offence in view of provision made in section 82. However, in view of the provision made in section 98, B has same 'right of private defence' which a person enjoys against a person above 7 years of age or a major (above 18 years of age).

According to section 100, a person has a right to kill another if he has reasonable apprehension of death or grievous hurt.

In the given case, B has committed no offence even if he caused death of A (child below 7 years of age) in view of section 98 read with section 100, I.P.C. In other words, it can be said that a person has right of private defence against another even if such a other person, in law, is not capable of committing offence.

Thus, in the given case, accused B (defence) will succeed and the prosecution will not succeed.

Q. 2. A instigates B to murder C, but B refuses to do so. Has A committed any offence? If so what?

Ans.: A has committed the offence of 'abetment of murder' of C -- section 108, Explanation 2.

Reasons:

Explanation 2 of section 108 provides that in order to constitute the offence of abetment, it is not necessary that the act abetted should be committed.

In the present problem, A has committed the offence of abetment for murder though the B has not committed the offence abetted.

NOTE: This problem is based on Illustration (a) attached to Explanation 2 of section 108.

Q. 3. The accused was beating a person with fists. The wife of the man being beaten intervened with her baby in arms with a view to rescue her husband. The accused gave a fist blow to her also, which struck the baby, as a result of which it died. On being prosecuted, the accused pleads accident. Decide.

Ans.: The plea of accident is not sustainable at law and the accused will not succeed in view of

Jageshwar's case, 1923 24 Cr LJ 789 and Emperor v. Chatur Nath, 1919 (21) Bom LR 1101.

Reasons:

Section 80 of I.P.C., on which this case is based, states that in order to take the defence of section 80 (accidental act), it is necessary that the act of the accused must have been lawful, and must have been done in lawful manner and by lawful means.

In the given case, the act of beating a man with fists is not lawful. The facts of the given case are based on Chatura Nath's case, referred above. In this case, the Bombay High Court held that although the child was hit by the accused by accident, yet the accused was not entitled to take the benefit of section 80, I.P.C. in as much as the act of accused i.e., 'beating', was not lawful.

The view expressed by Bombay High Court in Chatur Nath's case was also taken in Jageshwar's case referred above.

Thus, on the basis of above discussion, it can be said that in the given case, the accused cannot plead accident.

Q. 4. A says of a book published by S,: "I am not surprised that B's book is foolish and indecent for B is a man of impure mind and bad character". Do these remarks amount to defamation and why?

Ans.: Yes, the remarks of A amount to defamation. Reasons: Section 499, on which this problem is based, states that whoever, by words either spoken or intended to be read, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation such person, is said to defame that person (if his case does not fall under any of the Exceptions given in section 499 itself).

It the present problem, the remarks made by A is wholly covered by section 499 and is not covered by any of the Exceptions given in section 499. Thus, remarks made by A amount to defamation in as much as the opinion which A expresses regarding B's character is an opinion not founded on B's book and is not covered by exceptions, specially by the sixth Exception of section 499. It reads as follows: "It is not defamation to express in good faith any opinions respecting the merits of any performance which its author has submitted to the judgement of the public or respecting the character of the author so far as his character appears in such performance, and no further". NOTE: This problem is based on Illustration (e) of sixth Exception of section 499.

Q. 5. A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby induces Z to buy and pay for the article. Discuss A's offence.

Ans.: A has committed the offence of cheating defined under section 415, I.P.C.--

Illustration (c) of section 415.

Reasons:

Section 415 of I.P.C. gives the definition of cheating in following terms: "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat' ".

in the given problem, A exhibits a false sample of an article to Z and in this manner he intentionally deceives Z to believe that the article is similar to (corresponds with) the sample and thus, induces Z to purchase and make payment for the article. Thus, the case of A is wholly covered by the definition of cheating given under section 415. Hence, A has committed the offence of cheating defined under section 415, I.P.C.

NOTE: This problem is based on Illustration (c) of section 415 of I.P.C.

Q. 6. A, a doctor after full examination of a patient named B, in good faith communicates to B that he has cancer and

that he cannot live long. B dies next day in consequence of the shock caused by A's communication. Decide the liability of A

Ans.: No criminal liability is made out against A (Doctor), hence A is not guilty of any offence - section 93.

