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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 19 (15TH OCTOBER 2018)

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MEDICAL NEGLIGENCE - Appellant is a doctor by profession - Whether National Commission was justified in allowing respondent No.1's appeal by holding that appellant was negligent in performing the Surgery of Gall Bladder of respondent No.1 and, in consequence thereof, was justified in awarding Rs.2 lakhs by way of compensation to respondent No.1.

Held - Suffering of ailment by patient after surgery is one thing, which may be due to myriad reasons known in medical jurisprudence - Whereas suffering of any such ailment as a result of improper performance of the surgery and that too with degree of negligence on the part of Doctor is another thing - To prove case of negligence of a doctor, the medical evidence of experts in field to prove latter is required - Simply proving former is not sufficient -Respondent No. 1 was not able to prove that ailments which she suffered after returning home from hospital were a result of faulty surgery performed by the appellant - Appeal stands allowed. **(S.C.)** ***51***

MODEL GUIDELINES FOR BROADCASTING OF THE PROCEEDINGS AND OTHER JUDICIAL EVENTS OF SUPREME COURT OF INDIA - Petitioners have sought a declaration that Supreme Court case proceedings of "constitutional importance having an impact on the public at large or a large number of people" should be live streamed in a manner that is easily accessible for public viewing.

Held - it is necessary for judi-ciary to move a pace with technology - Chief Justices of High Courts should be commended to consider adoption of live-streaming both in the High Courts and in the district judiciaries in phases, commensurate with available resources and technical support - High Courts would have to determine the modalities for doing so by framing appropriate rules.

Model guidelines for broadcasting of the proceedings and other judicial events of Supreme Court of India :

A. Kind of matters to be live-streamed

1. Proceedings involving the hearing of cases before the Supreme Court shall be live-streamed in the manner provided below:

a) Cases falling under the following categories shall be excluded as a class from live-streaming:

(i) Matrimonial matters, including transfer petitions;

(ii) Cases involving sensitive issues as in the nature of sexual assault; and

(iii) Matters where children and juveniles are involved, like POCSO cases.

b) Apart from the general prohibition on streaming cases falling in the above categories, the presiding judge of each courtroom shall have the discretion to disallow live-streaming for specific cases where, in his/her opinion, publicity would prejudice the interests of justice. This may be intimated by the presiding judge in advance or live-streaming may be suspended as and when a matter is being heard; and

c) Where objections are filed by a litigant against live-streaming of a case on grounds of privacy, confidentiality, or the administration of justice, the final authority on live-streaming the case shall lie with the presiding judge.

2. In addition to live-streaming of courtroom proceedings, the following events may also be live-streamed in future subject to the provisions of the Rules:
(a) Oath ceremonies of the Judges of the Supreme Court and speeches delivered by retiring judges and other judges in the farewell ceremony of the respective Supreme Court Judges; and

(b) Addresses delivered in judicial conferences or Full Court References or any event organized by the Supreme Court or by advocate associations affiliated to the Supreme Court or any other events. **(S.C.)** ***60***

(INDIAN) PENAL CODE, Secs.- 302, 397 & 450 – EVIDENCE ACT, Sec.27 - Criminal Appeal against conviction – Circumstantial evidence.

Held - Circumstantial evidence is not direct to point in issue but consists of evidence of various other facts, which are also closely associated with the fact in issue, if that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed - Chain of circumstances when grouped together, establishes that it is appellants, who have committed the offence - Appeal stands dismissed. **(Hyd.)** ***101***

--X--

2018(3) L.S. 101 (Hyd.) (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
Suresh Kumar Kiat &
The Hon'ble Mr.Justice
T.Amarnath Goud

Dakkata Balaramreddy
& Anr., ..Appellants

Vs.

The State of A.P.
..Respondents

INDIAN PENAL CODE, Secs.- 302, 397 & 450 – EVIDENCE ACT, Sec.27 - Criminal Appeal against conviction – Circumstantial evidence.

Held - Circumstantial evidence is not direct to point in issue but consists of evidence of various other facts, which are also closely associated with the fact in issue, if that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed - Chain of circumstances when grouped together, establishes that it is appellants, who have committed the offence - Appeal stands dismissed.

Mr.A.T.M. Ranga Ramanujam, Senior Counsel, M. Karuna Sagar, Advocates for the Appellants.

Public Prosecutor (A.P.), Advocate for the Respondents.

J U D G M E N T
(per the Hon'ble Mr.Justice Suresh Kumar Kait)

1. The present appeal is preferred against the judgment dated 30th August 2016, in Sessions Case No.81 of 2012, passed by the VI Additional District and Sessions Judge, Sompeta, whereby, the appellants/ A-1 and A-2 are found guilty for the offences under Sections 302, 450 and 397 of IPC. Consequently, for the offence under Section 302 of IPC, they were sentenced to undergo imprisonment for life and also to pay a fine of Rs.2,000/-, in default of payment of fine, to suffer simple imprisonment for 6 months. They were also sentenced to undergo imprisonment for 10 years and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for six months for the offence under Section 450 of IPC. They were further sentenced to undergo imprisonment for Seven years for the offence under Section 397 of IPC. All the sentences were to run concurrently.

2. The case of the prosecution is that on 21st August 2008 at about 9.00 p.m., the appellants/A-1 and A-2 trespassed into the house of PW-1 in order to commit an offence by hiding iron rods back below their shirts. A-2 brutally killed deceased No.1, whereas, A-1 killed deceased No.2 by beating on head with iron rods and robbed the gold ornaments weighing about 3.543 Kgs. and cash of Rs.18,340/-, total worth Rs.28,18,340/- from the house of PW-1.

