

RESILIENCE

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LATEST LEGAL NEWS

Not Necessary To Give Opportunity Of Hearing To Person Summoned U/Section 319 CrPC Before Adding Him As Accused : Supreme Court

The Supreme Court held that a person summoned under Section 319 CrPC need not be given opportunity of hearing before being added as an accused. "The principle of hearing a person who is summoned cannot be read into Section 319 Cr.P.C. Such a procedure is not at all contemplated therein.", the bench of Justices B V Nagarathna and Ujjal Bhuyan observed. In this case, a person was summoned under Section 319 CrPC and added as an accused by the Trial Court. The Allahabad High Court dismissed the revision petition filed against this order and thus the accused approached the Apex Court.

Placing reliance on some observations made in Jogendra Yadav and Ors. vs. State of Bihar (2015) 9 SCC 244, the accused, in the appeal before Apex Court, contended that it is necessary that a person summoned under Section 319 CrPC must be heard before his addition as an accused to be tried along with other accused already facing trial. If such a hearing is not provided to the accused then the rights of the persons summoned to be added as an accused

Referring to Constitution bench judgments in Hardeep Singh V/s. State of Punjab & Ors. (2014) 3 SCC 92, Sukhpal Singh Khair vs. State of Punjab, (2023) 1 SCC 289, and Brijendra Singh & Ors. v/s. State of Rajasthan (2017) 7 SCC 706, the court made these observations:

A person who is summoned in exercise of the power under Section 319 Cr.P.C. cannot hijack the trial

"Merely because in certain proceedings the persons summoned had been provided an opportunity of being heard cannot be the same thing as stating that it is a mandatory requirement or a precondition that at the time of summoning a person under Section 319 of the Cr.P.C., he should be given an opportunity of being heard. That is not the mandate of law inasmuch as Section 319 clearly uses the expression "to proceed" which means to proceed with the trial and not to jeopardise the trial at the instance of the person(s) summoned by conducting a mini trial or a trial within a trial there by derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody. A person who is summoned in exercise of the power under Section 319 Cr.P.C. cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before being added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated as discussed above. Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 Cr.P.C. It is also observed by this Court in

Hardeep Singh that such a summoned person can assail a summoning order before a superior 29 Court and will also have the right of cross examining the witnesses as well as can let in his defence evidence, if any.

"The principle of hearing a person who is summoned cannot be read into Section 319 Cr.P.C" "Thus, the lateral entry of a person summoned in exercise of power under Section 319 Cr.P.C. is only to face the trial along with other accused. This, being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319 Cr.P.C. principles of natural justice which in any case would be followed during the trial. It is well settled that principles of natural justice cannot be applied in strait-jacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law.. In view of the aforesaid discussion, we do not think that the judgment in Jogendra Yadav calls for any re-consideration and the said observation in paragraph 9 as extracted supra is relatable only to the facts of the said case. Thus, the principle of hearing a person who is summoned cannot be read into Section 319 Cr.P.C. Such a procedure is not at all contemplated therein. In the circumstances, we do not accept the contentions of the appellants herein."

While dismissing the appeal, the court observed that the observations made in Jogendra Yadav case cannot be considered to be the ratio of the said judgment. Further, the context in which the observations are made in paragraph must relate to the facts of the said case where an opportunity was in fact provided to the persons summoned therein.

Case details

Yashodhan Singh vs State of UP | 2023 LiveLaw (SC) 576 | 2023 INSC 652

Headnotes Code of Criminal Procedure, 1973 ; Section 319 - The contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 Cr.P.C - The principle of hearing a person who is summoned cannot be read into Section 319 Cr.P.C. - The lateral entry of a person summoned in exercise of power under Section 319 Cr.P.C. is only to face the trial along with other accused. (Para 32-34)

Code of Criminal Procedure, 1973 ; Sections 319, 227 - When power is exercised the under Section 319 Cr.P.C. to summon a person to be added as an accused in the trial to be tried along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319 Cr.P.C. based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge. (Para 24)

Code of Criminal Procedure, 1973 ; Sections 319, 190 - The exercise of power under Section 319 Cr.P.C. is not at the initial stage where cognizance is the initial stage where cognizance is taken of the offence and the summoning order is passed before committal of the matter to the Sessions Court. That power exercised under Section 190 of the Cr.P.C. is quite distinct from the power exercised by the Trial Court/Sessions Court under Section 319 Cr.P.C - Scope of Section 319 CrPC discussed - Referred to Hardeep Singh V/s. State of

Punjab & Ors. (2014) 3 SCC 92, Sukhpal Singh Khair vs. State of Rajasthan (2017) 7 SCC 706. (Para 22-27)

Natural Justice - Principles of natural justice cannot be applied in strait-jacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law. (Para 33)

Provide Option For Declaring 'No Religion', 'No Caste' In Application For Birth Certificate: Telangana High Court To State

Observing that the system has to evolve along with the times and the changing requirements of the citizens, the Telangana High Court has ordered the state government to provide a 'no religion' and 'no caste' column in the application for Birth Certificate.

In the decision on a couple's plea seeking a "non religious and no caste" identity for their child, Justice Lalitha Kanneganti said the petitioners have every right not to follow or profess any religion and such right is implicit in Article 25 of the Constitution of India. The court said it is the bounden duty of the authorities to act in consonance with the rights guaranteed to the citizen by the Constitution of India.

"The State cannot compel the citizen to profess or declare that he belongs to one religion or the other. If he is compelled to do so, it is nothing but infringing his fundamental rights guaranteed by the Constitution of India," said the court. A constitutional court cannot remain a mute spectator to the legitimate requirement of a citizen, the court observed as it allowed the plea.

"The Writ Petition is allowed directing the respondents to provide a column for "no religion", "no caste" in the on line application format and receive the petitioners' application for registering the birth of their son, by virtue of Article 25 of the Constitution of India. He has every right to claim that he does not belong to any religion /caste," said the bench.

The couple had contended the mandatory selection of religion and caste in the application for a birth certificate, without which the application is not accepted, is against constitutional rights protected under Article 25 of the Constitution. It was submitted that the application, under the column for religions, provides four options to choose from: Hinduism, Islam, Christianity and other religions. However, the application does not have a column for 'no religion', the court was told.

The petitioners submitted that theirs was a love marriage and they belong to different religions but had gotten married without any religious rituals or customs and vowed to raise the children free of any religious influence. "They want to bring the children without any religious formalities or caste practices as a non-believer family at their home or outside home. They wanted to nurture and nourish him in such a way that they cherish true democratic and humanistic values in their day to day life," the counsel on behalf of the petitioners contended.

The petitioners further argued that India is a secular country and as per Article 25, an

individual is free to choose whether he wants to practice a religion or not. The petitioners contended that it is not only them who are facing the issue and "that whether one is an atheist, rationalist, radical humanist, socialist or a communist, he / she or all those who are lakhs in number in India and who claim and subscribe to this, would definitely agree to the status of being recognized as "non- religious and no caste". Union government in response said that the subject of birth and death registration comes under the concurrent list of the Constitution and implementation of the provisions of Registration of Births and Deaths Act is on the State Governments for which Chief Registrar of Births and Deaths has been declared as Chief Executive Authority in the State/ UT and at central level, the Registrar General, India only coordinates and unifies the activities of the Chief Registrars of Births and Deaths in the matter of registration of births and deaths. "The information on religion under item 'Religion of the family' with options as 'Hindu', 'Muslim', 'Christian' and 'any other religion' is collected under statistical part of the reporting form and used for statistical purpose only. Hence, the same is not reflected in the birth and death certificate. The specific forms for reporting the birth and death events are prescribed by the respective State Governments. Hence, it relates to Respondents 4 and 5 and State Government of Telangana through the Chief Registrar of Births and Deaths," the Centre said.

The state government authorities did not file any counter in the matter.

Allowing the plea, the court said Article 25 confers freedom of conscience on a citizen which is a fundamental right guaranteed to a citizen.

"It confers the right to freely profess, practice or propagate any religion, which includes in it the citizens right to say that he does not believe in any religion and he does not want to profess, practice or propagate any religion. The citizen has a right to act as per his conscience and beliefs

The bench further said the State cannot compel the citizen to profess or declare that he belongs to one religion or the other. If he is compelled to do so, it is nothing but infringing his fundamental rights guaranteed by the Constitution of India, observed the bench.

"The society is continuously evolving and as per the mandate of the Constitution, the State has to make the changes wherever required as per the changing needs as change is inevitable. At all times, the State has to respect the human rights and bring harmony in the society. In this case, the petitioner and his wife who belongs to two different religions, who do not believe in the concept of religion want to bring up the children as per their beliefs. The Hon'ble Apex Court in case of Navtej Singh Johar v. Union of India⁷ has held that it is not only the duty of the State and the judiciary to protect the basic right to dignity but the collective at large owes a responsibility to respect one another's dignity for showing respect for the dignity of another is a constitutional duty," the court said.

'Discipline Is A Non-Negotiable Condition Of Service In Armed Forces' : Supreme Court Dismisses Appeal Of Suspended Army Driver Who Overstayed Leave

The Supreme Court on Friday dismissed an appeal filed by a Mechanical Transport Driver enrolled in the Army Service who was dismissed from service for overstaying the leave granted to him. Finding him to be a habitual offender, the Apex Court held that such gross indiscipline by a member of the Armed Forces is unacceptable.

“Discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service” the Top Court said in this regard.

he Armed Forces Tribunal had upheld his dismissal from service for having failed to rejoin duty on expiry of the leave granted to him. A division bench of Justice Hima Kohli and Justice Rajesh Bindal, while dismissing his appeal observed:

“Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.”

The facts pertaining to the case is that the appellant was initially granted leave for 39 days and his request for extension was also accepted. However his request for further extension of leave was turned down, despite which he failed to report for duty. The appellant only surrendered after 108 days

The Summary Court Martial (SCM) found him guilty and dismissed him from service. Adv Shiv Kant Pandey appearing for the appellant argued that the punishment awarded is in violation of Sections 39(b) and 120 of the Act and that the maximum punishment was of imprisonment for a period of one year. Sr. . Adv. R. Balasubramanian, appearing for the respondents highlighted that the appellant was a repeat offender.

The Apex Court found that even though the reason given by the appellant for his absence was that his wife was unwell, he did not place any documents on record to show that she was seriously unwell and required his assistance. The Court also noted that he had made a habit of remaining absent without leave. Regulation 448 of the Defence Service Regulations, 19879 contemplates the scale of punishments that can be awarded by the SCM. This Regulation makes it clear that they are only general instructions for the guidance of officers of the SCM for passing a sentence, the Court observed. If there is good reason for doing so, nothing contained in the Regulation limits the discretion of the SCM to pass any legal sentence, the Apex Court concluded . Section 72 and 73 of the Act also give the SCM the discretion to inflict appropriate punishment it was observed.

The Top Court observed that, the appellant being a habitual offender, did not deserve any leniency and hence dismissed his appeal:

“we do not find any infirmity in the impugned judgment passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not

deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.”

Supreme Court Directs Centre To Reconsider Reward Paid To Person Who Informed About Tax Evasion By News Agency ANI Media Pvt Ltd

The Supreme Court recently directed the reward committee constituted by the Ministry of Finance under the "Reward to Informers" policy to take a fresh decision on the amount of reward awarded to a person who gave information regarding tax evasion by news agency M/s ANI Media Pvt Ltd.

The appellant before the Supreme Court contended that he had provided information to the authorities about the service tax evasion of Rs. 2.59 crores by M/s Asian News International (ANI) Media Pvt Ltd. The appellant claimed that upon giving such information, the defaulter came forward and voluntarily paid the service tax dues of Rs 2.59 crores. The reward committee sanctioned a final reward of Rs.5.50 Lakhs to the appellant based on information about the evasion of tax. The appellant claimed that he is entitled to a reward of Rs.51.80 Lakhs based on clause 4.1 of the above policy.

As per Clause 4.1 of the "Reward to Informers and Government Servants Review of Policy-Procedure and Guidelines" issued by the Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, the reward is up to 20% of the amount evaded plus the amount of fine and penalty levied.

