



SJA NEWSLETTER

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Topic of the Month

“Cicero” the famous Roman statesman has said, “chief law is public good.” In democratic society Courts function for the benefit of the society, so Judges are accountable to the society. Judges are not per se public servants. They carry out the will of the legislature subject to constitutional limitations and laws. The role of the Judge is not only to resolve the disputes but the Judges are further charged with the sacred duty of administering justice. Justice has to be administered according to laws. May be in rare and most exceptional cases justice may be tempered with mercy. Judge in the discharge of his sacred duty has to follow the procedure established by law.

“Deuteronomic” code of old testament summarized the personality of Judge as under:

“And charged your Judges at the time, saying, hear the causes between your brethren, and Judge righteously between every man and his brother, and the stranger that is with him. Ye, shall not respect person in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of the man.” (Deuteronomy, Chapter I Verses 16-17). The Judges who are bestowed with the sacred and onerous duty of administering justice, have not to decide the lis before them according to their own predilections and peculiar dispositions. Justice has to be administered in accordance with laws and settled judicial principles”.

“Delvin” in the “Judge” has said; “Judge who gives the right judgment while appearing not to do so may be thrice blessed in Heaven, but on earth he is no use at all.”

(‘M/S Three Star Enterprises v. State of J&K’, AIR 2009 J&K 45.)

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Barin Ghosh
Chief Justice

Judge-In-Charge

Hon’ble Mr. Justice
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ACADEMY NEWS

State Judicial Academy apart from organizing Refresher courses, Conferences and Seminars, is also publishing the compiled study material on various subjects. So far study material for the guidance of Subordinate Judges on the following subjects have been prepared :

- a) Quick Guide on Law relating to Temporary Injunctions;
- b) Ready Referencer on Law relating to Dishonour of Cheques;
- c) Bail: Law and Practice;
- d) Summary of Proceedings of Workshop on 'Delay in Dispensation of Justice : Causes and the Remedies'.

Two more hand books on the subject "English Urdu Legal Glossary" and "Art of Writing Judgment" are being prepared and are in the final stage of publication.

Judicial Officers have been provided with study material in the form of booklets and Compact Discs.

As per feed back received by the State Judicial Academy, the Judicial officers have been immensely benefitted and officers are utilizing the study material for their ready reference while dispensing justice. As soon as the study material under preparation is published, the same would be provided to the officers immediately.

The Academy has already informed the Judicial Officers to make suggestions regarding topics they require the assistance of the State Judicial Academy to prepare the study material. Judicial Officers also have been requested to contribute towards the Academy's publication by writing Articles on various subjects, case comments and write-ups on areas of conflict in law. In this way, Judicial Officers will not only contribute towards publication but shall also keep themselves abreast with the latest development of law which is of utmost importance in judicial dispensation.

By receiving the constant feed back from the Judicial Officers, the State Judicial Academy shall on regular basis update its compilations to meet their latest requirements of law.

Various programmes on various subjects of law are organized by National Judicial Academy, Bhopal, State Judicial Academies of different States, National Institute of Criminology, New Delhi and various other Statutory Organizations on regular

basis. Judicial Officers of all ranks get opportunity to participate in those programmes.

In near future, State Judicial Academy shall request all the Judicial Officers to share their experiences with other officers through the medium of State Judicial Academy, whenever they return back after attending various programmes organized by National Judicial Academy, Bhopal and other Institutions. In this way, the knowledge gained by such participating officer shall also be shared by the officers who do not participate in the same programme.

LEGAL JOTTINGS

(Case No. Cr. Appeal Nos. 840-841 of 2003)

Ongole Ravikanth v. State of A.P.

Date of Decision: 17/06/2009

Coram : Hon'ble Mr. Justice B.Sudershan Reddy & Hon'ble Mr. Justice Aftab Alam.

Subject Index : Sections 498-A / 302 / 304-A IPC / Dying declaration : Appellant was charged u/s 498-A and 302 IPC, for having caused death of his wife by putting her to flames by igniting match stick, when she had poured Kerosene oil on herself. Trial Court convicted him for offence u/s 324 IPC. High Court set aside the conviction u/s 324 IPC and instead convicted him for offences u/s 304-A IPC. Judgment of High Court upheld by Supreme Court. Held that : Dying declaration of deceased made to Magistrate was reliable, in which she had named appellant to have ignited fire on her. Appellant knew that his act was likely to cause death.