Reasons:

According to section 93, a communication made in good faith does not constitute an offence even though it causes harm, if the communication has been made for the benefit of the person to whom such communication is made.

In this problem, communication made by doctor to patient that he cannot live long because of cancer, is a communication made in good faith (after full examination of B), for the benefit of B. Thus, A (Doctor) is not guilty of any offence in view of the provision contained in section 93, though the patient dies as a result of shock caused by A's communication.

NOTE: This problem is similar to the Illustration attached to section 93.

Q. 7. A is attacked by a mob which attempts to kill him. A in exercise of his right of private defence fires at the mob killing one of the several children mingled with the mob. What offence, if any, is committed by A?

Ans.: A has committed no offence - section 106.

Reasons:

The problem is based on section 106.

Section 106 lays down--

"If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk".

The present problem is wholly covered by section 106, as A is in such a situation that he cannot effectually exercise his right of private defence i.e. defend himself from the deadly assault without taking the risk of causing harm to innocent children mingled with the mob. Thus, even if he causes harm to innocent children mingled with the mob in defending himself, he (A) commits no offence. His right of private defence extends to the running of that risk which he has taken in this case.

NOTE: This problem is based on the Illustration attached to section 106.

Q. 8. A, a snake charmer exhibited in public a venomous snake whose fangs he knew, had not been extracted, and for showing his own skill and dexterity, however, without intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator while trying to push off the snake was bitten by the snake and consequently died. What offence, if any, was committed by A. Give reasons and also refer to the case law, if any, on the point.

Ans.: A has committed the offence of 'culpable homicide not amounting to murder'- Emperor v. Ganesh Dooley, (1879) 5 Cal 351.

Reasons:

The facts of the given case are based on Ganesh Dooley's case, referred above. In this case the Calcutta High Court held that the snake charmer committed the offence of 'culpable homicide not amounting to murder' under 3rd clause of section 299. It reads as follows: "whoever causes death by doing an act with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide".

Thus, it can be easily said that in the present case, A is guilty of 'culpable homicide not amounting to murder', because his act of showing the skill and dexterity in public by a poisonous (venomous) snake, being fully acquainted with the fact that the poisonous tooth (fangs) of the snake had not been extracted, was such, as he must have knowledge of the fact that his act is likely to cause the death of another, though he had no intention to cause the death or kill to any of the spectators or any onlooker present there.

NOTE: It is notable in this case, that the intention of A is immaterial, as in order to constitute the offence of culpable homicide, intention is not an essential element in all cases. That is why 3rd clause of section 299 (culpable homicide) does not speak of intention. It is also notable that if it is a case of intention, the case is covered by 1st clause of section 299 and by 1st clause of section 300 (murder). Hence, the offender becomes liable for murder defined under section 300, if the act of causing death by offender is intentional. But in the given problem, as the offender had no intention to cause death, section 300 cannot be invoked.

Q. 9. A throws acid on the right hand of B, an unmarried girl of 17 years causing permanent disfigurement of her right hand. Did A cause grievous hurt to B defined under section 320, I.P.C.? Give reasons.

Ans.: No, A has not caused grievous hurt to B, defined under section 320, I.P.C.

Reasons:

Section 320 of I.P.C. which gives the definition of grievous hurt lays down eight circumstances (clauses) under which a hurt becomes grievous hurt.

According to the 'sixth circumstance' of section 320, a hurt becomes grievous hurt if offender causes permanent disfigurement of the head or face of the victim.

In the present case, A caused permanent disfigurement of right hand of girl and neither of face nor of head, by throwing acid. Thus, his case is not covered by section 320. Hence, he did not cause grievous hurt defined under section 320, I.P.C. Here, it is immaterial that the girl is unmarried and is only 17 years old i.e. a minor.

However, it is notable that A has caused simple hurt, defined under section 319, I.P.C. Section 319, I.P.C. reads as follows: "whoever causes bodily pain, disease or infirmity to any person is said to cause hurt".