Aggrieved by the quantum of reward given, the appellant filed a petition under Article 226 of the Constitution before the Bombay High Court in 2015. Before the Bombay High Court, the Principal Commissioner of Service Tax, in the affidavit in reply, admitted that information was provided by the appellant in relation to ANI Media. The tax evasion by this media company was set out in the affidavit. The affidavit further stated that the reward committee examined the information provided by the appellant and sanctioned a final reward of Rs.5.50 lacs, which is in tune with the information about evasion of tax and on investigation.

Refuting the stand of the department, the appellant filed a rejoinder before the High Court stating that he has to only give information with regard to the evasion of service tax. If that information is true and based on that recoveries are effected, then, the reward circular mandates computation of the sum based on the quantum thereof and not how the authorities arrive at any figures and attributable to the information. Thus, he argued that it is not possible for the authorities to bifurcate the information and attribute to the petitioner only that part of it, which results in actual recoveries

In 2016, a Division Bench of the High Court held that the writ petition involved disputed questions of fact and therefore, the appropriate remedy for the appellant was to file a civil suit. Aggrieved by this, the appellant approached the Supreme Court.

Supreme Court's analysis The Supreme Court held that the reward committee did not apply its mind while granting the reward. The court emphasized that decision-making authority

must provide well-founded reasons for reaching a particular conclusion. It further asserted that subsequent attempts to supply reasons through affidavits would not be sufficient. The bench comprising Justices Abhay S. Oka and Justice Sanjay Karol observed "The minutes show complete non-application of mind on the prayer made by the appellant. It is well settled that if the decision-making authority does not record reasons for coming to a particular conclusion, the reasons cannot be supplied by filing affidavits."

The bench also noted that previously, in 2018, the Additional Solicitor General had informed that a decision has been taken to enhance the reward as Rs 9.45 lakhs. This was also taken as a factor by the Court to hold that there is no proper application of mind regarding the decision. The Court allowed the appeal partly directing the committee to reconsider the case of appellant and decide if he's entitled to an amount more than already given. T

The Court highlighted that under Clause 4.1 of the Policy, the reward is up to 20% of the amount evaded plus the amount of fine and penalty levied. It noted that as per the policy, a committee comprising three members is empowered to take a decision regarding the reward.

The Court examined the Union's affidavit which relied on a note-sheet, but the official Minutes did not mention any decision based on such notes.

The Court raised concerns about the lack of reasons provided in the decision to restrict the appellant's reward to Rs. 5.50 lakhs instead of the 20% entitled under the Policy. It also pointed out the order passed in 2018 where ASG had submitted that award was enhanced to 9.45 lakhs which go on to show non-application of mind.

The Court directed the committee to reconsider the case of appellant and determine if a higher amount is payable to him. It allowed the appeal in part and directed the committee to take a decision within 6 months.

Murder Case | 'Cruel' Is Relative Term; If Its Ordinary Meaning Is Used, Exception 4 Of S.300 IPC Can Never Be Applied : Supreme Court

The Supreme Court observed that the term 'cruel' in exception 4 to Section 300 of IPC is a relative term. "Exception 4 applies when a man kills another. By ordinary standards, this itself is a cruel act..... If we assign a meaning to the word 'cruel' used in exception which is used in common parlance, in no case exception 4 can be applied", the bench of Justices Abhay S. Oka and Sanjay Karol observed.

In this case, the accused who was Lance Naik in the Indian Army was convicted by the Court Martial for the offence punishable under Section 302 of the IPC read with Section 69 of the Army Act, 1950. In this appeal before the Apex Court, the accused contended that his case will be governed by exception 4 to Section 300 of IPC as the incident was an outcome of a sudden fight and he acted in a heat of passion. On the other hand, the Union of India contended that exception 4 to Section 300 will not apply in this case, as it cannot be said that there was a sudden fight and that the accused acted in a cruel manner.

Taking note of the evidence on record, the bench observed that the appellant cannot be said to have acted in such a cruel manner which will deprive him of the benefit of exception 4 to Section 300 of IPC.

"The term cruel manner is a relative term. Exception 4 applies when a man kills another. By ordinary standards, this itself is a cruel act. The appellant fired only one bullet which proved to be fatal. He did not fire more bullets though available. He did not run away and he helped others to take the deceased to a hospital. If we assign a meaning to the word 'cruel' used in exception 4 which is used in common parlance, in no case exception 4 can be applied.

Therefore, in our view, exception 4 to Section 300 was applicable in this case. Therefore, the appellant is guilty of culpable homicide not amounting to murder. The appellant snatched the rifle from the hands of the deceased and fired one bullet at the deceased. This act was done with the intention of causing such bodily injury to the deceased as was likely to cause death. Therefore, the first part of Section 304 of IPC will apply in this case. Under the first part of Section 304 of IPC, an accused can be punished with imprisonment for life or with imprisonment for a term which may extend to 10 years.", the court said while partly allowing the appeal.

The court added that the conduct of the appellant will be a mitigating factor for determining the sentence and thus reduced the sentence to imprisonment for the term which he has already undergone.

Case details

L/Nk Gursewak Singh vs Union of India | 2023 LiveLaw (SC) 571 | 2023 INSC 648

Headnotes Indian Penal Code, 1860 ; Exception 4 to Section 300 - The term 'cruel manner' is a relative term. Exception 4 applies when a man kills another. By ordinary standards, this itself is a cruel act - If we assign a meaning to the word 'cruel' used in exception which is used in common parlance, in no case exception 4 can be applied. (Para 11)

Indian Penal Code, 1860 ; Section 302 and 304 Part 1 - Appellant's conviction altered from from S 302 IPC to S 304 Part 1 IPC.

CURRENT AFFAIRS

Dr. APJ Abdul Kalam: Memories Never Die

The release of the book 'Dr. APJ Abdul Kalam: Memories Never Die' has sparked immense interest and reverence among readers across the country. This book, released by Union Home Minister Amit Shah, sheds light on the remarkable life of Dr. ..

New Guidelines for the Designation of Senior Advocates in SC

The Supreme Court of India has recently released new guidelines regarding the designation of senior advocates. These guidelines aim to streamline the process of conferring the prestigious 'senior advocate' designation to practicing advocates. Led by Justice SK Kaul, a three-judge ..

Telangana Eunuchs Act

The Telangana High Court recently made a significant ruling on July 6, striking down the Telangana Eunuchs Act of 1919. The court found the Act to be unconstitutional, infringing upon the rights of transgender individuals and undermining their equality, privacy, ..

Horizontal Reservations for Transgender Persons

The issue of providing additional reservations for transgender persons in education and public employment has come under scrutiny in the Bombay High Court. The Maharashtra government has responded that it would be challenging to implement additional reservations due to the ..

Press and Registration of Periodicals Bill, 2023 and the Mediation Bill

The Union Cabinet has recently cleared two significant bills, namely the Press and Registration of Periodicals Bill, 2023 and the Mediation Bill. These bills aim to address important aspects of press regulation and the resolution of civil or commercial disputes ..

Archeological Significance of Benisagar

Benisagar, a village located 85 kilometers from Jharkhand's West Singhbhum district, is a treasure trove of historical wonders. Excavated by the Archaeological Survey of India (ASI), this site has revealed continuous habitation from the fifth century A.D. to the 16-17 ..

Isle of Rum

The quest to explore Mars has been an ambitious and collaborative effort involving space agencies from across the globe. As part of the joint NASA and European Space Agency (ESA) Mars Sample Return Campaign, the Isle of Rum has been ..

ULLAS App

In a bold step towards advancing education and literacy among adults in India, the ULLAS app was launched on the sidelines of the Akhil Bhartiya Siksha Samgam (ABSS). This groundbreaking initiative, spearheaded by Shri Dharmendra Pradhan, the Union Minister of ..

LATEST JUDGMENTS

Rohit Bishnoi Vs. State of Rajasthan & Anr. 2023 Latest Caselaw 576 SC

Citation : 2023 Latest Caselaw 576 SC

Judgement Date : **24 Jul 2023**

Case No : CrI.A. No.-002078-002078 / 2023

Rohit Bishnoi Vs. State of Rajasthan & Anr.

[Criminal Appeal No. 2078 of 2023 @ SLP (CrI. No. 8935 of 2023 @ Diary No(s). 40947 of 2022]

[Criminal Appeal Nos. 2079-2080 of 2023 @ SLP (CrI.) Nos. 3445-3446 of 2023]

Nagarathna, J.

1. Delay condoned.
2. Leave granted.

3. These appeals have been preferred by the informant-appellant assailing the judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Miscellaneous Bail Application Nos. 16016 of 2021, 4265 of 2022 and 4823 of 2022, whereby, bail has been granted to the respondents-accused herein, namely, Vikas Vishnoi, Budharam and Rajendra Bishnoi respectively, in connection with First Information Report ("F.I.R." for short) No. 134 of 2020 registered at Police Station Mandore, District Jodhpur, Rajasthan for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC" for the sake of brevity) and Section 3 read with Sections 25 and 27 of the Arms Act, 1959.

4. The facts in a nutshell are that the appellant is the brother of one of the deceased, namely, Vikash Panwar and is the informant who lodged F.I.R. No. 134 of 2020 against four persons, including three of the respondents-accused herein.

4.1. F.I.R. No. 134 of 2020 dated 18 May, 2020 is stated to have been filed by the appellant herein between 2.45 hours and 2.55 hours in the night stating that his elder brother, Vikash Panwar, aged 25 years at the time had been in an extra marital live-in-relationship with Nirma @ Gudia, since three months, who was also married to Shrawan Jani and had two children from the said marriage. That unhappy about the said extra marital live-in-relationship, the parents and parents in-law of Nirma had been threatening to kill appellant's brother, Vikash Panwar.

4.2. That Budharam and Vikas Vishnoi, Nirma's brothers, Shrawan Jani, Nirma's husband and Ram Kishor, Nirma's brother-in-law were threatening the informant's brother by way of calls and WhatsApp messages.

4.3. That on 17 May, 2020 at around 12.15 p.m., the informant's nephew informed him telephonically that a video of his brother, Vikash getting shot was being circulated on social media. The incident was stated to have occurred at Nayapura Mandore area and on receiving the said information, the informant and his father reached the said area and found Vikash Panwar lying on the ground, dead, with blood oozing out from around his ribs.

4.4. That upon inquiry, the informant got to know that the four accused hereinabove named had come on two motorcycles and dragged Vikash who was purchasing vegetables. Thereafter, they had shot at him, causing his death.

5. Earlier, on 18 February, 2020, Meera Devi had filed F.I.R. No. 81 of 2020 in Police Station Bilara, Jodhpur stating therein that the deceased-Vikash Panwar had kidnapped her daughter-in-law, Nirma.

6. On 24 February, 2020, Nirma filed F.I.R. No. 88 of 2020 against her brother-in-law and parents-in-law for offences punishable under Sections 498A and 376 of the IPC, stating therein that her brother-inlaw repeatedly raped her and that she was being subjected to cruelty in her matrimonial household.

7. In connection with F.I.R. No. 134 of 2020, respondent-accused, Budharam was arrested on 22 May, 2020 while respondents-accused, Rajendra Bishnoi and Vikas Vishnoi were arrested on 30 May, 2020 and remanded to judicial custody.

8. After conducting the investigation, the police filed a chargesheet before the Metropolitan Magistrate, Mahanagar, Jodhpur, on 19 August, 2022 against eight accused including the respondents-accused herein. Respondent-accused, Budharam was charged for offences punishable under Sections 302 and 120B of the IPC and Section 3 read with Sections 25 and 27 of the Arms Act, while respondents-accused, Rajendra Bishnoi and Vikas Vishnoi were charged for offences under Sections 302 and 120B of the IPC.

9. Respondent-accused, Vikas Vishnoi preferred an application seeking regular bail before the Court of the Additional District and Sessions Judge, Mahanagar, Jodhpur. The same was dismissed by an Order dated 10 November, 2021.

10. Application seeking regular bail filed by the respondent-accused, Vikas Vishnoi before the High Court, under Section 439 of the Code of Criminal Procedure, 1973, was dismissed as withdrawn by an Order dated 16 April, 2021.