(Case No. Cr. Appeal Nos. 1130-31 of 2003)

K.K.Ahuja v. V.K. Vora & Anr.

Date of Decision: 06/07/2009

Coram : Hon'ble Mr. Justice R. V. Raveendran & Hon'ble Mr. Justice Dr. Mukundam Sharma

Subject Index : Sections 138 / 141 Negotiable Instruments Act. Complaint filed against Deputy General Managers and others for dishonour of Cheque issued on behalf of a Company. Respondent No.2 who was a Deputy General Manger filed petition u/s 482 CrPC, in High Court. Proceedings against him quashed. Order of High Court challenged. Held by Supreme Court - A Deputy General Manger is not a person who is responsible to the company for the conduct of the business of the company. He does not fall under any of the categories (a) to (g) listed in section 5 of the Companies Act. Therefore the question whether he was in charge of the business of the company or not, is irrelevant. He cannot be made vicariously liable under Section 141(1) of the Act. If he has to be made liable under

Section 141(2), the necessary averments relating to consent / connivance / negligence should have been made. In this case, no such averment is made. Hence the first respondent, who was the Deputy General Manger, could not be prosecuted either under sub-section (1) or under sub-section (2) of Section 141 of the Act.

(Case No. Cr. Appeal Nos. 1108 of 2007)

Ramvir & Ors. v. State of U.P. & Ors.

Date of Decision: 06/07/2009

Coram : Hon'ble Mr. Justice Dr. Mukundam Sharma & Hon'ble Mr. Justice B.S. Chauhan.

Subject Index: Section 302 / 34 IPC: Appellant No.1 charged u/s 302 IPC, and Appellants No. 2 and 3 charged u / s 302 read with s. 34 IPC. Convicted and sentenced for life by trial Court. Sentence upheld by High Court. In Criminal appeal against the Judgment of High Court, held by Supreme Court - Considering the facts and circumstances of the case, we find that the story put up by the prosecution regarding the role of the appellant No. 2 and 3 are exaggerated and improbable. There is no allegation that these two persons i. e. appellant No. 2 and 3 were carrying any weapon in their hands. It is also proved that they were coming to the place of occurrence from another direction. Therefore, the role ascribed to the appellant No. 2 and 3 are found to be unbelievable. However, the fact that appellant No. 1 had given knife blow which has pierced through the chest and the lung, the gravity of the blow and the dimension of the injury clearly proves that appellant No.1 had the intention and knowledge of killing the deceased Yashpal. The conviction and sentence with respect to appellant No. 1 upheld, and appellants No. 2 and 3 acquitted.

(Case No. Cr. Appeal Nos. 729 of 2003)

Pandharinath v. State of Maharashtra

Date of Decision: 06/07/2009

Coram : Hon'ble Mr. Justice Dr. Mukundam Sharma & Hon'ble Mr. Justice B.S. Chauhan.

Subject Index : Section 376 / 511 IPC : Appellant was charged for commission of offence u/s 376 IPC. Trial Court convicted him and sentenced to rigorous imprisonment for Five years. On appeal by accused, High Court set aside the Judgment of trial Court. Appellant convicted u / s 376 read with s.511 IPC. Judgment of High Court also challenged. Held by Supreme Court Statement of Medical officer does not confirm the commission of rape on prosecutrix. However other circumstances proved. Conviction u/s 376 read with s. 511 IPC, upheld. Further held - If it appears to the Court that Section 376 IPC is not applicable but a lesser offence under 376 read with 511 IPC is made out, the court is not prevented from

taking recourse to and punishing the accused for the commission of such lesser offence. The attempt to commit rape is lesser offence than that of rape, and there is no bar of converting the act of the accused from Section 376 to Section 511.