3. On 21st August 2008 at about 23.00 hours, PW-1 lodged a written report at Ichapuram Town Police Station. PW-23 registered the same as a case in Crime No.61 of 2008 for the offences under Sections 302 and 379 of IPC and informed the facts of the offence to PW-26, who was in-charge of Ichapuram Circle, since it is a grave offence. Accordingly, PW-26/ Inspector of Police immediately took up investigation. During the course of investigation, he visited the scene of offence, observed the scene of offence in the presence of mediators/PW-15 and LW-23/ Pilaka Polarao and held inquest over the dead bodies of deceased persons in the presence of panchayatdars. He arrested A-2 on 22nd August 2008 at 1.15 hours at Radhamveedhi, Jagannadhaswamy temple, Ichapuram in the presence of mediators and recovered part of stolen property i.e. 1748 grams and 750 milligrams of gold ornaments and cash of Rs.18,340/- from his possession. He arrested A-1 on 22nd August 2008 at Gollaveedhi, Ichapuram at 4.00 hours and recovered 1794 grams and 370 milligrams of ornaments from his possession in the presence of mediators. Thus, PW-26 recovered total gold of 3.543 Kgs. from both A-1 and A-2 and sent them for judicial custody. Thereafter, PW-26 examined PWs.1 to 4, 6 to 9, LW-4/Kotha Bhagyalaxmi and LW-5/Vetcha Satyam and recorded their detailed statements in Part-II Case Diary and forwarded the material objects to RFSL, Visakhapatnam for analysis.

4. PW-27/Inspector of Police, Ichapuram Circle, took up further investigation. During the course of investigation, he visited the scene of offence, examined PWs.9 and 10 and LW-12/Simhadri Ramesh and recorded their statements. He filed a Memo in the Court of Judicial Magistrate of First Class, Ichapuram for adding Sections 450, 394 r/w.397 of IPC. He also filed a Memo in the Court of Additional Judicial Magistrate of First Class, Sompeta, to record the statements of PWs.4 and 6 under Section 164 Cr.P.C.

5. The further case of the prosecution is that PW-19/Medical Officer, Civil Assistant Surgeon, Community Health Centre, Ichapuram conducted autopsy over the dead body of deceased No.1 and issued postmortem certificate opining that the cause of death was shock and hemorrhage due to head injury. PW-20/Medical Officer, Civil Assistant Surgeon, Community Health Centre, Ichapuram conducted autopsy over the dead body of deceased No.2 and issued postmortem report opining that the cause of death was shock and hemorrhage due to head injury. PW-24/Inspector of Police, FPB, SDEP Unit CID, Srikakulam, who compared the photocopies of chance prints with FP slips of A-1 and A-2, issued his opinion vide C.No.69/V-SOC/ SD-SDF/SKL/ 08, dated 22nd August 2008. PW-18/ Photographer, Clues Team, Srikakulam, took photos of the scene of offence and dead bodies on the instructions of PW-26.

6. It is the further case of the prosecution that on the requisition of PW-6, LW-36/ Additional Judicial First Class Magistrate, Sompeta recorded the statements of PWs.4 and 6 under Section 164 Cr.P.C. LW-31/ Dr.A.Adinarayana, Assistant Director, Regional Forensic Science Laboratory,

Visakhapatnam, who analyzed the preserved material objects, issued opinion in File No.VSP/SER/181/ 2008, dated 28.11.2008, that Item Nos.1 to 15 were examined and human blood was detected on Item Nos.2 to 5, 7, 10 and 12 to 15. Blood group of the bloodstains on item Nos.2 and 3 was "O" group. Blood group of bloodstains on Item Nos.4, 5, 7, 10 and 12 to 15 could not be established. Blood was detected on Item Nos.8 and 9, but their origin could not be determined. Blood was not detected on Item Nos.1, 6 and 11, of which, Item Nos.6 and 11 were received as controls for Item Nos.5 and 10 respectively. PW-27 completed the investigation and filed charge sheet.

7. The Judicial Magistrate of First Class, Sompeta, took cognizance of case for the offences under Sections 302, 379, 450, 394, 411 r/w.397 of IPC. After following the procedure contemplated under Section 209 of Cr.P.C., committed the case to the Court of Sessions. The District and Sessions Division made over the case to the trial Court for disposal according to law.

8. After appearance of A-1 and A-2, charges were framed under Sections 302, 379, 450, 411, 394 r/w.397 of IPC against them. The charge contents were read over and explained to them in Telugu, who abjured the guilt and claimed to be tried.

9. To prove the guilt of accused, the prosecution examined PWs.1 to 27 and marked Exs.P-1 to P-21 documents and M.Os.1 to 99 objects. After closure of prosecution evidence, A-1 and A-2 were examined under Section 313 Cr.P.C. The plea of the accused was of complete denial. No oral or documentary evidence was adduced on behalf of accused.

10. After considering the evidence on record and statements of accused recorded under Section 313 Cr.P.C., the learned trial Court found them guilty and accordingly convicted and sentenced them as mentioned above. Hence, the present appeal.

11. Learned Senior Counsel appearing on behalf of appellants submitted that the present case rests on circumstantial evidence and there are no direct witnesses to prove the prosecution case. He submitted that PW-1 made complaint/Ex.P-1, stating that on 21st August 2008, he went to Sompeta in a Car on personal work. At around 10 p.m., PW-7 made a phone call and informed him that Dakkata Balaram Reddy and Chinapana Gopi i.e. A-1 and A-2 entered into his house and after some time, he heard some shoutings. Then, they ran away with small baggages in their hands. Learned counsel submitted that no witness was examined by the prosecution to prove that PW-1 went to Sompeta on 21st August 2008. He further submitted that PW-2 deposed in the cross-examination that PW-1 did not state to him as to how he came to know about the death of his wife and son. PW-1 did not state that he saw A-1 and A-2 killing his wife and son. Thus, the statement of PW-1 cannot be relied upon that he was informed by PW-7 regarding the incident. PW-3 also deposed on the same lines. It is pertinent to mention here that to this effect, there is no question put to PW-1 in cross-examination.