11. Thereafter, respondent-accused, Vikas Vishnoi filed a second bail application, being S.B. Criminal Miscellaneous Bail Application Nos. 16016 of 2021, before the High Court. By the impugned judgment dated 14 February, 2022, the High Court granted him bail in connection with F.I.R. No. 134 of 2020 registered at Police Station Mandore, District Jodhpur, Rajasthan.

12. Subsequently, the High Court vide impugned judgment dated 02 February, 2023 allowed S.B. Criminal Miscellaneous Bail Nos. 4265 of 2022 and 4823 of 2022 and thereby granted bail to the respondentsaccused herein, namely, Budharam and Rajendra Bishnoi respectively. Being aggrieved, the appellant-informant has preferred these appeals before this Court.

13. We have heard Sri Pradeep Chhindra, learned counsel appearing for the appellant, Sri B.S. Rajesh Agrajit, learned counsel appearing for the State and Sri Asad Alvi, Sri Hamid Irfan and Ms. Srishti Prabhakar, learned counsel appearing for the respondents-accused.

14. Learned counsel for the appellant at the outset submitted that the impugned judgments have been passed without considering the facts as to the active involvement of the accused and the heinous nature of the crimes in which the accused have been involved. That the High Court has enlarged the respondents-accused on bail, contrary to the settled principles of law and judgments of this Court.

14.1. It was further submitted that the High Court has not assigned the reasons for grant of bail in the instant case whereas the respondentsaccused have allegedly committed heinous crimes which could result in life imprisonment or even death penalty. According to the learned counsel for the

appellant, the High Court in a very cryptic order, de hors any reasoning, has granted bail to the respondents-accused.

14.2. It was contended that the High Court failed to consider the overwhelming material that would point towards the guilt of the accused. Instead, the High Court referred only to the testimony of one hostile witness and on the basis thereof exercised its discretion to grant bail in an erroneous and perverse manner.

14.3. Sri Pradeep Chhindra next contended that while considering an application for grant of bail, the Court's exercise of discretion must be guided by reasons to be recorded in the Order granting bail. That the Court must have due regard to the seriousness of the allegations and the nature of punishment that would follow conviction for the offences alleged. In support of his submission, reliance has been placed on the decisions of this Court in Brijmani Devi vs. Pappu Kumar- [(2022) 4 SCC 497] and Deepak Yadav vs. State of Uttar Pradesh- [(2022) 8 SCC 559].

15. Of the same tenor were the submissions of Sri B.S. Rajesh Agrajit, learned counsel appearing for the State. It was submitted that the investigating officers had collected overwhelming evidence in the form of statements of eye-witnesses and other witnesses who identified the accused in pictures and in the CCTV footage wherein they were seen escaping the crime scene.

That the police also recovered murder weapons, phones on which information was transmitted, reconnaissance was done, call tower records, bikes on which the escape was planned etc. That the chargesheet includes pictorial evidence of the respondents-accused escaping from the scene of the crime. That the High Court overlooked such clear and cogent evidence collected during the course of investigation, which, in the very least would prima-facie point towards the guilt of the accused and erroneously proceeded to grant bail.

15.1. It was urged that discretion in matters concerning grant of bail must be exercised judiciously, taking into account the particular circumstances of each case. That a decision as to whether or not to grant bail must be taken having due regard to factors such as the nature and gravity of the allegations, the strength of the evidence against the accused, the potential severity of the punishment that would follow conviction, the character of the accused, the likelihood of the accused absconding, the possibility of the accused influencing witnesses, the broader public interest and other relevant factors. That where the prosecution has been able to produce prima-facie evidence in support of the charge(s) against the accused, it would not be a fit case for grant of bail.

15.2. It was further submitted that the accused were not only involved in a conspiracy to kill the deceased, Vikash Panwar, but also actively participated in his murder. That having regard to the gravity of the offences alleged against the accused, the bail applications ought not to have been allowed. With the aforesaid submissions, it was prayed that the present appeals be allowed, the impugned judgments be set aside and the bail bonds of the respondents-accused be cancelled.

16. Per contra, learned counsel for the respondents-accused, supported the impugned judgments and submitted that the same do not suffer from such perversity as would justify interference by this Court.

16.1. It was further submitted that no matter how serious the nature of the alleged offences may be, the accused shall be entitled to be released on bail if the competent court is of the prima-facie view that the accused was/were not involved in the alleged crime.

16.2. That the conclusion of trial in connection with F.I.R. No. 134 of 2020, would take a considerable amount of time and it would be against the interest of justice and the fundamental value of liberty to keep the accused in custody for such an indefinite period. Therefore, the High Court was right in enlarging the accused on bail.

16.3. It was contended that there was no justifiable cause for the apprehension that the respondents-accused would influence the witnesses. That when the statement of prosecution witness, Nirma who turned hostile, was recorded by the Trial Court, the respondents-accused were in judicial custody. Therefore, there is no way that they could have influenced the said witness to turn hostile.

16.4. That the respondents-accused had no intention to misuse the liberty granted to them and this was evidenced by the fact that there has been no allegation against them as to non-compliance or abuse of conditions of bail.

16.5. Learned counsel for respondent-accused, Vikas Vishnoi submitted that the only role ascribed to the said accused in the alleged crime is that he was riding on a motorcycle together with a co-accused at the time of incident. That no allegation has been made as to the said accused inflicting any injuries to the deceased.

16.6. As regards the allegations against respondent-accused, Rajendra Bishnoi to the effect that he hit the deceased on his head with the butt of the pistol, it is submitted that the same were baseless and there was no evidence to prove the same. So also, the allegations against respondent-accused, Budharam to the effect that he had fired bullet shots at the deceased. With the aforesaid submissions, it is prayed that the present appeals be dismissed as being devoid of merit and the impugned judgments be affirmed.

17. Having regard to the contention of the learned counsel for the appellant that the impugned judgments granting bail to the respondents-accused are bereft of any reasoning and they are cryptic and bail has been granted in a casual manner, we extract those portions of the impugned judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court which provides the "reasoning" of the Court for granting bail, as under:

Impugned judgment dated 14 February, 2022

"Heard learned counsel for the parties.

The prosecution witness Nirma @ Gudiya, in her police statement, has identified the petitioner and other co-accused persons in the CCTV footage, but in her court statement, she has not supported the prosecution story and turned hostile. So far as witness Rohit is concerned, I have gone through his police statement and in those statement, he has simply stated that he was informed that the incident is carried out by the petitioner and other co-accused persons.

Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the petitioner(s) under Section 439 Cr.P.C. Accordingly, this/these second bail application(s) filed under Section 439 Cr.P.C. is/are allowed and it is directed that petitioner(s) - Vikash Vishnoi S/o Hanuman Ram shall be released on bail in connection with FIR No.134/2020 of Police Station Mandore, District Jodhpur provided he/she/they execute(s) a personal bond in the sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his/her/their appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial."

Impugned judgment dated 02 February, 2023

"Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bill to the accused petitioners under Section 439 Cr.P.C.

Accordingly, the bail applications filed under Section 439 Cr.P.C. are allowed and it is directed that petitioners Raju @ Rajendra Bishnoi S/o of Pukhraj @ Papparam and Budharam S/o Kojaram shall be released on bail in connection with F.I.R. No.134/2020, registered at Police Station Mandore, District Jodhpur provided each of them executes a personal bond in a sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for their appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial."

18. This Court has, on several occasions discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) The seriousness of the offence; (ii) The likelihood of the accused fleeing from justice; (iii) The impact of release of the accused on the prosecution witnesses; (iv) Likelihood of the accused tampering with evidence.

While such a list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide *Gudikanti Narasimhulu vs. Public Prosecutor, High Court of Andhra Pradesh*- [(1978) 1 SCC 240]; *Prahlad Singh Bhati vs. NCT, Delhi*- [(2001) 4 SCC 280]; *Anil Kumar Yadav vs. State (NCT of Delhi)* - [(2018) 12 SCC 129].

19. This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal, vide *Ram Govind Upadhyay vs. Sudarshan Singh*- [(2002) 3 SCC 598]; *Prasanta Kumar Sarkar vs. Ashis Chatterjee* - [(2010) 14 SCC 496]; *Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli)*- [(2021) 6 SCC 230] ; *Brijmani Devi vs. Pappu Kumar* (supra).

20. Reference may also be made to recent decisions of this Court in *Manoj Kumar Khokhar vs. State of Rajasthan*- [2022 SCC OnLine SC 30] and *Jaibunisha vs. Meharban*- [(2022) 5 SCC 465], wherein, on engaging in an elaborate discussion of the case law cited supra and after duly acknowledging that liberty of individual is an invaluable right, it has been held that an order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising power under Article 136 of the Constitution of India.

21. The Latin maxim "cessante ratione legis cessat ipsa lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself," is also apposite.

22. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing on the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion.

While considering an application for grant of bail, a prima-facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis à vis the offence/s alleged against an accused.

23. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High Court while granting bail.

As noted from the aforecited judgments, it is not necessary for a Court to assign elaborate reasons or engage in a roving inquiry as to the merits of the prosecution's case while granting bail,

particularly, when the trial is at the initial stages and the allegations against the accused would not have been crystallised as such. Elaborate details cannot be recorded so as to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an Order on an application for grant of bail.

However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering with the evidence; criminal antecedents of the accused; and a prima-facie satisfaction of the Court in support of the charge against the accused.

24. In view of the aforesaid discussion, we shall now consider the facts of the present case. The allegations against respondents-accused as well as the contentions raised at the Bar have been narrated supra. On a consideration of the same, the following aspects of the case would emerge:

a) The allegations against respondent-accused, Budharam is for offences under Sections 302 and 120B of the IPC and Section 3 read with Sections 25 and 27 of the Arms Act, while against respondents-accused, Rajendra Bishnoi and Vikas Vishnoi the allegations are for offences under Sections 302 and 120B of the IPC.

b) The allegation against the respondents-accused is not only that they were involved in a conspiracy to kill the deceased, Vikash Panwar, but also that they actively participated in his murder. The alleged incident is stated to be an instance of honour killing.

c) A perusal of the chargesheet dated 19 August, 2022 would reveal that specific roles have been ascribed to each of the respondents-accused in the alleged incident. It is alleged that respondent-accused Rajendra Bishnoi tugged at the collar of the deceased from behind, so as to drag him down the stairs on which he was standing, after which respondent-accused Vikas Vishnoi caught hold of the deceased, thereby, enabling co-accused Raju to hit him on his head with the butt of a country-made pistol. Having incapacitated the deceased in the said manner, Budharam was able to fire bullet shots on the chest and back of the deceased, resulting in his death.

d) In the present case, it cannot be said that the accusations against the respondents-accused are prima-facie wholly false, frivolous or vexatious in nature, so as to justify grant of bail. We observe, while not expressing any opinion on the merits of the case, that the prosecution has brought on record adequate material that would prima-facie point towards the guilt of the accused.

Details as to the manner in which the deceased, Vikash Panwar and Nirma were traced by the accused, the acts of reconnaissance that were carried out by the accused before the alleged fateful incident and the manner in which each of the accused participated in the alleged crime have been brought on record. Therefore, we are not inclined to hold at this juncture that the prosecution has not established a prima-facie case as to the guilt of the accused.

e) One of the prosecution witnesses, namely Nirma, turned hostile. Therefore, in the absence of any evidence as to the circumstances under which she turned hostile, we cannot rule out the possibility of the respondents-accused influencing other witnesses, tampering with the evidence, if they continue to remain on bail.

f) The present case is not one where the accused have been detained in custody for an inordinate amount of time as under-trials.

g) The High Court of Rajasthan, in the impugned orders dated 09 September, 2019 and 17 October, 2019 has not considered the aforesaid aspects of the case in the context of the grant of

bail. The High Court has been swayed by the fact that one of the prosecution witnesses, namely, Nirma has turned hostile which is not an aspect that must be taken into account while considering an application for bail.

25. While we are conscious of the fact that a Court considering the grant of bail must not engage in an elaborate discussion on the merits of the case, we are of the view that the High Court while passing the impugned orders has not taken into account even a single material aspect of the case.

Instead, the High Court referred only to the testimony of one hostile witness in the trial and on the basis thereof, exercised its discretion to grant bail in an erroneous manner. The High Court has lost sight of the aforesaid vital aspects of the case and granted bail to the respondents-accused by passing very cryptic and casual orders, de hors cogent reasoning.