(Case No. Cr. Appeal Nos. 1055 of 2002)

Mallappa Siddappa Alakanur & Ors. v. State of Karnataka

Date of Decision: 06/07/2009

Coram : Hon'ble Mr. Justice V.S. Sirpurkar & Hon'ble Mr. Justice R.M. Lodha.

Subject Index : Section 302 / 149 IPC : Appellants were charged u /s 302 and 149 IPC for commission of murder. Trial court acquitted accused on the grounds of discrepancies in the testimony of witnesses and contradiction in evidence of eye witnesses and the Medical evidence. High Court set aside the Judgment and convicted the appellants. In appeal by the appellants Judgment of High Court upheld by Supreme Court. Held - A doubt by the criminal Court should not be that of doubting Thomas, it should be a real and tangible doubt. A doubt regarding the veracity of the evidence of the witness should be a reasonable doubt and the evidence cannot be simply brushed aside on such minor aspects.

(Case No. Cr. Appeal Nos. 485 of 2004)

K. Ramachandran v. V.N. Rajan & Anr.

Date of Decision: 07/07/2009

Coram : Hon'ble Mr. Justice V.S. Sirpurkar & Hon'ble Mr. Justice R.M. Lodha.

Subject Index : Sections 302 / 201 IPC and 378 CrPC : The appellant was tried for the offence under Section 302 as also under Section 201 of the Indian Penal Code on the allegation that he, on 18.02.1995, committed murder of his wife Nalini. Trial Court acquitted the accused. No appeal was filed by State. However after a delay of 801 days, an application of condonation of delay was filed. Application was dismissed by Division Bench. During the same time a revision petition filed by the father of deceased was considered by the Single Bench, and was accepted. Single Bench directed to rehear the parties and to re-appreciate the evidence already produced during trial. Judgment of Single Bench challenged before Supreme Court. Judgment set aside. Held : The rejection of application for condonation of delay resulted in the State being disabled to appeal against the Judgment of Trial Court u / s 378 CrPC. All this would clearly suggest that once the appeal at the instance of the State has been dismissed, the complainant or the state could not ask for the revision of the judgment.

(Civil Appeal Nos. 4148-4149 of 2009 arising out of SLP Nos. 23661-23662 of 2007)

Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally & Ors.

Date of Decision : 07/07/2009.

Coram : Hon'ble Mr. Justice Tarun Chatterjee & Hon'ble Mr. Justice H.L. Dattu.

Subject Index : Order 8 Rule 9 CPC / Amendment of pleadings : Appellant was pursuing a petition before Rent Controller, for fixation of fair rent. During the course of examination of first witness, the appellant moved application for filing additional counter statement. Application was allowed by Rent Controller. In revision order was set aside on the ground that it was delayed and would introduce inconsistent pleas. Order of High Court considered by Supreme Court Held - So far as ground of delay is concerned, we do not find that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional counter statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter statement which could easily be compensated by cost. Even by filing an amendment or additional counter statement, it is open to the appellant to add a new ground of defence or substituting or altering the defence or even taking inconsistent pleas in the counter statement as long as the pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely.

(Civil Appeal Nos. 1135 of 2009 arising out of SLP (Crl.) No. 431 of 2008)

Dalip Kaur & Ors. v. Jagnar Singh & Anr.

Date of Decision : 07/07/2009.

Coram : Hon'ble Mr. Justice S.B. Sinha & Hon'ble Mr. Ashok Kumar Ganguly.

Subject Index : Section 406 / 420 IPC : Appellant entered into an agreement for sale with the respondent No.2 agreeing to sell 13 acres of land at the rate of Rs.4,70,000/- per acre. He paid a sum of Rs.7,00,000/- towards advance to the appellant. A sum of Rs.14,20,000/- was furthermore paid to the appellant within a period of seven months from the date of execution of the said sale agreement. On failure to pay further amount, Appellant executed sale deed in favour of first respondent. An FIR lodged by Respondent when appellant did not return advance money. Appellant moved for quashment of FIR. High Court did not quash the FIR. Order of High Court

challenged. Question arose before the Supreme Court, whether breach of contract of an agreement for sale would constitute an offence under Section 406 or Section 420 of the Indian Penal Code. Held - An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

(Civil Appeal No. 44 of 2003)

New India Assurance Co. Ltd. v. Suresh Chandra Aggarwal

Date of Decision: 10-07-2009.