12. Learned counsel further submitted that PW-4 deposed that on 21st August 2008 at about 9.00 p.m., he heard loud noises at PW-1's house and he also shouted as to what happened inside the house, accordingly number of people gathered at that house. After few minutes, A-1 and A-2 came out from the house of PW-1 and ran away. After that, Police came to the house of PW-1. Along with Police, they all went inside the house of PW-1 and found that PW- 1's wife and son were dead in pool of blood. Body of PW-1's son was in the shop room and the body of PW-1's wife was near the bath room, which is after the shop room. The Judicial First Class Magistrate, Sompeta recorded his statement on 11th December 2008 and after the contents were readover, he signed on it, which is marked as Ex.P-2. After 15 days, Police came to his shop and asked for some gold ornaments for the sake of identification. Later, after identification, Police returned the said ornaments to him. Learned Senior Counsel submitted that in the cross-examination, first this witness deposed that his house and PW-1's house were at a distance and no voices can be heard from the house of PW-1. However, he did not state before the Police that when he was at his house, he was also doing gold business. He admitted that he did not remember as to at what time PW-1 came to his house. He denied the suggestion that he had to go to his sister's house from the house of PW-1. He stated that he can say weight of ornaments but cannot say the total ornaments taken by the Police.

13. Learned Senior Counsel submits that the deposition of this witness is not as deposed by PW-1, and moreover, the ornaments recovered were not seized and sealed properly. Thus, the trial Court has wrongly relied upon the deposition of this witness.

14. PW-6 deposed that on 21st of August 2008 at about 9.00 p.m., he was going to his house and PW-4 was going to his sister's house via Chinnamedara Veedhi. When they reached PW-1's house, they heard cries from the said house. They also shouted as to what happened. In the meanwhile, 10 to 15 people gathered. A-1 came outside from the house of PW-1 and ran away on bike with a bag on his shoulder. After 5 or 10 minutes, A-2 jumped from the upstairs of PW-1's house to neighbouring house, and from there, jumped down. At that time, A-2 was holding a bag.

15. Learned counsel argued that in the rough sketch/Ex.P-19, nowhere it is stated that there was light in the house or in the street. Therefore, in the absence of any source of light, it was difficult for any of the witnesses to identify A-1 and A-2 while coming out from the house of PW-1.

16. PW-7 deposed that on 21st of August 2008 at 9.00 p.m., he closed his shop and was returning home. By the time he reached PW-1's house, he heard loud sounds from the said house and some people gathered there. He telephoned to PW-1 and informed him that loud sounds were coming from his house, on which, PW-1 stated that he was returning home. At about 10.30 p.m., PW-1 returned to the house and Police report was given.

17. Learned counsel submitted that there

is no investigation on the phone call made by PW-7 to PW-1 informing about the incident, but the learned trial Court has erroneously relied upon the deposition of this witness.

18. PW-8 deposed that about 7 years prior to the incident, Inspector of Police, Ichapuram called him to the Police Station and asked to weigh gold relating to this crime. Accordingly, he weighed the gold ornaments, which were about 3_ kgs. After 15 days of the incident, Police had taken some gold ornaments from his shop for identification. About 400 grams of gold ornaments were given for identification to the Police in the morning and the Police returned the same in the evening.

19. Learned counsel for the appellants submitted that in the cross-examination, PW-8 deposed that he always maintains day-to-day stock and sale register. However, he did not show the deduction of ornaments given to the Police on that day in his stock register. He also did not issue any receipt to the Police, with an endorsement that he had received back the gold ornaments. He also did not remember as to who had taken the ornaments from him. Thus, it is submitted that this witness is a planted witness, however, the trial Court has wrongly relied upon his evidence.

20. PW-10 deposed that at about 9.30 p.m., while he was taking dinner at his house, he heard sounds from outside. Immediately, he came out and found that around ten people were gathered in the street. Meanwhile, A-1 ran away from PW-1's house and then A-2 also ran away from the said house. A-1 and A-2 were holding bags. Later, he came to know that A-1 and A-2 murdered PW-1's wife and son and ran away with gold. Learned counsel for appellants submitted that this witness failed to disclose the attire of A-1 and A-2 and also the colours of bags. Thus, this witness cannot be believed.

21. PW-11 deposed that after 10 or 12 days of the incident i.e. on 03.09.2008 at about 8.30 or 9.00 a.m., the Inspector of Police went to his shop and asked to give some ornaments weighing around 500 grams consisting of Necklaces, chains, nose-studs, rings etc., for conducting identification of property and Police returned the said ornaments at around 1.00 or 2.00 p.m.

22. Learned counsel submitted that in the cross-examination, this witness did not disclose as to how many ornaments were hand-made and how many were machine-made, from out of the ornaments given to the Police. However, he stated that he noted on a paper, the ornaments given to the Police and later tore-away the paper after the ornaments were returned.

23. PW-13 deposed that he was 1st signatory to the inquest report/ Ex.P-5. He stated that the dead body of the wife of PW-1 was found in the pool of blood with head injury near bathroom and all the things in the room were shattered. There was iron rod near the dead body and that the body was lying on its back. However, in the cross-examination, he deposed that in his presence, one iron rod was seized by the Police. Except that, nothing was seized from the scene of offence. Thus, this witness

nullifies the inquest report/Ex.P-5.

24. While concluding his arguments, learned Senior Counsel submitted that the accused were arrested on 26.11.2011, but the Test Identification Parade was conducted on 28.12.2011 i.e. after almost 30 days from the date of arrest. Moreover, PW-1 admitted that A-1 and A-2 were shown to the witnesses prior to the identification parade. Thus, the Test Identification Parade was conducted just to complete the formality and to establish that A-1 and A-2 were identified by the witnesses. The prosecution has to establish the case beyond reasonable doubt, but in the present case, there are discrepancies and the witnesses are planted ones, therefore, cannot be relied upon.