26. Having considered the aforesaid facts of the present case in light of the law cited above, we do not think that this case is a fit case for the grant of bail to the respondents-accused, given the seriousness of the allegations against them.

We find that the High Court was not right in allowing the applications for bail filed by the respondents-accused. Hence, the impugned judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court of Rajasthan at Jodhpur are set aside. The appeals are allowed.

27. The respondents-accused are on bail. Their bail bonds stand cancelled and they are directed to surrender before the concerned jail authorities within a period of two weeks from today.

.....J. B.V. Nagarathna

.....J. Prashant Kumar Mishra

Sandeep Kumar Vs. State of Haryana & Anr 2023 Latest Caselaw 587 SC

Citation : 2023 Latest Caselaw 587 SC

Judgement Date : **28 Jul 2023**

Case No : CrI.A. No.-002195-002195 / 2023

Sandeep Kumar Vs. State of Haryana & Anr.

[Criminal Appeal No. 2195 of 2023 arising out of SLP (CrI) No. 6537 of 2022]

Sudhanshu Dhulia, J.

1. Leave granted.

2. Heard Shri Ram Naresh Yadav learned Counsel for the appellant/complainant, Shri Vishal Mahajan, Deputy Advocate General for the State/Respondent No.1 and Shri Shreeyash U. Lalit learned Counsel for Respondent No.2.

3. The appellant before this Court was the informant in the case and was a prosecution witness (PW-9), in Sessions Trial No.8/2018, which is being held before the Additional Sessions Judge, Sirsa, Haryana, under Sections 458, 460, 323, 302, 148, 149 and 285 of IPC, 1860 read with Section 25 of Arms Act, 1959. The incident is of 12:30 mid night dated 07.09.2017 which occurred at Sirsa, Haryana.

The First Information Report reveals that there were in total fifteen assailants which had broke open the complainant's house, in the middle of the night and had come in order to assault the inmates of the house. Out of these assailants seven have been named who were armed with lathi and three of the named assailants/accused namely Ramesh Gandhi, Kalu Jakhar and Pawan were armed with gun and pistols respectively.

Police after investigation had filed chargesheet against nine persons, but not against Ramesh Gandhi, Kalu Jakhar or Pawan whose names were placed in column 2 of the chargesheet. After the trial had commenced and the complainant was being examined as PW-9, he disclosed the entire event as an eye witness in his examination-in-chief, where he has unambiguously assigned the roles to these three assailants as well, who were named in the FIR but not made accused in the chargesheet, that is, Ramesh Gandhi (respondent No.2), Kalu Jakhar and Pawan.

4. Immediately thereafter an application was moved before the Court by the Appellant under Section 319 Code of Criminal Procedure, for summoning these three persons Ramesh Gandhi, Kalu Jakhar and Pawan as accused so that they may also face the trial. This application as we have already stated was allowed, but the order was set aside by the High Court in Revision. Before we examine the scope of Section 319 of Code of Criminal Procedure, it would be relevant to go through the statement given by PW-9, complainant, in his examination in chief as that forms the basis for summoning the three persons.

PW-9 states in his examination-in-chief that on 07.09.2017, he along with his younger brother Pradeep Kumar and his cousin Bijender was sleeping in the court yard of their house, after having dinner. His father, Hanuman (deceased), was also sleeping in the court yard. The main gate of the house was bolted. His uncle Subhash, Jaibir and Raj Kumar were also sleeping in their houses.

At about 12:30 i.e. in the middle of the night fifteen persons entered their house having 'lathi' and 'danda' in their hands, from the adjacent room by breaking the chain. Two were having pistols in their hand which could be seen in the light of the bulb. He then goes on to say that while Ramesh Gandhi was having a gun, Kalu Jakhar and Pawan were armed with pistols and remaining were having lathis and dandas.

They first exhorted and then started beating all of them and threatened that today they will teach them a lesson, for selling liquor. When they were inflicting blows on the three of them his father Hanuman came to their rescue, to whom Subhash gave a blow from his lathi. He then states that all the accused were inflicting injuries on his father, and when they finally left the house, they left after firing from their weapons. These are the essential details of his slightly longer narration. Section 319 of Cr.PC reads as under:

"319. Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

Sub-section (1) of Section 319 leaves it to the judicial discretion of the Court, where the trial is proceeding to summon a person as an accused (who is so far not an accused in trial), if evidence has appeared before the Court that such a person has committed an offence for which he should be tried together with the other accused.

This judicial discretion is extremely limited by the circumstances which have been stated in sub-section (1) of Section 319. We have already referred to the statement given by PW-9, (an eye-witness) in his examination-in-chief. To our mind the Court had no alternative here but to summon the accused persons, considering that now it had an evidence before it in the form of the statement of PW-9.

Pursuant to the summoning order out of the three accused who have been summoned only one of them, i.e., Ramesh Gandhi who is Respondent No. 2 had filed a Revision before the Punjab & Haryana High Court which was allowed by order dated 02.03.2022 In our considered opinion the High Court has not appreciated the matter in the true perspective of Section 319 Cr.P.C. The revision of Shri Ramesh Gandhi (one of the three accused who were summoned), was allowed for the reasons that he was found innocent during investigation and that he never used the gun and had actually fled from the spot.

These observations are even factually incorrect, from what we have just seen in the examination-in-chief of PW-9, the revisionist had fled the scene only after the commission of the crime by an "unlawful assembly". In his statement (PW-9), it has further come that while leaving the house firing was also done. Further, totally uncalled for presumption has been made by the High Court in favour of the revisionist, declaring him to be innocent. The High Court has reasoned as follows:-

"The petitioner was found innocent during investigation. It could not even be established on record whether the petitioner was attributed any injury and even as per the version of the complainant himself, the petitioner had allegedly fled away from the spot. Thus, the material on record, does not make it a fit case to summon the petitioner as an additional accused.

The matter can be looked from another angle. It is the case of the complainant that the petitioner armed with a gun had come to the place of occurrence along with other coaccused. However, it does not seem to the common prudence that a person coming with a premeditated mind at the spot with a gun, would flee without even firing or attempt a shot. This clearly points towards a false implication of the petitioner."

In our opinion, whereas the trial court was absolutely correct to have summoned the accused based on the evidence of PW-9, the High Court committed a grave error in allowing the revision of the accused. Under the facts and circumstances of the case and on the powers of the Court under Section 319 and based on the evidence of PW-9, it was absolutely necessary for the trial court to have summoned the three accused, including the revisionist.

The reasoning given by the High Court, cannot be accepted at the stage of consideration of application under Section 319 Cr.PC. The merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court. This is not to be done at the stage of Section 319, though this is precisely what the High Court has done in the

present case. Moreover, the High Court did not appreciate the important fact that the charges being faced by the accused were under Sections 458, 460, 323, 285, 302, 148 and 149 of IPC.

Thus, one of the charges being Section 149, which is of being a member of an unlawful assembly, for attracting the offence under Section 149 IPC, one simply has to be a part of an unlawful assembly. Any specific individual role or act is not material. [See : 2021 SCC OnLine SC 632- Manjeet Singh v. State of Haryana & Ors., Para 38]. A plain reading of Section 149 IPC (read with Section 141 IPC), makes it clear that no overt act needs to be assigned to a member of an unlawful assembly.

"Even if no overt act is imputed to a particular person when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction". [See : Yunis alias Kariya v. State of Madhya Pradesh, AIR 2003 SC 539]

The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist.

The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and other witnesses is a subject matter of the trial which has to begin afresh. The scope and ambit of Section 319 CrPC has been discussed and dealt with in detail in the Constitution Bench judgment of Hardeep Singh v. State of Punjab and Others reported in (2014) 3 SCC 92 where it said:

"12. Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr. PC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."

5. In Hardeep Singh (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in Vikas v. State of Rajasthan, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

In Para 106 it stated as under:

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity.

The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" it is clear from the words "for which such person could be tried together with the accused".

The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused." In our considered opinion, the prosecution had fully made out its case for summoning the three as accused under Section 319, Cr.PC, so that they may also face trial.

6. Under these circumstances, the appeal is allowed and the order of the High Court dated 02.03.2022, is hereby set aside. It is further directed that the trial shall proceed now in accordance with law, as expeditiously as possible.

.....J. [C.T. Ravikumar]

.....J. [Sudhanshu Dhulia]

Shatrughan Vs. State of Chhattisgarh 2023 Latest Caselaw 574 SC

Citation : 2023 Latest Caselaw 574 SC

Judgement Date : **20 Jul 2023**

Case No : CrI.A. No.-000437-000437 / 2016

Shatrughan Vs. State of Chhattisgarh

[Criminal Appeal No. 437 of 2016]

Vikram Nath, J.

1. By means of this appeal, the accused appellant has assailed the correctness of the judgment and order of the High Court dated 06.04.2015 passed by a Division Bench of the High Court of Chhattisgarh dismissing the Criminal Appeal No.3 of 2010 titled Statrughan vs. State of Chhattisgarh, whereby the conviction under section 302, Indian Penal Code¹ and the sentence to undergo life imprisonment along with fine of Rs.5,000/- passed by the IInd Additional Sessions Judge, Baloda Bazar, Dist.Raipur in Sessions Trial No.41 of 2009 has been affirmed. The appellant is in jail and has already undergone almost 15 years incarceration.

2. According to the prosecution story, Vijay Kumar (PW1) uncle of the deceased (Jagat Ram) lodged a First Information Report at 04:30 AM on 20.07.2008 that on the previous night at about 08.00 PM while he was sitting in his house, his nephew Jagat was returning on a cycle and he heard his nephew shouting, while passing in front of the house of one Chandu "Kaka Vijay Singh run, Shatrughan has assaulted me with a Tabbal". The exact statement as recorded in vernacular is:

3. On hearing the said cry for help, the informant along with his wife, ran to the lane in front of the house of Chandu Lal and saw that his nephew Jagat was lying on the road and that Shatrughan was moving on his cycle along with Tabbal towards his house. His nephew told him

that Shatrughan, in order to murder him, had assaulted with Tabbal on his neck and thereafter escaped. His nephew was bleeding. In a loud voice, he called for help to save his nephew who had been assaulted by Shatrughan.

On his call, his daughter and other residents of the neighbourhood collected. Father of the deceased, Ajit Ram took the injured on Motor Cycle of Sitaram for medical help. After some time, he returned and informed that Jagat had died. The said complaint was registered as FIR No.215 of 2008 at Police Station Kasdol, District Raipur.

Investigation was entrusted to Investigating Officer² (PW-16) who visited the spot, got the inquest prepared, recorded the statements of the informants as well as the witnesses, arrested the appellant and recovered various articles including the weapon of assault, other clothes containing blood stains and also recovered the cycle. The post-mortem was conducted on 20.07.2008 itself at 02.00 PM. Following ante mortem injuries were noticed:

- Deep sharp incised wound on the left side of the neck measuring 5cm in length, 3 cm wide and 3cm deep.
- Associated blood vessels were also cut and there was heavy bleeding.

4. After completing the investigation, the chargesheet was submitted under section 302 IPC. The case was committed to the Sessions Court. The Trial Judge framed the charge on 20.07.2008 which the appellant denied and claimed to be tried. The prosecution examined 16 witnesses and produced 21 documents. The defence did not examine any witness nor did it lead any documentary evidence.

5. The Trial Court, after considering the material on record, came to the conclusion that the prosecution had proved beyond reasonable doubt that it was the appellant who had committed the crime and accordingly convicted him for culpable homicide amounting to murder under section 302 IPC and awarded him sentence to undergo life imprisonment along with fine of Rs.5,000/-. The said conviction has been affirmed by the High Court. Hence, this appeal.

6. We have heard learned counsel for the parties and perused the original record also.

7. According to Ms. Anu Gupta, learned counsel for the appellant, both the Courts below committed serious error of law by recording conviction. They relied upon inadmissible evidence and at the same time ignored the relevant admissible evidence. The witnesses of fact were not consistent and did not inspire confidence. The medical evidence did not support the prosecution story. There was no direct evidence of the commission of crime.