Coram: Hon'ble Mr. Justice D.K. Jain & Hon'ble Mr. Justice B. Sudershan Reddy

Subject Index: Sections - 3, 5, 15 and 19 of Motor Vehicles Act. Car Insured by Respondent with Appellant, met with an accident during the validity of Insurance policy. Driver of vehicle also died in the accident. Claim was lodged by respondent in respect of damage to the vehicle. Insurer rejected the claim on the ground that at the time of accident the driver was not holding a valid driving licence. Driving licence had expired 4 months prior to the accident. However after the accident, the licence had been renewed. Divisional Consumer forum rejected the complaint filed against the insurer by the Insured. In revision filed against the order, National Consumer Commission set aside the order of Divisional Consumer Forum, holding that when the Driving licence was renewed, it was validated from the date of its expiry. In appeal before Supreme Court, Judgment of National Consumer Commission set aside. Held by Supreme Court Renewal of Licence does not date back to the expiry thereof, unless conditions set out in section 15 are fulfilled. On the expiry of licence, the licence holder has to apply within a period of 30 days to continue the validity of licence.

NEWS AND VIEWS

Execution by hanging to continue : SC

Hanging by the neck till death would continue to be the mode of execution of condemned prisoners, SC said on Monday refusing to entertain a PIL seeking replacement of the 'cruel and painful' method with the 'lethal injection', a method practised in the US.

“How do you know that hanging causes pain? And how do you know that injecting the condemned prisoner with a lethal drug would not cause pain?” asked a bench comprising Chief Justice K.G. Balakrishnan and Justice P. Sathasivam.

PIL petitioner Ashok Kumar Walia probably

thought that the bench was mistaking his plea and tried to impress upon the court by arguing that he was not seeking abolition of death penalty but only a change in the manner of execution of prisoners on the death row.

But, it appeared that the bench understood the implications of the plea and said it has been opined that hanging, which involved dropping the prisoner with the noose around the neck several feet down so as to dislocate his neck and sever the spinal cord, also caused instant death.

The CJI said: "Many countries, still practising death penalty, have various methods of execution, death squad which guns down a condemned prisoner from close range, hanging by the neck, electric chair and by injecting a lethal drug."

"In India, we have a very, very liberal sentencing system based on a humane law. The courts in rarest of the rare cases award death sentence", the bench said. Before dismissing the PIL, the court told the petitioner to create public opinion for the abolition of capital punishment.

India last carried out the death sentence in 2004 when Dhananjay Chatterjee was hanged to death for rape and murder of 14-year-old school student Hetal Parekh in 1990.

(TOI/7.07.2009)

HC widens scope of maintenance

Giving a wider interpretation to the maintenance law, the Delhi High Court on Tuesday said maintenance amount granted to spouse should be sufficient to lead a life with facilities which he or she was enjoying before separation.

"I am of the view that while granting maintenance under Hindu Law, the court does not have to grant mere sustenance amount as maintenance is meant to ensure that the spouse enjoys the same monetary status and facilities as he or she was enjoying prior to separation," Justice Manmohan said.

The court passed the order on a plea by a man challenging a lower court's order directing him to pay Rs 7,000 as maintenance to his wife.

Pradeep Sharma, contended that the maintenance amount granted by the lower court was higher and he was unable to provide it. The court, however, was not satisfied with his contention and dismissed his plea after it came to know that his annual income was more than Rs 6 lakh. "The order granting monthly maintenance at the rate of Rs 7,000 is neither in excess of the jurisdiction nor does it suffer from material irregularity," the court said.

Reiterating an earlier order of the apex court, Justice Manmohan said that as the determination of maintenance is not governed by any rigid or inflexible rule, it gives wide power and discretion to the court to do justice.

Earlier, the apex court had ruled that a woman is entitled to claim maintenance from her husband if her independent income or earnings as a single woman are insufficient to maintain the standard of living she was accustomed to whilst living with her husband.