25. In support of his contentions, the learned Senior Counsel for appellants has relied upon the judgments in **Mohd.Hussain @ Zulfikar Ali v. State (Government of NCT of Delhi)** (2012) 2 SCC 584), in **Mahavir Singh v. State of Madhya Pradesh** (2016) 10 SCC 220), in **State of M.P. v. Ghudan** (2003) 12 SCC 485), in **Malkoo v. State (**AIR 1961 Allahabad 612), in **The State v. Motia & others (**AIR 1955 Rajasthan 82)and in the case of **State of Vindhya Pradesh v. Sarua Munni Dhimar & others (**AIR 1954 Vindhya Pradesh 42).

26. On the other hand, the learned Public Prosecutor appearing on behalf of State submitted that though all the witnesses turned hostile except the official witnesses, however, PW-1 admitted his signature on Ex.P-1 and claimed the ornaments and cash recovered from A-1 and A-2. Moreover, in the test identification parade, PW-1 has identified A-1 and A-2. There was delay in conducting the Test Identification Parade, as PW-1 took treatment for one month after the incident. It is submitted that the learned trial Court, by relying upon the oral evidence of PWs.1 to 7 and after going through Exs.P-1 to P-21, has rightly convicted the appellants for the offences mentioned above. Thus, there is no merit in the present appeal and the same is liable to be dismissed. In support of his arguments, he placed reliance on the judgments in the case of **Mukesh Kumar v. State of Delhi** (2015) 17 SCC 694), in **Alagupandi @ Alagupandian v. State of Tamilnadu** (2012) 10 SCC 451)and in the case of **Dharam Deo Yadav v. State of Uttar Pradesh** (2014) 5 SCC 509)**.**

27. The case of the prosecution is that on 21st August 2008 night at about 9.00 p.m., the appellants/A-1 and A-2 trespassed into the house of PW-1 in order to commit an offence by hiding iron rods in the back below their shirts. A-2 brutally killed deceased No.1 and A-1 killed deceased No.2 by beating on their heads with iron rods and robbed the gold ornaments weighing about 3.543 kgs. and cash of Rs.18,340/-, total worth Rs.28,18,340/- from the house of PW-1 and escaped with booty.

28. PW-1 deposed that on 20th August 2008 at about 5.00 p.m., he went to Sompeta for business purpose. Thereafter, he received a phone call from PW-7 at about 9.30 p.m. stating that A-1 and A-2 went to his house at 9.00 p.m. and they heard loud cries from his house. After some time, A-1 ran away with small bundles of gold and PWs.4, 6 and 7 watched the

same. Thereafter, A-2 ran away from the upstairs of backside. On receiving the information, he returned from Sompeta and reached his house at about 10.00 or 10.30 p.m. By the time he reached his house, people gathered outside his house and all the doors of his house were kept open and the shop room was also opened. His elder son was in a pool of blood near sofa at the shop room and there was an iron rod on the floor. On the Southern side room, his wife Venkata Gopala Lakshmi was in a pool of blood and he found an iron rod near her. All the gold ornaments were missing from the shop almyrah and show case. He took the help of one V.K.Prasad and lodged report under Ex.P-1.

29. PWs.2 and 3 are brothers of deceased Vetcha Venkata Gopala Lakshmi. They deposed that they came to know through phone call from PW-1 that their sister and nephew were killed by A-1 and A-2. Immediately, they, along with LW-4/Kotha Bhagyalaxmi, reached Ichapuram at about 1.00 p.m.

30. PW-4 deposed that while himself and PW-6 were going to his sister's house at Dabbeeru street via Medara Veedhi, they heard loud noises at PW-1's house. They shouted as to what happened inside the house. Number of people were gathered at that house. After few minutes, A-1 came out from the house of PW-1 and ran away. After that, Police came to the house of PW-1. Along with Police, they all went inside the house of PW-1 and found that PW-1's wife and son were lying dead in a pool of blood. The body of PW-1's son was in the shop room and the body of PW-1's wife was near the bath room, which is after the shop room.

31. PW-5 deposed that he came to know about the murder of PW-1's elder son and wife on 22nd August 2008. PW-7 deposed that on 21st August 2008 at 9.00 p.m., he closed his shop and while returning his home, he heard loud sounds from PW-1's house and some people gathered there. He telephoned to PW-1 and informed him that loud sounds were coming from his house, upon which, PW-1 stated that he was returning to home. On reaching the house of PW-1, they found on left side of sofa in the shop room, Kiran Kumar was found in a pool of blood and before the bathroom, the wife of PW-1 was in a pool of blood. One iron rod each were there at the dead bodies of deceased. M.Os.1 and 2 were the said iron rods.

32. PW-9 deposed that while he was washing his face, neighbours in their street informed that loud sounds were coming from his opposite house. After one hour, Police and PW-1/Kesava Rao came there. The people who saw the dead bodies of deceased, stated that PW-1's son was found dead in the shop room and PW-1's wife was found dead at the back side of the shop room. Later, he came to know that PW-1's son and wife were killed and their ornaments were stolen. On the next day, inquest was conducted over the dead body of PW-1's wife. He drafted the inquest report upon the directions of Police.

33. PW-10 deposed in his evidence that at about 9.30 p.m., while he was taking dinner at his house, he heard sounds from

outside. Immediately, he came out and found that around ten people were gathered in the street. Meanwhile, A-1 ran away from PW-1's house and then A-2 also ran away from the said house. A-1 and A-2 were holding bags. Later, he came to know that A-1 and A-2 murdered PW-1's wife and son and ran away with gold.

34. PW-11 deposed that inquest was conducted by the Inspector of Police on the dead body of deceased/Vetcha Kiran Kumar. The said inquest report was drafted by LW-13/Kalla Devaraju. Himself, along with other inquestdars, signed the said report.