The case was based on circumstantial and hearsay evidence. No motive had been set up by the prosecution either in the First Information Report or the statements recorded during the investigation or even in the evidence led during trial. It was a case of false implication due to various factors elicited in the cross-examination. Learned counsel has taken us to the relevant evidence which shall be shortly discussed. It was thus submitted that the appellant deserves to be acquitted.

8. On the other hand, Shri Sumeer Sodhi, learned counsel for the State of Chhattisgarh submitted that the prosecution had fully proved the commission of crime by cogent material. The defence could not disturb or shake the evidence of the prosecution witnesses despite availing the opportunity of cross-examination.

There is no reason or justification to interfere with the concurrent findings recorded by both the Courts below. Mr. Sodhi has also taken us to the relevant part of the evidence in order to discredit

the arguments and the evidence shown to us by the learned counsel for the appellant. He thus submitted that the appeal deserves dismissal.

9. PW-1 is the informant and uncle of the deceased. He claims to be the first person to arrive at the scene of the crime. Before discussing his testimony, it would be appropriate to comment on the site plan prepared by the IO to show the location and the distance of the place where the incident took place and the house of the informant.

In the site plan, the place of assault is shown with alphabet "A" which is in front of the house of Chandu. On the other side of the lane, a little away and diagonally from the house of Chandu is the house of Vijay Kumar, the informant (PW-1) which has been marked by alphabet "C".

A little further away from the house of PW-1 is the house of deceased Jagat marked with alphabet "B". Alphabet 'D' is marked to indicate the place where the cycle of deceased was lying. The distance between "A" to "C" is stated to be 14.80 metres (48.56 ft.), the distance between "A" and "B" is 250 metres (820.21 ft.) and the distance between "A" to "D" is shown to be 13.30 metres (43.64 ft.).

10. With the above picture in mind as depicted by the site plan, the evidence of the witnesses of fact is being discussed. It would be relevant to note that evidence as recorded is in close proximity and within a reasonable time from the date of occurrence (within a few months on 11.02.2009). As such the facts would be still fresh in the minds of the witnesses.

11. PW-1 states that the incident happened about 4 months back at about 08.00PM when Jagat shouted that Shatrughan has assaulted him. He rushed to the place of occurrence and saw the accused running away and the Tabbal was lying there. The deceased had already fell unconscious by that time with a deep cut at the neck from which blood was flowing. Upon his call, Chandu, Firtu, Akshay and his daughter had all come running.

The incident had actually taken place in front of house of Chandu and Akshay. The deceased was taken to Dr. Sahu who declared him brought dead and then he went to lodge the report at the Police Station. He also states that he does not know why the appellant assaulted his nephew. He then acknowledges the signature on First Information Report (Ex. P1). He also acknowledges his signature on Merg report (Ex. P2).

12. In his cross-examination, PW-1 admits that after the house of Chandu there is house of one Ram Singh and after the house of Ram Singh, next is his house. He further admits that there were some guests in the house of his brother Ajit Ram i.e. the house of the deceased. He does not deny the fact that the guests at his brother's place were served alcohol along with food and he does not deny that maybe the deceased had also consumed alcohol with his guests.

In paragraph 9 of the cross-examination, he states that Akshay and Firtu had come to the spot on his calling. Chandu was not there, as he had gone out and he admits that Chandu did not come to the spot on his calling. He denies the suggestion that he had come out on the calling of Firtu. He admits that the deceased was not talking at the time when he came there as he was already unconscious.

He then admits that the appellant, along with one Rajendra, had lodged a complaint against the Sarpanch Khemraj as also the wife of one Munnu Lal. He admits that he had no dispute with the appellant nor did the deceased had any dispute with him. Then, on his own he states that he did not know that if there was any dispute between deceased and the appellant.

He denies the suggestion that he had actually not seen the appellant escaping from the spot as it was a dark night. He then admits that the Sarpanch had accompanied him to the Police Station. Then he explains the delay in reaching the Police Station as, according to him, he first went to

Baya Chowki and then from there, he went to Kasdol Police Station. He denies the suggestion that he actually did not see the appellant and had falsely implicated him.

13. PW-2 is Sukhnantin Bai. She is wife of PW-1 Vijay Kumar. She states that on the fateful day at about 07.30PM when she was at her home, she heard the voice of her nephew Jagat that Shatrughan has assaulted him. On hearing the said shout, her husband Vijay Kumar went out and thereafter she followed. When she reached the place of occurrence, her nephew was lying in the lane and the appellant was not there.

She states in her cross-examination that there was a complaint against Sarpanch. She also admits that there was no dispute between the deceased and the appellant. She also admits that her nephew had helped Shatrughan and Rajendra in that complaint against the Sarpanch as a result the Sarpanch had to give a public apology.

14. PW-3 is Kirantin Bai, widow of the deceased. She only states that her husband was murdered about 5-6 months ago. Her mother-in-law informed her that the appellant had assaulted her husband with a Tabbal. She also states that the deceased was not in a position to talk when she saw him lying on the lane and thereafter, he was taken away by the relatives. No cross-examination has been done from this witness.

15. PW-4 is Yashoda Kumari, daughter of PW-1, Vijay Kumar. She stated that she only heard the deceased shouting that Shatrughan had assaulted. Upon hearing the same, first her father went out, then her mother went out and then she came out and saw that there was an injury on the neck of the deceased. In the cross-examination, she admits that there was no enmity between the deceased and the appellant.

She also admits that her house is across the lane about two houses away from the frontage of Chandu's house. She admits that there was no light at the time when she had come out and it was dark. She also admits the suggestion that house of Firtu Ram is closest to Chandu Lal's house and her house is little away. She also states that there was no one else at the time when she came out and she had not seen the appellant.

16. PW-5 is Lakhan Kumar son of Chetan Lal. He is a witness of the inquest and also of the recovery of the weapon of the assault and the cycle of the appellant. He has proved the recovery memos Ex-P3, Ex-P4, Ex-P5, Ex-P6 and Ex-P7. The cycle of the deceased was also recovered and the recovery memo Ex-P8 was also signed by him. The recovery of clothes vide Ex-P9 was also signed by him and the recovery of plain earth and blood-stained earth vide Ex-P10 was also signed by him.

He is also signatory of site plan Ex-P11 and the arrest memo of the appellant Ex- P12. In his cross-examination, he states that he is brother of the deceased. In paragraph 9 of the crossexamination, he states a meeting of the villagers was held at night in the village. He then denies the suggestion that the appellant in that meeting denied assaulting the deceased and instead had stated that the deceased had tripped and fallen.

He further denies the fact that the appellant had said the same thing to Deepak and Narottam. In paragraph 10, he admits that the Sarpanch was there in the meeting and he also admits that in the said meeting, the appellant had said that while he was passing, he saw the deceased had fallen on the 'Pharsa'. He also states that he was not aware at what time the inquest took place and he also states that the contents of the recovery memos and inquest were not read out to him.

17. PW-6 is Dr. Sunil Singh who had conducted the autopsy on the dead body of the deceased on 20.07.2008 at 02.00 PM. He has proved the Post Mortem report Ex.-P13. In his examination-in-chief, he states that on 20.07.2008, the Tabbal was sent to him for inspection. He has mentioned the length and breadth of the same in his report and that the injury on the deceased could be

possible from the said weapon and that he had advised that the Tabbal be sent for Chemical examination. This report he had proved and is marked as Ex.-P14.

18. He further states that on 21.07.2008, he had examined the appellant and had noticed some scratches on his right leg for which he had prepared an injury report which he proved and marked as Ex.- P15. He also states that on 20.07.2008, the clothes on the body of the deceased had blood-stains on it and he had advised that the same be sent for chemical examination. This report, he also proved and marked as Ex.-P16.

19. In his cross-examination, he states that the length of the Tabbal (metal part) was 13.5 cm. He further states that length of the injury on the deceased was 5 cm. He further states that it is correct in case if the said weapon is used for assault, then the length of the injury would also have been 13.5 cm. He also states that it is correct that from the weapon recovered, the injury could not have been caused on the neck of the deceased.

He again admits that the clothes which were seized from the appellant had some stains like blood but he was not sure whether it was human blood or not. He also admits that in the stomach of the deceased sufficient quantity of alcohol was found and it takes about 18 hours for the alcohol to pass out from the body. He also states that it is possible that the deceased could have received the injury in an accident.

20. PW-7 is witness of inquest and the site plan and also of the recovery, nothing much turns upon his statement. He has given a similar kind of statement as the other witness to recovery and inquest.

21. PW-8 is Ajit Ram, father of the deceased. He states that when he reached home around 08.00 PM after carrying out some purchases, his brother Vijay Kumar (PW-1) informed that his son Jagat had shouted that the appellant had assaulted him. He has proved some police papers. He admits that he had guests at home on that day. He also states that deceased also used to stay with him.

He admits of consuming alcohol but insofar his son Jagat is concerned he states that he does not know whether he used to consume alcohol or not. He also admits that there was no enmity between deceased and the appellant.

He, however, claims that he had no knowledge of complaint being made by the appellant against the Sarpanch and his son Jagat supporting the appellant. He has denied the suggestion that he was falsely taking the name of the appellant during the trial as prior to it he had never taken his name during investigation.

22. PW-9 is Firtu, neighbour of Chandu Lal. He states that while he was about to have dinner at around 7-8 PM, he heard some noise from outside and then there was another call that Jagat had been murdered and that the appellant has murdered him, then, he came out. Jagat was lying in the lane with the injury on his neck and Vijay Kumar told him that the appellant had committed this crime. He admits that Jagat, the deceased did not tell him anything.

He also states that others like Akshay and Mannu had also come. Jagat, the deceased was unconscious and he was taken to the hospital but he died on the way. He states that Shatrughan, the appellant while passing through his house had called him and thereafter, he had heard the voice of Jagat. He also states that the appellant, while crossing his house on his cycle, had called him and asked him as to what was he cooking.

He then states that PW-1 Vijay Kumar has told him that it was the appellant who had assaulted and that he had communicated this to IO but he has not mentioned in the statement under section

161 for which he cannot tell the reason. He further states that he never heard Jagat shouting and he had not seen the appellant. It was only on the call of Vijay Kumar that he had come out.

23. PW-10 is Seepat Bai, wife of Firtu. She only states that in the night, she heard people shouting run-run. When she came out, her husband was already outside and then she was told that the appellant had assaulted the deceased.

24. PW-11 is Khemraj Singh. He is Sarpanch of the village. He states that he had accompanied PW-1 to the outpost and then to the Police Station. He then denies the suggestion that the appellant had made a complaint against him and others regarding mis-appropriation of funds. He further denied the suggestion that Jagat, the deceased had supported Shatrughan and Rajendra in the complaint. However, he admits that on the complaint the Project Officer and others had come for inquiry. Other suggestions relating to the complaint and inquiry are denied by him.

25. PW-12 is one Akshay Kumar. He states that on the date of the incident in the night, he heard lot of noise and commotion and people shouting run-run, upon which he came out of the house. He saw PW-1, his wife and his daughter.

At that time, PW-1 told him that the appellant had assaulted the deceased with the Tabbal. He further states in the cross-examination that when he came out, Firtu Ram, Sarpanch & others had not come there and that he had not seen the appellant at that place. He states that he knows that there was no enmity between the appellant and the deceased. He is the next-door neighbour of informant PW-1.

26. PW-13 is Chandu. He states that the murder of Jagat had taken place in front of his house in the lane and that he had heard that the appellant had assaulted him.

27. PW-14 is Karan Singh who states that about 07.00 PM in the evening on 19.07.2008, he was changing clothes as he got wet while returning from work. Vijay Kumar came to his house and told him that Jagat had fallen down and that Jagat was taken for treatment. It was after that Lakhan and Laxman told him that it was the appellant who had assaulted the deceased. He is witness to the memo (Ex-P18) prepared for handing over the dead body to the family of the deceased.

In the cross-examination he states that he had heard that Sarpanch Khemraj had accompanied the injured to the hospital. Further he had also gone to the Police Station along with Vijay Kumar (PW-1) and Sarpanch Khemraj. He further states that they reached the Police Station at 06.00 AM although police had arrived in the village at 04.00 AM. FIR was registered at 07.00 AM and they returned to the village in the evening at 04.00 PM.