The order, passed by Justices Arijit Pasayat and Aftab Alam, gave wider interpretation to the phrase "unable to maintain herself" and said: "...it would mean the means available to the deserted wife while she was living with her husband and not the efforts made by her after the desertion." The expression, the judges added, does not imply that the wife should be destitute before she can apply for maintenance.

(TOI/8.07.2009)

Rape accused can be convicted even in the absence of injuries on victim : SC

An accused can be convicted for rape even if there are no injuries on the private parts of the victim as the same does not amount to consensual sex, the Supreme Court has ruled.

"Corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent," a bench of Justices V.S Sirpurkar and R.M Lodha said.

The Bench passed the ruling while rejecting the argument of convict Rajender alias Raju who claimed that absence of any injuries on the victims' private parts indicated that she consented to the sex and that the charge of rape was not corroborated by any other evidence except the testimony of the victim.

The apex court said that in rape cases the sole testimony of the witness without any corroboration can be relied on as rarely would a self-respecting Indian woman accuse a man of raping her.

"In the context of Indian culture, a woman-victim of sexual aggression would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit."

(HT/10.07.2009)

CASE COMMENTS

Brij Nandan Jaiswal v. Munna Jaiswal & Anr. **AIR 2009 SC 1021**

It was generally believed that a complainant in a criminal case had no role to play, so far as matter of grant of bail to accused is concerned. It was considered to be a domain of State through prosecution agency. However, the Hon'ble Supreme Court of India, in a judgment titled "Brij Nandan Jaiswal v. Munna @ Munna Jaiswal and another, reported as AIR 2009 SC 1021, has observed that a complainant can challenge the order of Court granting bail, on its merits. No finality is attached to the order granting bail and the complainant need not wait for cancellation of bail on account of misuse of bail, after it is granted. It has been held as under:

"It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any Court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail."

The Hon'ble Supreme Court has further observed that while granting bail, particularly in serious offences like murder, Court is required to give some reasons justifying the grant of bail. There may not be elaborate reasons in the order, but it should reflect some reasons on which order is based.

(Sanjay Gupta)
Ist Addl. District & Sessions Judge,
Jammu

State of M.P. v. Kashiram & Ors. **AIR 2009 SC 1645**

In this authority Hon'ble Supreme Court has cautioned the subordinate Judiciary about their responsibility toward the society's cry for justice against the criminal. The Hon'ble Supreme Court has warned that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of Law and Society and could not long endure under such serious threats.

It casts duty on every court to award proper sentence having regard to the nature of the offence

and the manner in which it was sentenced. Hon'ble Supreme Court observed that, "The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g where it relates to offences against women, dacoity, kidnaping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence in-built in the sentencing system".

The Court has observed that the Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong.

(Ghous-ul-Nisa Jeelani)
Spl. Judge, Anticorruption,
Srinagar

Erati Laxman v. State of A.P. **AIR 2009 SC 1816**

In this case the Hon'ble Supreme Court has considered the issue regarding the computation of age of accused as regards Juvenile Justice Act. When accused is brought before the Court, in appropriate cases, the first requirement is to consider whether accused has not attained the age 16 years in case of males or 18 years in case of females, which is relevant to determine if he/she is a 'Juvenile' within the definition contained in Juvenile Justice Act. In this regard it has been held by the Supreme Court that the date of commission of offence would be the relevant date. The age of accused at the time of commission of offence would determine the status of accused as a juvenile. The date on which accused is produced before Court or the date of production of Challan would be irrelevant in this regard.

Another point relevant for Court's consideration is, as to when the age of 16/18 years is completed. It has been observed by Hon'ble Supreme Court as under:

“While calculating a person's age, the day of his birth must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday. A legal day commences at 12 O' clock midnight and continue until the same hour the following night.”

Therefore, two points have been settled in the Judgment, first that the relevant date for determining if accused is a Juvenile, is the date of commission of offence, and second that age of 16/18 years is completed on 12 O' clock midnight on commencement of 17/18th year of a male or a female as the case may be.