Q. 10. X sets a live electric naked wire in the passage of the latrine, so that no trespasser should come and use the latrine. There was no warning that the wire was live and trespasser V manages to pass into the latrine without contacting the wire but her hand happens to touch the wire while coming out and as a result of shock she dies. What offence, if any, has been committed by X? Give reasons for your answer.

Ans.: X has committed the offence of 'causing death by negligence' - section 304A and in Supreme Court *Chemibin Gregory v. State*, MANU/SC/0080/1963 : AIR 1964 SC 205.

Reasons:

According to section 304A, when a person causes the death of another by his rash or negligent act not amounting to culpable homicide, the person who causes such death commits the offence of causing death by negligence.

In the instant case, X has a right to prevent the trespasser V from entering and using his latrine. There is only want of warning on part of the X that he has set live electric naked wire. Thus, he is merely negligent and his act does not come within the ambit of 'culpable homicide'. Hence, he has committed the offence of 'causing death by negligent act, under section 304A.

In *Cherubin's case*, the Supreme Court observed that the accused is guilty under section 304A as his act does not amount to 'culpable homicide'.

Q. 11, P lures Q, a boy of 17 years, to Delhi without consent of Q's father. Has P committed the offence of 'kidnapping

from lawful guardianship'? Give reasons and also refer the relevant provision in this regard.

Ans.: No, P has not committed the offence of 'kidnapping from lawful guardianship' - section 361.

Reasons:

According to section 361, I.P.C. in order to constitute the offence of 'kidnapping from lawful guardianship', the age of person kidnapped must be below 16 years in case of a male.

In the instant case, the age of Q is 17 years and he is a male. Thus, P has not committed the offence of kidnapping from lawful guardianship.

NOTE: The difference between the preceding problem and the present problem is that in preceding problem Q is a female below 18 years of age, thus offence of kidnapping from lawful guardianship is committed. In the present problem Q is a male, so the offence of kidnapping from lawful guardianship is not committed.

Q. 12. W, a woman intentionally put poison into the food of her husband H for causing the death of H. H died sometimes afterwards from inflammation of the brain. During trial the prosecution could adduce no evidence that the poison was even the secondary cause of the death of H. Is W guilty of 'murder' or 'attempt to murder' of H under section 302 or under section 307? Give reasons and also refer to case law, if any, on the point.

Ans.: No, W is not guilty of 'murder' of H under section 302, I.P.C. - Venkatasami, 1882 Weir, 3rd Edn., 187.

Reasons:

The facts of this case are similar to Venkatasami's case referred above, where the wife intentionally put arsenic in the food of her husband to kill him. The husband died sometimes afterwards from the inflammation of the brain. The prosecution could adduce no evidence that the 'arsenic' was even the secondary cause of the death of the deceased. It was held that the wife is not guilty under section 307, I.P.C.

In the given case also, the prosecution could not adduce the evidence during trial that poison is even the secondary cause, if not the primary or main cause of the death of H. Thus, W is not guilty of even 'attempt to murder' under section 307 and as she is not guilty under section 307, she cannot be held guilty of murder of H under section 302, I.P.C.

Q. 13. A performs sexual intercourse with his wife aged 13 years. Has A committed any offence?

Ans.: Yes, A has committed the offence of 'rape' defined under section 375 (punishable under section 376)-- Exception attached to section 375.

Reasons:

Sexual intercourse by husband with his own wife does not constitute the offence of rape defined under section 375, I.P.C.

But there is an 'exception', attached to section 375. According to this 'exception' performance of sexual intercourse with own wife becomes rape if the wife is below 15 years of age.

In the present case, the age of wife is 13 years and the husband A performs sexual intercourse with her. Thus, he committed the offence of rape. NOTE: It is notable that according to section 18 of Hindu Marriage Act, marrying a girl under 18 years of age is an offence and punishable. It has not been mentioned in the answer because the problem has been asked on subject relating to Indian Penal Code and not Hindu Marriage Act.

Q. 14. B owes some money to A. A in order to put pressure on B to pay the debt, takes away without B's consent two of his cows and ties them in his house. Is A guilty of any offence?

Ans.: Yes, A is guilty of offence of theft defined under section 378, I.P.C. - Queen Empress v. Sri Churn Chungo, (1895) ILR 22 Cal 117 (1022) (FB).