35. PW-12 deposed that inquest was conducted on the dead body of deceased/ Vetcha Kiran Kumar by the Inspector of Police and the said inquest was drafted by LW-13/Kalla Devaraju. Himself, along with other inquestdars, signed the said report.

36. PW-13 deposed that the inquest over the dead body of deceased/wife of PW-1 was conducted in his presence along with LW-19/Sasanapuri Nageswara Rao, LW-20/ Potta Raveendra, LW-21/Talli Kumari and PW-9. The inquest report/Ex.P-5 was scribed by PW-9.

37. PW-14 deposed that inquest over the dead body of deceased/ wife of PW-1 was conducted in his presence along with PW-13, LW-20/Potta Raveendra, LW-21/Talli Kumari and PW-9. Inquest report/Ex.P-5 was scribed by PW-9. He is the 2nd signatory to the said inquest report. It is further deposed that after 10 days, at around 9 or 9.30 a.m., Police came to his shop and took _ kg gold consisting of different ornaments viz., necklaces, bracelets, earstuds, rings etc., for identification purpose and they returned the said ornaments at about 1.00 p.m.

38. PW-15 deposed that Inspector of Police observed the scene of offence and took photographs of the scene and also prepared scene observation report. He signed the said report. He has seen M.Os.1 and 2 near the dead bodies of deceased.

39. PW-18 is a photographer, who photographed the dead bodies of deceased Kiran Kumar and Venkata Gopala Lakshmi and also the scene of offence. Later, he handed over the photos along with negatives and CD to the Inspector of Police, Ichapuram.

40. PW-26 deposed that on 21st of August 2008 at 23.15 hours, while he was holding additional charge of Ichapuram Circle, received information about the incident from S.I. of Police, Ichapuram Rural P.S./PW-23, who was holding the charge of Ichapuram Town P.S. Then, he secured the presence of complainant/PW-1, examined him and recorded his detailed statement in the case diary. Then, he appraised the facts of the case to the superior officers and received instructions. He arrested the accused at 4-00 a.m. after informing the grounds of arrest to Dakkata Appanna, related to A-1 and A-2. He also interrogated both the accused and asked them for clothes which were worn by them at the time of offence, for which, they disclosed that they were wearing the same clothes at the time of offence. Then, he verified the clothes and found some bloodstains. Later, he got

secured other clothes and handed over to them and seized the bloodstained clothes i.e. one bloodstained half-hand double XL size T-Shirt of yellow colour with black stripes and one bloodstained cement colour pant of A-1, and one bloodstained cement colour pant of A-2 in the presence of mediators under the cover of mediators' report/Ex.P-10. Later, he took finger prints and photographs of the accused. During the course of investigation, he examined PWs.2 to 7 and recorded their detailed statements.

41. PW-27 deposed that on 31st of August 2008, he took up further investigation in this case. During his absence, the Inspector of Police, Sompeta conducted investigation, who handed over to him, the CD file along with stolen property. He reached Ichapuram Town P.S. on 11.09.2008. He filed a memo before JMFC, Ichapuram for recording statements of PWs.4 and 6 under Section 164 Cr.P.C. On 15.09.2008, he went to the scene of offence and examined PWs.9, 10 and LW-12/Simhadri Ramesh and recorded their statements.

42. From the depositions of prosecution witnesses mentioned above, it is clear that murder of deceased Nos.1 and 2 had taken place in the house of PW-1. On hearing loud sounds from outside, the prosecution witnesses came out. Some of the witnesses deposed that A-1 and A-2 ran away from the house of PW-1, holding bags. Later, they came to know that deceased Nos.1 and 2 were murdered.

43. PW-6 deposed that on 21st August 2008 at about 9.00 p.m., himself and PW-4 were going to his house. By the time they reached the house of PW-1, they heard cries from the said house. They also shouted as to what happened. In the meanwhile, 10 to 15 people gathered there. A-1 came out from PW-1's house and ran away on the bike with a bag on his shoulder. After 5 or 10 minutes, A-2 jumped down. By that time, A-2 was holding a bag. After one hour, PW-1 returned to his house and Police also came there. They found the dead bodies of PW-1's wife and son in a pool of blood. He came to know that cash and gold ornaments were stolen. Except marking of contradictions that he was doing gold business and that PW-1 is his colleague gold merchant, which was denied by PW-6, nothing much is elicited from him in favour of accused.

44. It is important to note that PW-6 is the direct witness, who heard loud sounds and who saw A-1 and A-2 running away with bags from the house of PW-1. Apart from direct evidence, this case depends on circumstantial evidence. The cumulative effect of circumstances negated the innocence and proved the guilt of accused beyond reasonable doubt.

45. The settled law is that the act must have been proved by accusations, so that the chain of evidence must not leave any reasonable doubt for a conclusion, as held in **Hanumant Govind Nargundkar v. State of M.P. (**AIR 1952 SC 343).

46. Turning to the circumstances relating to the facts of a case tending to show the innocence or guilt, must be rational and a prudent man may base his opinion upon probabilities of the case. One of the

important circumstances is that the thumb impressions of A-1 and A-2 were present on the glass show-case at the scene of offence, which is shop room in the house of PW-1. The comparison of thumb impressions has become an exact science and great weight can be attached to the evidence of expert in this regard. The testimony of qualified finger print examiner having necessary qualifications to be a finger print expert, cannot be discarded. The Court has to rely on the expert upon two distinct points, first of all, under question of similarity between the marks, and secondly, on the point which is one for expert opinion whether it is possible to find the finger prints or thumb impressions of two individuals corresponding in as many points of resemblance as shown to exist between the impressions found in the case before the court and those of the accused. Accordingly, the Court cannot delegate its authority to the expert, but has to satisfy itself as to the value of the evidence of expert in the same way as it must satisfy itself as to the value of any other evidence.