(*Vishesh Parihar*)
Sub-Judge/Forest Magistrate,
Srinagar

Mohabat & Ors. v. State of M.P.
AIR 2009 SC 1893

Sometimes in criminal cases relatives of complainant are cited as witnesses by prosecution and invariably in all those cases the testimony of such witnesses is doubted for being interested witnesses. Hon'ble Supreme Court has recently in a case titled Mohabat and Ors. v. State of M.P., reported as AIR 2009 Supreme Court 1893, held that relationship is not always an element of a witness being an interested witness, and is not a ground to affect credibility of witness. It has been observed as under:

“Merely because the eye-witnesses are family members, their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.”

Therefore when no foundation has been laid during trial regarding the credibility of a witness, at later stage merely for simple reason that witness is in relation with complainant party, cannot be a ground to brush aside his testimony. A witness is normally to be considered independent unless such circumstances are brought on record by the defence, which show the tendency and reason of witness to falsely implicate the accused. Such circumstances are to be proved by the defence by preponderance of probability. If such evidence is rejected mechanically for being partisan or interested witness, it would invariably lead to failure of justice.

(*Sanjeev Kumar Bhagat*)
Pr. District & Sessions Judge,
Leh-Ladakh

Kusuma Ankama Rao v. State of A.P.
AIR 2008 SC 2819

Extra Judicial confession though weak in nature is a oriental piece of evidence and cannot be ignored as such. For a court to believe the extra judicial confession, it must be clear, voluntary, consistent, convincing, unambiguous and relevant one. If it withstands the test of credibility, trustworthiness and it is also essential and prerequisite that the person to whom it is made must be unbiased, uninterested and not having even a remote link with the case or the accused.

The Hon'ble Supreme Court in its judgment reported in AIR 2008 SC 2819 has held as following :

“An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of the witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to

indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

The extra judicial confession if successfully passes through the parameters as laid down in the above mentioned judicial pronouncement, can surely form the basis of sound conviction.

(*Rajesh Kumar Abrol*)
Sub-Judge, Leave Reserve,
High Court Wing, Jammu

Banarsi Dass v. Teeku Dutta (Mrs.) & Anr.
(2005)4 SCC 449

Law presumes legitimacy of a child born during lawful wedlock and section 112 of Evidence Act requires the party disputing the parentage to prove the non access in order to dispel the presumption of the fact under section 112 of the Evidence Act. This presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities.

Based on the maxim *pater is est quem nuptiae demonstrant* (he is the father whom the marriage indicates). The presumption of legitimacy is this, that a child born of a married woman is deemed to be legitimate, it throws on the person who is interested in making out illegitimacy, the whole burden of proving it, as law presumes against vice and immorality.

The Hon’ble Supreme Court in *Dukhtar Jahan v. Mohd. Farooq* as reported in (1987) 1 SCC 624 has held “Section 112 lays down that if a person was born during the continuance of a valid marriage between his mother and any man or within two hundred and eighty days after its dissolution and mother remains unmarried, it shall be taken as conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. This rule of law based on the dictates of justice has always made the courts incline towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimization of the

child would result in rank injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman”.

It was further held that as the law leans towards the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. While referring to law laid down in *Kamti Devi v. Poshi Ram*, where it has been held that result of DNA (deoxyribonuclei acid) test, which is said to be scientifically accurate, is not enough to escape the conclusiveness of Section 112 of the Evidence Act.

(*Deepak Sethi*)
Chief Judicial Magistrate,
Ramban

Sohan Raj Sharma v. State of Haryana
AIR 2008 SC 2108

Hon’ble Apex Court, in this case has observed that “Abetment” involves a mental process of instigating a person or intentionally aiding that person in doing of thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing, it required before a person can be said to be abetting the commission of offence u/s 306 of IPC.

Section 107 IPC defines ‘abetment of a thing’. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (1) he instigates any person to do that thing or (2) engages with one or more other persons in any conspiracy for doing of that thing or (3) intentionally aids by act or illegal omission, the doing of that thing. These things are essentials to complete abetment as a crime. The word ‘instigate’ literally means to provoke, incite, urge on or bring about by persuasion to do any thing.

In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased wife with cruelty is not enough.

(*Subash C. Gupta*)
Pr. District & Sessions Judge,
Rajouri