Reasons:

According to section 378, for the commission of offence of theft, following five conditions must be satisfied:

- (i) The property must be movable.
- (ii) Such property must be in possession of some other person.
- (iii) Property must be removed from such possession.
- (iv) Removal must be done dishonestly, and
- (v) Property must be removed without consent of the person who has possession of the property.

In the present case, all the essential conditions of 'theft' are satisfied by A as he takes away (removes) two cows (movable property) which was in the possession of B, without B's consent and he does so dishonestly (to put pressure on B to pay the debt). Thus, A has committed the offence of theft.

In Churn Chunga's case, it was held by the Calcutta High Court that removal of debtor's property by his creditor without the consent of debtor to enforce the payment of debt by coercion amounts the offence of 'theft'.

Thus, it can be said that A has committed the offence of theft. Once the acts of A comes within the definition of section 378 (theft), he is guilty of theft and it is immaterial that he did so to put pressure on B for recovery of his debt.

In fact, law does not empower a creditor to take law in his own hand and the remedy available to creditor (in this case A) is to take civil action against the debtor (in this case B).

Q. 15. Liladhar threatens to publish a defamatory libel concerning Roopa Devi unless she gives him money. Roopa Devi, who is an unmarried girl, gives him money. What offence has been committed by Liladhar?

Ans.: Liladhar has committed the offence of 'extortion' - defined in section 383 and punishable under section 384 of I.P.C.

Reasons:

Section 383 of I.P.C. defines the offence of 'extortion'. The section lays down that when a person intentionally puts another in fear of any injury and thus dishonestly induces such another person put in fear, to deliver any property, he commits the offence of 'extortion'.

In the given case, Liladhar intentionally puts Roopa Devi, who is an unmarried girl, in fear of injury by giving threat to defame her by publication of libel. If she does not give money to him. In this manner Liladhar dishonestly induces Roopa Devi to deliver property to him. Thus, Liladhar has committed the offence of 'extortion'.

Q. 16. A, a Hindu minor girl goes to Mumbai from Chennai with her mother B to appear at a certain examination. C, the husband of B (Father of A) had also consented for the same. In Mumbai, X lures the minor girl and removes her from the custody of S. X is prosecuted by B for kidnapping the minor girl. X takes the defence that C, the father of minor girl, is the real (natural) guardian of the girl under Hindu Law and not the mother and he did not remove the girl from the guardianship of father but from mother. Thus, he has not committed the offence of 'kidnapping' defined under section 361. Is the defence of X sustainable at law? Give reasons.

Ans.: No, the defence of X is not sustainable at law and he has committed the offence of kidnapping the minor girl in view of definition given in section 361, I.P.C. - Pran Krishnan's case, (1882) 8 Cal 969.

Reasons:

It is true that under Hindu Law, father is the natural or real guardian of his legitimate child and mother is not the natural guardian of her legitimate child as long as father is alive as per section 6(a) of the Hindu minority and Guardianship Act, 1956.

But in Pran Krishnan's case, referred above, the Calcutta High Court held that custody of mother is considered to be the custody of father and mother is also lawful guardian of her legitimate child unless the mother acts without the consent of her husband (father of the child).

In the instant case, the mother has gone to Mumbai with her daughter with the consent of her husband i.e. with the consent of the father of minor girl. Thus, here mother is the lawful guardian of the girl and the girl is in custody of her father in view of decision given by Calcutta High Court in Pran Krishnan's case. Hence, if X lures the girl who is minor and removes her from the custody of her mother, he commits the offence of 'kidnapping' from the lawful guardianship defined under section, I.P.C. and the defence taken by him is not sustainable at law.

Q. 17. A police officer obtains certain ornaments from a person by threatening that he will be locked up immediately and not be released for months. What offence has been committed by the police officer?

Ans.: The police officer has committed the offence of 'robbery' (not extortion) defined under section 390 - Basant Rai's case, (1896) PR N 12 of 1896.

Reasons:

According to section 390, in every robbery there is either theft or extortion.

Section 390 provides that extortion is 'robbery' if the offender who commits the extortion, puts the person extorted in fear of instant 'wrongful restraint' and obtains the property extorted at once, then and there. It goes without saying that the offender must be present before the person so put in fear.