47. On the above issue, PW-24 the Inspector of Police, Finger Print Bureau has been examined. He deposed that on receipt of telephonic message from the Sub-Inspector of Police, Ichapuram Town Police Station, he visited the scene of crime along with the clues team on 22nd August 2008 at about 6.00 a.m. There, he examined the scene of crime and articles which were suspected to have been handled by the unknown culprits. He developed chance prints on the glass show-case and one chance print on cream colour plastic bags and labeled them as 'A', 'B', 'C', 'D' and 'E' for the facility of photography. On the same day, he received the chance prints and found that the photographs of chance prints marked as 'B' and 'C' were unfit for comparison for want of ridge characteristics. The same has been compared with the finger print slips of deceased inmates at the scene of crime for the purpose of elimination and found that the photocopy of chance prints marked as 'E' was identical of the right index finger impressions of deceased inmate V.Kiran Kumar son of V.Kesava Rao. The said photocopy of chance prints of 'E' is eliminated for further comparison. The remaining photocopies of chance prints marked as 'A' and 'B' have been compared with the finger print slips of both accused and found that the photocopy of chance print marked as 'A-1' was identical with specimen right thumb finger impressions marked as 'S-1' on the finger print slip marked as 'S' of accused/ Dakkata Balarama Reddy S/o.Appanna Reddy. The photocopy of chance print marked as 'D' is identical with the right index finger impressions marked as 'P-1' on the finger print slip marked as 'P' of the accused Chinapana Gopi S/o.Late Peethambara Reddy. Accordingly, comparison charts showing identical characteristics were prepared and submitted. Comparison chart showing of the 10 ridge characteristics were clearly drawn and mentioned that 10 ridge characteristics in the two comparison charts were collectively occurring in their relative possession in both the finger prints marked as 'A', 'B', 'S-1' and 'P-1'.

48. The two identical finger print charts were marked as Exs.P-17 and P-18, subject to objection. PW-24/Finger Print Expert

opined that the chance print marked as 'A' is identical with specimen right thumb impression marked as 'S-1' on the finger print slip of accused/Dakkata Balarama Reddy marked as 'S'. The finger print marked as 'D' is identical with specimen right index finger impression marked as 'P-1' on the finger print slip of the accused Chinapana Gopi, marked as 'P', and that they were made by the same fingers of the above said persons respectively.

49. In the cross-examination, it was elicited that 10 ridge characteristics were compared, which were shown in the two charts Exs.P-17 and P-18. It was also elicited that the finger print expert is qualified in All India Expert Examination with regard to Finger Print Science, which was conducted by the Central Finger Print Bureau of Calcutta. The types of ridges are arches, loops, whorls and composites.

50. It is pertinent to mention here that the counsel for the accused has put a question in the cross-examination of PW-24 that, whether out of 4 types of ridges, did any two types of ridges would match in the present case with the specimen and the chance prints, for which, PW-24 answered that two different patterns of ridges never match. In the present case also, when compared, the specimen (10 each) and the chance print did not tally with two different patterns of ridges. In the cross-examination of this witness, nothing much was elicited in favour of the appellants. Moreover, the evidence of finger print expert can be relied upon, as he is a qualified expert and there is no tampering of the receipt of finger prints. The presence of appellants can be determined as finger prints were available on the show-case in the house of PW-1 and they tallied with the finger impressions of A-1 and A-2.

51. Another important circumstance is that the bloodstained clothes on the bodies of appellants were sent for chemical analysis. PW-16 deposed that in their presence, Police seized yellow T-shirt (M.O.97) and light cement colour jeans pant (M.O.98) of D.Balaram (A-1) and cement colour bloodstained jeans pant of A-2, marked as M.O.99. PW-17 deposed that Police seized one jeans pant of Gopi (A-2) and one T-shirt and jeans pant of Balaram (A-1) at the Police Station in their presence. Ex.P-10 is the mediators' report, in which, it was mentioned that Inspector of Police questioned A-1 and A-2 as to the clothes wore by them at the time of offence and they stated that at the time of offence, they wore the clothes which they were wearing at that time. A-2 handed over his pant and A-1 handed over his pant and shirt. Ex.P-21 is the report of RFSL, as per which, human blood was detected on item Nos.2 to 5, 7, 10 and 12 to 15 i.e., a cement colour jeans pant with dark brown stains, a torn cement colour jeans pant with mud stains, a metallic rusted iron rod, a piece of gauze cloth with dark brown stains, a torn white colour cotton full-sleeved shirt with green stripes with dark brown stains, a piece of gauze cloth with dark brown stains, a metallic iron rod, a maroon colour polyester saree pieces with multi-colour design with dark brown stains, a torn pink colour cotton jacket with dark brown stains and a torn white colour mill made cut banian with dark brown stains. Blood was detected

on item Nos.8 and 9 but their origin could not be determined. Blood group of bloodstains on item Nos.4, 5, 7, 10 and 12 to 15 could not be established. Blood group of bloodstains on item Nos.2 and 3 is "O" group. Blood was not detected on item Nos.1, 6 and 11. Item Nos.6 and 11 were received as controls for item Nos.5 and 10 respectively.