28. PW-15 is one Abhiram Sahu. He had prepared the site plan and proved it, which was marked as Ex.- P19.

29. PW-16, Dinu Ram Mandavi, Inspector is the Investigating Officer. He has stated about the Merg Report dated 20.07.2008 registered as Merg No.82 of 2008 which he proved as Ex-P2. He further proves the FIR as Ex.-P1, the site plan, the inquest, and its intimation as Ex-P3 and Ex-P4.

Further, he proves Ex-P13 is the request for Post Mortem and the recovery memo of the Tabbal (Ex-P14) also contains his signatures. He also proves the other Police papers and further proves the recoveries made during the investigation. He tried to explain the delay in registering the FIR and, according to him, the Merg report having been registered, the criminal machinery had been put into motion.

He has denied the suggestion that in fact in the initial Merg report, the name of the appellant was not there and it was only later on that his name had been added. He further states that he could not

find any reason as to what was the motive for committing the crime. All other suggestions have been denied by him.

30. In the examination under section 313 Code of Criminal Procedure³, the entire evidence against the appellant was put to him which he has denied. He however, stated that he was doing his duty as Chowkidar in the Forest Department and on account of personal enmity he had been falsely implicated. He also states that he wants to examine Forest Range Officer Mr. Sinha and one Mr. Rajendra Thakur. However, no evidence was led on behalf of the defence.

31. The first question to be considered is as to whether any of the eye-witnesses had actually seen the occurrence of the appellant assaulting the deceased. The answer is 'no'.

32. Following are the reasons for the above conclusion:

a) According to the informant (PW-1), he was the first person to arrive at the site along with his wife upon hearing the cry for help from the deceased that Shatrughan was assaulting him with a tabbal. When he reached the site he saw that the deceased was lying on the road and the appellant was moving towards his house on a cycle along with tabbal. This is the FIR version.

b) In his deposition PW 1 states that when he rushed to the place of occurrence, he saw the accused running away and the tabbal was lying there. The deceased had fallen unconscious and there was deep cut on his neck with blood flowing from the injury. Upon his call, the other neighbours and his daughter all came out from their houses.

c) PW-14 who has stated that PW-1 only informed him that Jagat (deceased) had been assaulted and had been taken to the hospital. PW-1 did not inform PW-14 that it was the appellant who had assaulted. PW-14 states that it was later on that Lakhan and Laxman who informed about the appellant assaulting the deceased. The other eye-witnesses whose testimonies have already been narrated above have not stated that they saw the appellant assaulting the deceased.

d) PW-2 is the wife of PW-1, PW-3 is the widow of the deceased, PW-4 is daughter of PW-1, are the other witnesses who reached the place of occurrence. None of them have stated that they have seen the appellant assaulting the deceased.

e) Thus, the only evidence is of PW-1 stating that the appellant was running away from the place of occurrence when he reached there. He has himself stated that the deceased was already unconscious as such was not in a condition to speak.

f) There is one more aspect to be considered as to whether the cry given by the deceased could have been made as stated. Normally in villages nobody takes the name of elders and especially their uncles. PW 1 Vijay Kumar is the uncle (father's brother) of the deceased. Under normal course the deceased would have called kaka only and would not take his name to say that 'kaka Vijay Singh run, Shatrughan is assaulting me with a tabbal'

("काका विजय व िंह दौड़ो , मेरे को शत्रुघ्न तब्बल े मार वदया है").

g) In the First Information Report it is stated that when PW 1 came out he saw Shatrughan running towards his house on a cycle along with tabbal but in the deposition before the Trial Court it is stated that when he reached the place of occurrence the appellant was running and the tabbal was lying there and then he states that the deceased had only shouted that the appellant is assaulting him.

h) Another aspect to be considered is whether after receiving the said injury the deceased could have shouted and if he had shouted before being assaulted then the situation would have been different. It would have been a one to one and he could have resisted the assault. The fact is there is only one injury on the neck.

33. In view of the above, the prosecution story as set out does not appear to be a probable story and the supporting evidence led during trial of the witnesses of fact also does not inspire confidence. Rather there are material contradictions.

34. On the other hand, the defence has been successful in making a serious dent in the prosecution case for the following reasons:

a) The first point is that no motive has been set up by the prosecution as to why the appellant would assault the deceased. All the witnesses of fact who are family members have stated that there was no enmity between the appellant and the deceased.

Once there is no eye-witness of the incident the prosecution will have to establish a motive for the commission of the crime inasmuch as in a case of direct evidence, motive may not have a major role. If there is no motive setup or proved and there are direct eyewitnesses, motive may lose its importance but in the present case as admittedly no one has seen the occurrence, the motive has an important role to play.

b) The defence during the cross-examination has elicited that the Sarpanch Khemraj had grouse against the appellant for the reason that the appellant had made a complaint regarding misappropriation of government funds and also of committing major illegality in distribution of essential commodities. On the said complaint an enquiry was made where the Sarpanch Khemraj PW 11 had to tender public apology.

c) Defence has also suggested that in the night itself after the deceased was taken to the hospital, a meeting was called by the Sarpanch Khemraj where the appellant was forced to confess. The said meeting has been admitted by PW-5. It was suggested that appellant in the meeting had stated that he had seen the deceased tripping and falling on the sharp object resulting into the injury which proved fatal.

d) It is possible that on account of the influence of the Sarpanch Khemraj that the appellant has been falsely implicated.

e) The defence also had elicited during cross-examination of PW 6 that the weapon of assault recovered and produced before him could not have caused the injury in view of the size of the weapon of assault and the size of the injury which had no match.

f) The defence had also suggested that in fact the deceased was heavily drunk and had fallen on a sharp-edged object because of which he had received the injury. This appears probable for two reasons: firstly, that PW 6 had stated that there was sufficient alcohol in the body of the deceased and secondly that the weapon of assault produced by the prosecution did not match with the injury. The injury could have been caused by the deceased slipping and falling on a sharp object.

35. From the above narration of the evidence and analysis, it is evident that the testimony of PW 1 was not reliable and could not have formed the basis of conviction. Apparently, he was influenced by Sarpanch Khemraj whose active participation in the proceedings subsequent to the incident cannot be ruled out. The medical evidence did not support the prosecution case as the weapon of assault could not have caused injury on the deceased as noticed in the post-mortem report.

There was no motive as to why the appellant would commit the murder of an acquaintance and a friend for no reason. The defence version that the deceased was under the influence of alcohol and could have tripped and fallen on a sharp object resulting into the ante-mortem injury reported in the post-mortem was quite possible. The same is clearly borne out from the record. The explanation for delayed lodging of the FIR is not satisfactory.

36. In view of the above discussion, the prosecution had failed to establish the charge.

37. For all the reasons explained above, the appellant would be entitled to acquittal. The appeal is accordingly allowed. The conviction and sentence of the appellant are set aside. He is acquitted of all the charges. The appellant is in custody. He shall be released forthwith, if not wanted in any other case.

38. Pending applications are disposed of.

.....J. (Vikram Nath)

.....J. (Ahsanuddin Amanullah)

DR
RA

MCQ'S**1. Summon's case means-**

- (A) A case which is not a warrant case
 (B) A case in which security is not required
 (C) A case through which offence of theft is tried
 (D) A case in which only summons can be served during trial

2. Non-cognizable offence means an offence wherein-

- (A) A police officer cannot arrest without warrant
 (B) A police officer can arrest at his discretion
 (C) A police officer has authority to arrest without warrant
 (D) On request of complainant, arrest can be made

3. Additional Chief Judicial Magistrate may pass a sentence of imprisonment extending upon-

- (A) 5 years (B) 7 years
 (C) 3 years (D) 10 years

4. What offence is bailable?

- (A) Mentioned as bailable offence in I Schedule of Cr. P.C.
 (B) All cases of summon's trial
 (C) All non-cognizable offences
 (D) All cases which are not triable by session

5. Which of the following combinations are correctly matched?

1. Made by Magistrate- Investigation
 2. Object is to collect evidence- Inquiry
 3. Ordinarily second stage of inquiry-criminal case
 4. It is not a Judicial investigation - Proceedings

Select correct answer with the help of code given below-

Code :

- (A) 1 and 2 (B) 2 and 3
 (C) 3 and 4 (D) 2 and 4

6. Which of the following sentences may be passed by a Magistrate of second class ?

- (A) Imprisonment for a term not exceeding two years
 (B) Imprisonment for a term not exceeding one year
 (C) Imprisonment for a term not exceeding six months

- (D) Only a fine not exceeding five thousand rupees

7. The Chief Judicial Magistrate may pass a-

- (A) Sentence of imprisonment not exceeding 7 years
 (B) Sentence for life imprisonment
 (C) Death sentence
 (D) Sentence of imprisonment exceeding seven years

8. An order of life imprisonment may be passed by -

- (A) A Chief Judicial magistrate
 (B) A sessions Judge
 (C) A metropolitan magistrate
 (D) Any Magistrate of first class

9. A sentence of imprisonment for a term of ten years may be passed by which one of the following

- (A) The Court of a Magistrate of 1st class
 (B) The Court of a chief Judicial magistrate
 (C) Assistant Sessions Judge
 (D) The Court of the Chief Metropolitan Magistrate

10. The Court of a Magistrate of first class may pass a sentence of imprisonment for a term not exceeding-

- (A) Three years (B) Five years
 (C) Seven years (D) Four years

11. Save in exception circumstances, no woman shall be arrested after Sunset and before Sunrise, and where such exceptional circumstances to arrest exist, the woman police officer shall obtain the prior permission of the following-

- (A) District Magistrate
 (B) Superintendent of Police
 (C) Judicial magistrate of the First Class
 (D) Sessions Judge

12. Which one of the following is not correctly matched ?

- (A) Police to prevent cognizable offences - Section 149
 (B) Power to arrest to prevent the commission of cognizable offence- Section 151
 (C) Power of certain armed force officers to dispense assembly - Section 131
 (D) Arrest by magistrate - Section 45

13. Which of the following statements is not correct under the Code of Criminal Procedure ?

- (A) Where a private person or an authorised person has a right to arrest a person and hand him over to the custody of police; such private person can also make search of such arrested person
 (B) Enquiry and trial, both are included in 'Judicial proceedings'.
 (C) Complaint may be made by any person and it is not necessary that the injured or the affected only should complain.
 (D) Charges are framed only in warrant cases; there is no need to frame charge sheet in petty summons cases

14. report of person arrested without warrant shall be given by the Officer-in-charge of Police Station to- A

- (A) Only district magistrate
 (B) Only Sub-Divisional Magistrate
 (C) Judicial Magistrate of First Class
 (D) Either to the District magistrate or Sub divisional Magistrate

15. A person arrested by a police officer may be kept in custody for-

- (A) Two days
 (B) Three days
 (C) Twenty-four hours
 (D) One week

16. Under which of the following sections of the Code of Criminal procedure, police can arrest an accused without warrant?

- (A) Section 37 (B) Section 40
 (C) Section 42 (D) Section 41

17. - Point out the incorrect statement

- (A) In a cognizable offence any police officer may without any order from a Magistrate and without a warrant arrest any person
 (B) A private person may arrest or cause to be arrested any person committing a cognizable offence
 (C) An Executive Magistrate may arrest offender when any offence is committed in his presence and within his jurisdiction
 (D) None of the above is correct

18. Which one of the following statements is wrong, if a person forcibly resists endeavour to arrest him police officer may

- (A) Use all the means necessary to effect arrest

- (B) Cause death of such a person irrespective of offence he has committed
 (C) Cause death of such a person accused of murder
 (D) Cause death of such a person accused of culpable homicide not amounting to murder

19. If a person in lawful custody escapes, person from whose custody he escaped may immediately pursue and arrest him ?

- (A) Within local limits of police station concerned
 (B) Within local limits of district
 (C) Within local limits of State
 (D) In any place in India

20. According to which section a person can arrest on refusal to give name and evidence?

- (A) Section 39 (B) Section 40
 (C) Section 41 (D) Section 42

21. Under which section arrested person can be searched ?

- (A) Section 51 (B) Section 52
 (C) Section 53 (D) Section 54

22. Under which section person arrested to be informed of grounds of arrest and of right to bail ?

- (A) Section 51 (B) Section 50
 (C) Section 49 (D) Section 45

23. What is meaning of Registered Medical practitioner ?

- (A) Who possess any medical qualification as defined in clause h of Section 2 of the Indian Medical Council Act, 1956
 (B) Whose name has been entered in a State medical register
 (C) None of these
 (D) (A) and (B) both

24. Officer incharge of police station shall report to all persons arrested without warrant within limits of their station to -

- (A) S.S.P.
 (B) District Magistrate
 (C) Governor
 (D) All of these

25. Under which section of Cr. P.C., a police officer can arrest a person without an order from a Magistrate and without warrant ?