In the present case, the police officer puts the concerned person in the fear of wrongful confinement (which includes 'wrongful restraint') by giving threat to lock him up and not to be released for months and thereby obtains the property immediately. Thus, the police officer commits the offence of 'robbery' by committing 'extortion' in presence of concerned person, in view of law embodied in section 390, I.P.C.

The facts of the given case are based on Basant Rai's case, referred above, In this case also, it was held that the police officer has committed the offence of 'robbery' and not 'extortion'.

NOTE: It is notable that fear of instant wrongful confinement and delivery of ornaments immediately, converts the offence of 'extortion' into 'robbery'. Hence, police officer has not committed 'extortion' but 'robbery'.

Q. 18. X, while going on a journey, entrusts his diamond ring to Y. Y sells the diamond ring. What offence, if any has been committed by Y.

Ans.: X has committed the offence of criminal breach of trust - defined under section 405, I.P.C.

Reasons:

Section 405 which defines the offence of 'criminal breach of trust' on which the instant case is based, provides that when a person is entrusted with property in any manner and he dishonestly disposes of that property, he commits the offence of 'criminal breach of trust'.

In the given case, Y was entrusted with the property (diamond ring) by X while he was going on a journey. Y

disposes of the diamond ring by selling. Obviously Y had a dishonest intention. Thus, Y has committed the offence of 'criminal breach of trust' in view of section 405.

Q. 19. A intending to murder B buys a gun and loads it. Has A committed any offence?

Ans.: A has not committed any offence as he is still in preparation stage and preparation to commit murder is not an offence - 1st part of Illustration (c) of section 307 and Supreme Court in *Abhaya Nand Mishra v. State of Bihar*, (1962) 1 SCJ 183.

Reasons:

As a general rule, preparation to commit an offence is not an 'offence' (It is notable that this general rule is subject to some exceptions--for example, 'making preparation to commit dacoity' - section 399, I.P.C.

So far as 'attempt to an offence' is concerned, it is always punishable and there is no exception to it.

The answer of present problem depends upon the fact that whether in given problem A is in preparation stage or in attempt stage. If A is in preparation stage, he is not guilty but if he is in attempt stage, he is guilty of 'attempt to murder' B.

In *Abhayanand Mishra v. State of Bihar*, referred above, the Supreme Court of India observed that when a person is in position to change his mind or withdraw from the act intended, he is in preparation stage and if it is not so, he enters into the realm of 'attempt'. In other words it can be said that when the act of a person is within his control, he is in preparation stage but if act is beyond his control, he enters into the realm of 'attempt'.

In the given problem, though A has intention to murder B and for this purpose he not only buys a gun but loads it, yet he is in preparation stage and has not entered into the realm of 'attempt', as he is still in a position to change his mind. Thus, A is in preparation stage and has not committed any offence under the I.P.C.

NOTE: (i) This problem is based on 1st part of Illustration (c) of section 307, I.P.C.

(ii) In the concluding part of answer it has been mentioned 'not committed any offence under I.P.C. as A may be guilty under any other Act like Arms Act etc. It has not been mentioned in the question that gun was purchased with license or without license, so nothing has been mentioned in the answer in this regard.

Q. 20. A found a purse having money in it. He did not know to whom did it belong. Subsequently he came to know that purse was of B and he A kept the same for his own use. What offence was committed by A?

Ans.: A has committed the offence of 'dishonest (criminal) misappropriation of property' -section 403 read with Explanation 2.

Reasons:

Section 403, I.P.C. provides that when a person dishonestly misappropriates or converts to his own use any movable property, he commits the offence of 'dishonest (criminal) misappropriation of property'.

Further, Explanation 2 of section 403, on which the present problem is based, lays down that that when a person appropriates the property to his own use after knowing about the owner of property, he commits the offence of 'dishonest misappropriation of property'.

In the instant problem, when A finds the purse having money in it, he does not know that to whom this purse belong. Subsequently, he comes to know that purse belongs to B and even after knowing this fact, he keeps the same for his own use. Thus, A is guilty of the offence of dishonest misappropriation of property.

NOTE: This problem is based on Illustration (e) of Explanation 2 of section 403.

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