52. It is settled law that, even if chemical examiner is not examined, his report is admissible in evidence and no formal proof is required under Section 293(4)(a) of Cr.P.C. Therefore, it is not at all necessary to examine the chemical examiner unless the Court thinks fit to summon and examine him. Moreover, it is not the case of defence that there are two reports and there is difference of opinion. The report of Chemical Examiner i.e. Assistant Director of RFSL, Visakhapatnam is marked as Ex.P-21. The conclusions in the report and reasons for arriving at such conclusions, disclose that experiments were performed by the Chemical Examiner to form his opinion so as to enable the Court to arrive at an independent conclusion. The blood detected on Item Nos.2 and 3 was of "O" group. Thus, the articles sent to the Chemical Examiner for analysis contained bloodstains of "O" group. It is not the case of the appellants that Police later-on put human blood on the articles sent for analysis, in order to implicate them in the case. The report of the Chemical Examiner was received in original, and hence, it is admissible in evidence without formal proof. Therefore, the analysis report/Ex.P-21 has established that the weapons M.Os.1 and 2 (iron rods) seized from the scene of offence and blood stained clothes of accused are examined for sufficient proof about the extent of bloodstains detected on those articles. Accordingly, the learned trial Court arrived at the conclusion that presence of accused is established with Ex.P-8 (Scene of offence observation report), seizure of weapons, coupled with report of expert.

53. PW-19 conducted postmortem examination over the dead body of deceased No.1 and opined that cause of death was due to shock and hemorrhage due to head injury. PW-20, the Doctor who conducted postmortem examination over the dead body of deceased No.2, stated that the cause of death was due to shock and hemorrhage due to head injury. The injuries found on the deceased persons indicate the act of violence and the weapons used for causing said injuries.

54. The above facts and the nature of injuries have proved the material point that the accused have made dangerous assault on the deceased in order to take away the property. The evidence of prosecution witnesses also establishes the seizure of gold ornaments from A-2, at the instance of A-1.

55. PW-26 deposed that on receiving information about the movements of culprits, he along with his staff, visited Radham Veedhi, Jagannadhaswamy temple at about 1-15 hours and noticed that one person, carrying one hand bag, was trying to escape on seeing the Police. Then, he apprehended him on suspicion and asked him about his identity and about the contents of the bag. The said person confessed that he is resident

of Ichapuram Municipality and was living by doing finance business after his superannuation from Military service. The said person further confessed that after his retirement, he addicted to bad vices and spent all the money for such vices as mentioned in the mediators' report. Then, PW-26 verified the bag which was carried by the said person and found the following ornaments within a box which was kept in olive colour bag:

1. Readmade Necklaces – 40.

2. Bangles studded with stones – 2.

3. One gold Pustelatadu with black beeds – 1.

4. One gold chain with Rudraksha Poosa – 1.

5. Small chains.

6. Six rings.

7. Ear-studs.

8. Nose-studs.

9. Kasulu.

10. Black beed chain.

11. Lockets.

12. Gold Pustelatadu.

13. Bangles and cash of Rs.18,340/-

After recovering the same, he got drafted the confessional statement of accused/ Chinapana Gopi (A-2), duly attested by the mediators at 2.30 a.m. Thereafter, he, along with his staff, the accused and mediators, rushed to the house of Dakkata Balaram (A-1), situated in Gollaveedhi of Ichapuram Municipality. On seeing the Police, one person tried to escape from the house. Then, he apprehended him with the assistance of his staff and interrogated in the presence of mediators. The said person confessed that he is a resident of Gollaveedhi of Ichapuram Municipality and was living by doing civil contract works. In that process, he received losses. When his brother-in-law came with a proposal to commit offence, he hatched-up a plan to rob the house of PW-1, who is a creditor and sound at wealth in Ichapuram town. Further, he corroborated the version of A-2 on all aspects. When questioned about the stolen property, A-1 fetched a bag from the side room of the house and bloodstained clothes and handed over the same to him. In the presence of mediators, he opened it and found three gold rings, one ear buttalu, two petala golusu, one black beed chain, ear rings, chains, rings, necklaces, ear ornaments, bangles, nose-studs etc. He got drafted the confessional statement of the accused duly attested by the mediators. Ex.P-9 is the admissible portion of confession of the accused.

56. PW-16/mediator deposed that on seeing the Police jeep, one person was running away from the place. Police chased, caught hold of that person and brought before the Inspector of Police. On questioning, he confessed that his name is Dakkata Balaram (A-1) and his brother-in-law's name is

Chinapana Gopi (A-2), Ex-Army man and he has a finance business. He confessed that both of them went to PW-1's house and asked to state the rate of old gold of Chinapana Gopi. The deceased/V.Kiran Kumar estimated the rate as Rs.20,000/-. On that, both of them demanded for Rs.25,000/- for the old gold, but the deceased Kiran Kumar refused to give the said amount. On that, Chinapana Gopi beat deceased Kiran Kumar with an iron rod, thereby, he fell down. On listening the cries of Kiran Kumar, his mother came there. On that, he beat on her head with an iron rod. Then, she fell down. Both Kiran Kumar and his mother died. Thereafter, they (A-1 and A-2) took the ornaments as per their wish and one of them left from the main entrance and the other one left from backyard. On being questioned by the Inspector of Police about the stolen ornaments, A-1 brought the ornaments with a bag from his house.

57. It is important to mention here that the 1st condition necessary for bringing Section 27 of the Evidence Act into operation is discovery of a fact, albeit a relevant fact, in consequence of information received from a person accused of an offence. The 2nd is that discovery of such fact must be deposed to. The 3rd is that at the time of receipt of information, accused must be in Police custody. The last but the most important condition is that, only that much of the information as relates distinctly to the fact thereby discovered, is admissible. Ex.P-9 is the admissible portion stating "okka sanchi ni teesukochi" (by bringing one bag). Thus, the above conditions are fulfilled and the ornaments were recovered in the presence of mediators.