- (A) Section 42 (B) Section 40
 (C) Section 51 (D) Section 41

26. Assertion (A) : Purpose of criminal law is to prevent crimes.

Reason (R): In certain situations even a private person can arrest another person Code:

- (A) Both (A) and (R) true, and (R) is correct explanation of (A)
- (B) Both (A) and (R) are true, but (R) is not correct explanation of (A)
- (C) (A) is true, but (R) is false
- (D) (A) is false, but (R) is true

27. A private person may arrest any person who-

- (A) Is reported to be a criminal
- (B) In his presence commits a non-cognizable offence
- (C) In his presence commits a bailable offence
- (D) In his presence commits a cognizable and non-bailable offence

28. Which section of the Code of Criminal Procedure authorises a private person to arrest any person committing cognizable offence ?

- (A) Section 44
- (B) Section 42
- (C) Section 43
- (D) Section 45

29. Warrant may be issued in lieu or in addition to summons "Recording of reasons in writing" is a condition precedent-

- (A) Is this statement true
- (B) Is this statement not true
- (C) Depends on discretion of Court
- (D) There is no such provision

30. Under Section 77 of Cr. P.C. a warrant of arrest may be executed-

- (A) Within the local jurisdiction of court issuing warrant
- (B) Within the session division
- (C) At any place within the State
- (D) At any place in India

31. Point out incorrect answer- Requisites of a valid warrant are-

- (A) It shall be in writing
- (B) It shall be signed by presiding officer of Court
- (C) It shall bear seal of Court
- (D) It must state name of accused but address is not necessary

32. Under which section of the Code of Criminal Procedure a proclamation for the person absconding may be issued ?

- (A) Section 83
- (B) Section 82
- (C) Section 81
- (D) Section 80

33. How are summons served ?

- (A) By a police officer
- (B) By an officer in Court
- (C) By an authorised public servant
- (D) By any of above

34. Under which section of Cr. P.C. the provisions regarding service of summons on corporate bodies and societies are mentioned ?

- (A) Section 61
- (B) Section 62
- (C) Section 51
- (D) Section 63

35. How are summons served on corporate bodies and societies ?

- (A) By serving it on the secretary
- (B) By serving it on local manager
- (C) By serving it on other principal officer of the corporation
- (D) By any one of the above

36. The provisions regarding the service of summons when person summoned cannot be found are incorporated under -

- (A) Section 63
- (B) Section 64
- (C) Section 62
- (D) None of the above

37. The procedure which is to be followed when service cannot be effected under section 62, 63 and 64 is given under-

- (A) Section 65
- (B) Section 66
- (C) Section 67
- (D) None of the above

38. Under which section the provisions regarding the service of summons on government servant are incorporated ?

- (A) Section 65
- (B) Section 64
- (C) Section 66
- (D) Section 67

39. The provisions regarding the service of summons on witness by post are incorporated under -

- (A) Section 62
- (B) Section 67
- (C) Section 69
- (D) None of the above

40. According to section 70 every warrant of arrest issued by a Court shall be-

- (A) In writing
- (B) Signed by the presiding officer of such Court
- (C) Bear the Seal of the court
- (D) All the above

41. Who has the power to direct security to be taken ?

- (A) Court issuing a warrant
- (B) Police officer
- (C) District Magistrate
- (D) District Judge

42. Can a Magistrate order in search of any place in his presence, for the search of which he is empowered to issue a search warrant ?

- (A) Yes, under Section 103 Cr. P.C.
- (B) Yes, under Section 104 Cr. P.C.
- (C) No yes, under Section 105 Cr. P.C.

43. Which Provision of the Cr. P.C. resembles with Habeas Corpus Writ ?

- (A) Section - 91
- (B) Section - 93
- (C) Section - 97
- (D) Section - 96

44. We can issue a search warrant to search persons wrongfully confined-

- (A) The District Magistrate
- (B) The Sub-divisional Magistrate
- (C) The Magistrate Ist class
- (D) All of these

45. For whom the Magistrate may make an order in section 98 ?

- (A) Girl of age below 18
- (B) Any woman
- (C) None of these
- (D) Both (A) and (B)

46. Section 96 of Cr. P.C. provides for-

- (A) Application to the High Court to set aside declaration of forfeiture
- (B) Search for persons wrongfully confined
- (C) Power to compel restoration of abducted females
- (D) When search warrant may be issued

47. Section 93 of Cr. P.C. provides for-

- (A) Application to the High Court, to set aside declaration of forfeiture
- (B) When search warrant may be issued
- (C) Search for persons wrongfully confined
- (D) Procedure as to letters and telegrams

48. Section 95 of Cr. P.C. provides-

- (A) Application to High Court to set aside declaration of forfeiture
- (B) Procedure as to letters and telegrams
- (C) Power to declare certain publications forfeited and to issue search warrants for same
- (D) Search for persons wrongfully confined

49. Summons to produce documents or other things may be issued under-

- (A) Section 90
- (B) Section 91
- (C) Section 75
- (D) None of the above

50. Procedure as to letters and telegrams is provided under-

- (A) Section 90
- (B) Section 91
- (C) Section 92
- (D) None of the above

51. When search warrant may be issued ?

- (A) Where court has reason to believe that a person will not produce the document as required by summon
- (B) Where such document or thing is not known to the Court to be in possession of any person
- (C) Where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection
- (D) In all the above circumstances

52. Provisions for the search of place suspected to contain stolen property, forged documents, etc. are incorporated under-

- (A) Section 91
- (B) Section 94
- (C) Section 93
- (D) None of the above

53. Provisions for the search for persons wrongfully confined are provided under-

- (A) Section 97
- (B) Section 96
- (C) Section 98
- (D) Section 91

54. Section 100 of Cr. P.C. provides for-

- (A) Directions of search warrants
- (B) Power to compel restoration of abducted females
- (C) Persons incharge of closed place to allow search
- (D) None of these

55. Provisions for disposal of things found in search beyond jurisdiction are provided under-

(A) Section 100 (B) Section 99

56. A police officer is authorised to seize certain property under-

- (A) Section 100
(B) Section 102
(C) Section 104
(D) None of these

57. Section 103 of Cr. P.C. provides for-

- (A) Power to impound documents
(B) Magistrate may direct search in his presence
(C) Power of police officer to seize certain property
(D) None of these

58. Contracting state is defined under-

- (A) Section 2
(B) Section 100
(C) Section 105-A
(D) None of these

59. Proceeds of crime is defined under-

- (A) Section 105-A
(B) Section 2
(C) Section 99
(D) None of these

60. Property is defined under-

- (A) Section 2
(B) Section 105-A
(C) Section 4
(D) None of these

61. Section 105-B of Cr. P.C. provides for-

- (A) Assistance in relation to orders of attachment or forfeiture of property
(B) Assistance in securing transfer of persons
(C) Reciprocal arrangements regarding processes
(D) None of these

62. Provisions for assistance in relation to orders of attachment or forfeiture of property are provided under-

- (A) Section 105-A
(B) Section 105-B
(C) Section 105-C
(D) None of these

63. been enumerated under Section -110 of the Cr. P.C. 1973 which empowers an Executive Magistrate to require such person to show cause why he should not be ordered to execute a bond for his good behaviour ?

- (A) Drugs and Cosmetics Act, 1940

(C) Section 101 (D) Section 102

- (B) Dowry Prohibition Act, 1961
(C) Foreign Exchange Regulation Act, 1973
(D) Untouchability (Offences) Act, 1955

64. In which of the following cases, it was held that provisions of chapter VII of Cr. P.C. being in public interest are not violative of Article 19 of the Constitution of India -

- (A) Ram Charan Vs. State
(B) Shiv Narain Vs. Ban Mali
(C) Madhu Limaye Vs. S.D.M. Monghyr
(D) Ram Prasad Vs. Emperor

65. Which of the following Magistrates can order habitual offenders of robbery or house breaking to execute a bond with or without sureties ?

- (A) Judicial Magistrate IInd class
(B) Judicial Magistrate Ist class
(C) Executive magistrate
(D) Any of these

66. Match List-I with List-II and select correct answer using code given below-

- List-I
(a) Security for keeping peace on conviction
(b) Security for good behaviour from suspected persons
(c) Security for good behaviour from habitual offender
(d) Security of keeping peace in other cases

- List-II
1. Section 110 Cr. P.C.
2. Section 107 Cr. P.C.
3. Section 109 Cr. P.C.
4. Section 106 Cr. P.C.

Code:

- | | | | | |
|-----|-----|-----|-----|-----|
| | (a) | (b) | (c) | (d) |
| (A) | 2 | 3 | 1 | 4 |
| (B) | 4 | 3 | 1 | 2 |
| (C) | 1 | 2 | 3 | 4 |
| (D) | 4 | 1 | 2 | 3 |

67. In proceeding under,section 108, an Executive magistrate may require to execute a bond for keeping peace for such period not exceeding -

- (A) One year (B) Three years
(C) Five years (D) Nine years

68. In proceeding under section 109, an Executive magistrate may require to execute a bond for keeping peace for such period not exceeding -

- (A) One year
years
(C) Five years
years

- (B) Three
(D) Nine

- (C) The number of sureties required
(D) All the above

69. In proceeding under, section 110, an Executive magistrate may require to execute a bond for keeping peace for such period not exceeding-

- (A) One year
(C) Three years
Five years
- (B) Nine years
(D)

70. Under section 107, which of the following courts has power to release offender on security for keeping peace and good behaviour ?

- (A) Sessions Court
(B) Magistrate Ist class
(C) Appellate or Revisional Court
(D) Executive magistrate

71. Under section 108 which of the following courts has power to release offender on security for keeping peace and good behaviour ?

- (A) The Sessions Court
(B) Magistrate IInd class
(C) The High Court
(D) Executive Magistrate

72. Under section 109 which of the following courts has power to release offender on security for keeping peace and good behaviour ?

- (A) Executive magistrate
(B) The Sessions Court
(C) Magistrate IInd class
(D) The High Court

73. Under section 110 which of the following Courts has power to release offender on security for keeping peace and good behaviour ?

- (A) The High Court
(B) Session Court
(C) Executive magistrate
(D) The Supreme Court

74. Section 122 prvoides-

- (A) Power to release persons imprisoned for failing to give security
(B) Contents of bond
(C) Imprisonment in default of security
(D) Power to reject security

75. Order under section 111 includes-

- (A) The amount of the bond
(B) The term for which it is to be in force

76. Provisions for the procedure in respect of persons present in Court is provided under-

- (A) Section 111
(B) Section 112
(C) Section 113
(D) None of these

77. If an order under section 111 is made against a person and if such person is not present in Court then the summons and warrants shall be issued under-

- (A) Section 110
(B) Section 112
(C) Section 113
(D) None of these

78. The Magistrate has power to dispense with personal attendance to the person against whom an order under section 111 is made under-

- (A) Section 111
(B) Section 112
(C) Section 113
(D) Section 115

79. Provisions regarding inquiry as to truth of information are provided under-

- (A) Section 116
(B) Section 115
(C) Section 117
(D) None of these

80. For keeping the peace order to give security may be pass under-

- (A) Section 116
(B) Section 117
(C) Section 118
(D) None of these

81. Provisions regarding discharge or release in the proceedings of keeping the peace are provided under-

- (A) Section 118
(B) Section 119
(C) Section 117
(D) Section 120

82. Under Section 125 of the Code of Criminal Procedure, a magistrate-

- (A) Has the power to grant interim maintenance and the expenses of the proceedings
(B) Has no power to grant interim maintenance and the expenses of the proceedings

(C) Has power to grant interim maintenance but no power to grant expenses of the proceedings

(D) Has no power to grant interim maintenance but has the power to grant expenses of the proceedings

83. Who of the following cannot claim maintenance under Section-125(4) of the Cr. P.C. ?

(A) Wife living in adultery

(B) Wife living separately by mutual consent

(C) Both (A) and (B)

(D) Either (A) or (B)

84. Who among the following is not entitled to claim maintenance under Section 125 Cr. P.Code ?

(A) Divorced wife so long as she does not marry

(B) Unmarried sister

(C) Adoptive mother

(D) Illegitimate minor child

85. Which of the following statements is not correct, with reference to Section 125 of the code of criminal procedure ?

(A) Section 125 cannot be used against a person who does not possess sufficient economic means

(B) The obligation to maintain a married daughter whose husband is unemployed, is of the father of such daughter

(C) A married daughter also has an obligation to maintain her parents who are unable to maintain themselves

(D) A woman who has taken divorce from her husband and has not remarried may claim maintenance from her ex-husband

86. Who may claim for maintenance under Section 125 of Cr. P.C. ?

(A) Wife who has her own source of income

(B) Illegitimate minor child

(C) Stepson or daughter

(D) Brother and sister

87. Which of the following cannot claim maintenance under section 125 of Criminal Procedure code ?

(A) Wife who cannot maintain herself

(B) Mother or father who cannot maintain herself or himself

(C) Major married daughter who cannot maintain herself

(D) Minor illegitimate daughter who cannot maintain herself

88. In which case the Supreme Court held that section 125 Cr. P.C. was applicable to all irrespective of their religion ?

(A) Mohd. Umar Khan Vs. Gulshan Begum

(B) Mohd. Ahmad Khan Vs. Shah Bano Begum

(C) Mst. Zohara Khatton Vs. Mohd. Ibrahim

(D) Nor Saba Khattoon Vs. Mohd. Quasim

89. "The object of proceedings under Section 145 Cr. P.C. is to ward-off danger of breach of peace and not to determine the title." It was observed in the case of-

(A) Union of India Vs. Ajeebunissan Khattoon

(B) Nandi Ram Vs. Chandi Ram

(C) Roshan Lal Vs. State

(D) Ramadhin Vs. Shyama Devi

90. A conditional order for removal of public nuisance under section 133 Cr. P.C. may be passed by-

(A) The District Magistrate only

(B) The Sub-Divisional magistrate only

(C) The Executive Magistrate only

(D) Any of above Magistrates

91. Mark correct answer-

Conditional order passed by a magistrate under section 133 of the Code Criminal Procedure cannot be challenged in Civil Court. This statement is-

(A) Wrong

(B) Correct

(C) Partly wrong

(D) Partly correct

92. Under section 145 of Cr. P.C. in connection with a dispute on immovable property, Executive Magistrate prior to passing his orders as regards to possession over such property which one of the following periods he takes into consideration-

(A) One month

(B) Two months

(C) Four months

(D) Six months

93. For invoking section 133 of Cr. P.C. where should not be inconvenience or invasion on ?

(A) Public rights

(B) Public place

(C) Private place or private persons

(D) All of the above

94. Who is authorised for the removal of public nuisance ?

- (A) Judicial Magistrate of Ist class
- (B) Judicial Magistrate of IInd class
- (C) Executive Magistrate
- (D) The Sessions Judge

95. Section 133 of Cr. P.C. provides-

- (A) Conditional order for removal of nuisance
- (B) Service or notification of order
- (C) Procedure where existence of public right is denied
- (D) Power of certain armed force officers to disperse unlawfull assembly

96. First information report-

- (A) Relates to cognizable or non-cognizable offence
- (B) Is given to a magistrate or Police officer
- (C) Relates prima facie to cognizable offence
- (D) May be given to District magistrate

97. Who among the following is authorised to record confessional statement under section 164 Cr. P.C.?

- (A) A Police officer
- (B) An Executive magistrate
- (C) A Judicial magistrate
- (D) Neither an Executive magistrate nor a Judicial magistrate

98. Which section of Cr. P.C. provides that no statement made by any person to police officer in course of an investigation shall, if reduced to writing be signed by person making it ?

- (A) Section 164
- (B) Section 163
- (C) Section 162
- (D) Section 161

**99. Point out incorrect answer-
First Information Report means-**

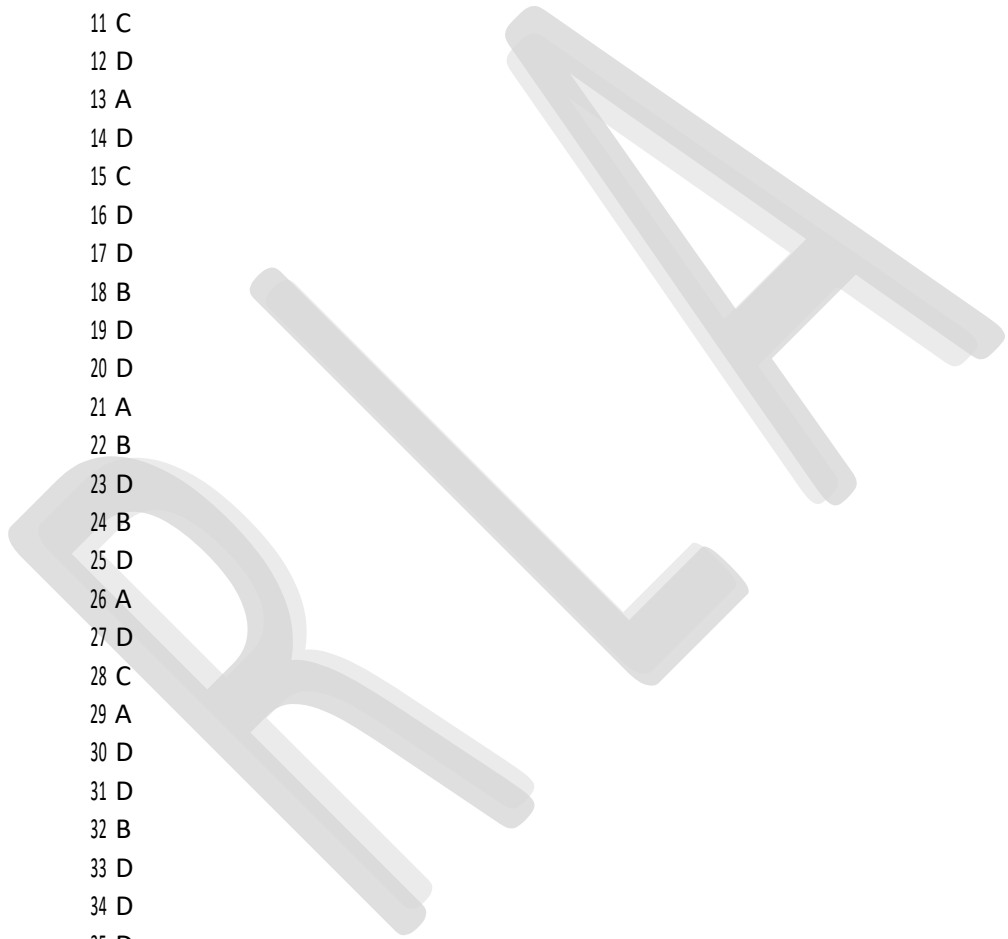
- (A) Report about cognizable offence
- (B) Information given to police officer
- (C) Information first in point of time
- (D) It must always be given in writing

100. In reference of information relating to commission of cognizable offence which of following statement is not correct ?

- (A) It may be given orally to officer incharge of police station
- (B) It is reduced to writing by or under direction of officer incharge of police station
- (C) Information reduced to writing is to be signed by person giving it
- (D) Copy of information cannot be given free of cost to informant

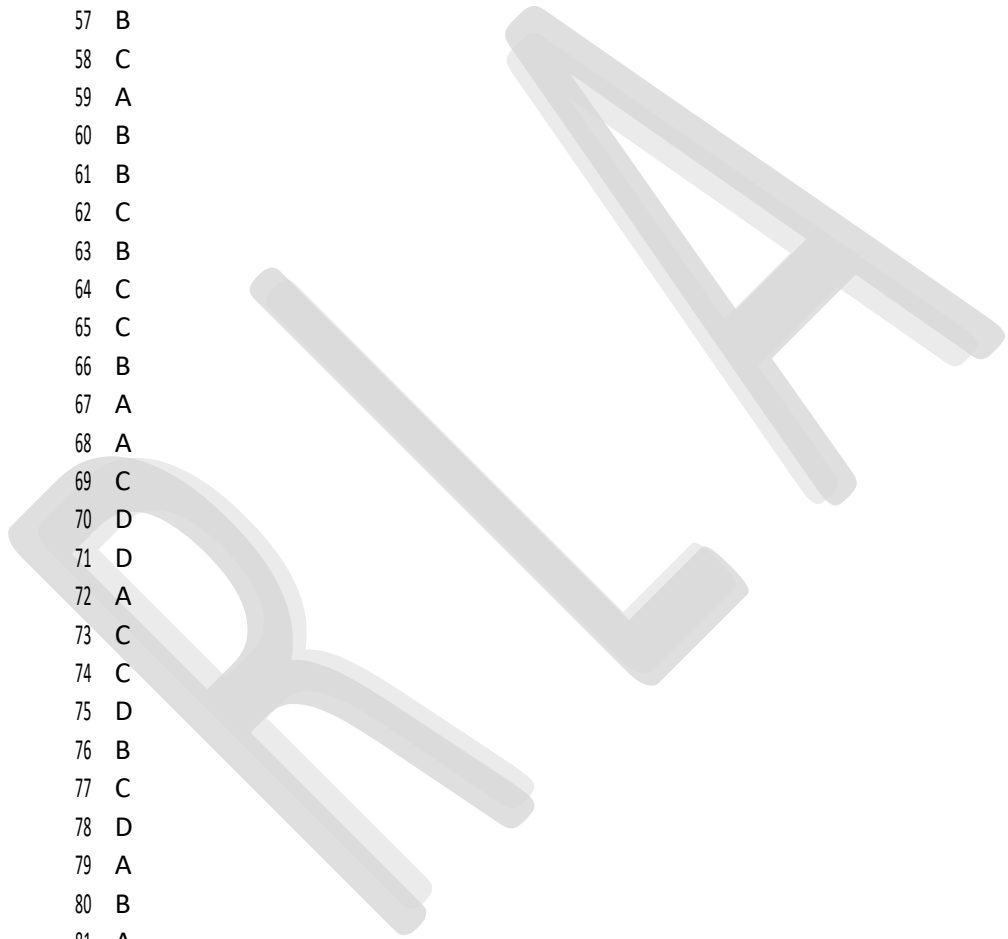
ANSWER KEY

- 1 A
- 2 A
- 3 B
- 4 A
- 5 C
- 6 B
- 7 A
- 8 B
- 9 C
- 10 A
- 11 C
- 12 D
- 13 A
- 14 D
- 15 C
- 16 D
- 17 D
- 18 B
- 19 D
- 20 D
- 21 A
- 22 B
- 23 D
- 24 B
- 25 D
- 26 A
- 27 D
- 28 C
- 29 A
- 30 D
- 31 D
- 32 B
- 33 D
- 34 D
- 35 D
- 36 B
- 37 A
- 38 C
- 39 C
- 40 D
- 41 A
- 42 A
- 43 C
- 44 D
- 45 D



RESILIENCE LAW ACADEMY

- 46 A
- 47 B
- 48 C
- 49 B
- 50 C
- 51 D
- 52 B
- 53 A
- 54 C
- 55 C
- 56 B
- 57 B
- 58 C
- 59 A
- 60 B
- 61 B
- 62 C
- 63 B
- 64 C
- 65 C
- 66 B
- 67 A
- 68 A
- 69 C
- 70 D
- 71 D
- 72 A
- 73 C
- 74 C
- 75 D
- 76 B
- 77 C
- 78 D
- 79 A
- 80 B
- 81 A
- 82 A
- 83 C
- 84 B
- 85 B
- 86 B
- 87 C
- 88 B
- 89 A
- 90 D
- 91 B



RESILIENCE LAW ACADEMY

- 92 B
- 93 D
- 94 C
- 95 A
- 96 C
- 97 C
- 98 C
- 99 D
- 100 D



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