58. PW-17/mediator deposed that himself, LW-27/Karri Dharmaraju, along with Police staff, went to Radham street near Jagannadhaswamy temple. By that time, one person was running away from that place. Police chased and caught hold of the said person. He was holding one bag (Sanchi) in his hand. Ex.P-12 is the admissible portion of the confession. The said person stated that his name is Chinapana Gopi (A-2). On 28.01.2008 at about 9.00 p.m., he went to PW-1's house by taking the old gold and has given that old gold to the deceased Kiran Kumar, who stated that he will give Rs.20,000/- to that gold. Then, A-2 asked for Rs.25,000/-, to which, said Kiran Kumar refused. A-2 asked Kiran Kumar to give back his old gold. The deceased Kiran Kumar brought the old gold from his house. Then the said Gopi (A-2) beat the deceased Kiran Kumar with an iron rod, thereby, Kiran Kumar shouted loudly and fell down. On hearing the cries of Kiran Kumar, his mother came out from inside. Then, Gopi's brother-in-law Balaram (A-1) beat on her head with an iron rod, thereby, she also fell down. A-1 and A-2 thrown both the rods there itself and the gold was tied in bundles. The said Balaram went from entrance, whereas, Gopi went away from the backyard by jumping the wall. Thus, Gopi sustained injury on his left leg. The Inspector of Police seized the said bag consisting of readymade gold necklace, gold chains, gold rings and some other gold ornaments, apart from cash of Rs.18,340/-.

59. It cannot be disputed that a statement, which merely explains the production of material and which does not lead to its

discovery, is not admissible under the provisions of Section 27 of the Evidence Act. The Court must distinguish between the cases where discovery is made in consequence of information given and a disclosure by an accused accompanying a statement. The information permitted to be admitted in evidence is confined to that portion of information which distinctly relates to the fact thereby discovered. The recovery of ornaments from A-2 does not come under Section 27 of Evidence Act, as initially, the Police chased and caught hold of A-2, who was holding one bag in his hand. After confession made by A-2, the Inspector of Police seized the said bag and observed the said bag in the presence of mediators. Therefore, recovery from A-2 is admissible under Section 27 of Evidence Act.

60. PW-1 has identified the gold ornaments M.Os.3 to 92 in the test identification parade held at Satyanarayana Swamy Temple in the presence of PWs.16 and 17. Ex.P-6 is the report of test identification parade, which was conducted by PWs.16 and 17 on 03.09.2008 at 11.00 a.m. PW-16 deposed that S.I. of Police, Ichapuram called him and PW-17 to the Police Station and handed over 18 models of gold ornaments weighing 3_ kgs. and also gold from 4 different shops. Then, they went to Satyanarayana Swamy temple and PW-1/ Kesava Rao came there. Thereafter, the stolen ornaments were mixed with other ornaments brought from the gold shops. PW-1 identified his ornaments and the details of identification of ornaments were drafted by PW-17. Though PW-16 was cross-examined, nothing much was elicited in favour of appellants. PW-17 further deposed that the Inspector of Police has given 18 types of stolen gold ornaments weighing 3_ kgs. After taking the said gold ornaments, himself, PW-1 and PW-16 went to Satyanarayana Swamy temple and conducted identification of ornaments. He also scribed Ex.P-11/report of test identification of ornaments.

61. PW-8 deposed that about 7 years back, Inspector of Police, Ichapuram called him to the Police Station and asked him to weigh the gold relating to this crime. He weighed the ornaments twice, which were about 3_ kgs. After 15 days of the incident, Police took some gold ornaments from his shop for identification. About 400 grams of gold ornaments were given for identification to the Police in the morning and the same were returned by the Police in the evening.

62. PW-11 deposed that after 10 or 12 days of the incident i.e. on 03.09.2008 at about 8.30 or 9.00 a.m., Inspector of Police came to his shop and asked to give some ornaments weighing around 500 grams, consisting of Necklaces, chains, nose studs, rings etc., for conducting identification parade of property. Police returned the same at about 1.00 or 2.00 p.m.

63. PW-27 deposed that by the time PW-1 came, two mediators i.e. PWs.16 and 17 and gold merchants Pydisetti Ravikumar, Boyina Venkataramana, Sunkara Sivaprasad, B.Sivaji and PW-14/ S.Nageswara Rao were present. They brought some gold ornaments from their shops. He gave instructions to PWs.16 and 17 to conduct identification of property through PW-1 at the verandah of

Satyanarayana Swamy Temple, Ichapuram town. By 11.00 a.m., the mediators went to the Temple and conducted identification of property till 12.00 p.m. After 12.00 p.m., PWs.16 and 17 handed over Ex.P-11 and the stolen property which is identified by PW-1. The property brought from the gold shops was handed over to them.

64. Identification of stolen ornaments by owners of such ornaments cannot be discarded on the mere ground that there were no special identification marks on the said ornaments. The said identification is done by the mediators, as such, it cannot be discarded. In the identification of property, even though 2 or 3 similar articles are mixed, still, the identification of property cannot be discarded when the witnesses are trustworthy and they have been subjected to fair test. The non-mentioning of the number of articles with which the stolen articles were mixed up and identified, does not make the test identification unreliable in any way. Merely because the gold articles were given by PWs.8 and 11, and PW-1, who is the owner of a gold shop, has identified the articles by frequently seeing, handling and using them, is not sufficient to reject the testimony of PW-1 on the ground that identification parade was not properly held. It is not the case of appellants that only 2 or 3 ornaments were mixed with the stolen property. PWs.8 and 11 deposed that number of gold ornaments were given for the purpose of mixing for identification of property.

65. After going through the depositions of the prosecution witnesses as discussed above, we are of the considered opinion that the cases cited by the learned Senior Counsel for appellants are not applicable to the facts and circumstances of the present case. Under the law, presumption under Section 114 of the Evidence Act is that if stolen property is found in the possession of a person soon after the theft, it can be presumed that either that person himself is a thief or he received such property knowing it to be stolen, unless he can account for possession. When prosecution establishes that accused was in possession of gold ornaments which were identified as that of deceased, it was for the accused to explain as to how he got possession of such ornaments of the deceased.

66. In the case of **Shri Zulfikar Ali & others v. State of Goa (**2006 (3) Crimes (HC) 565), it was held as under :

"Evidence of PW-15/Police Inspector that he chased van in which accused persons were traveling, arrested them and seized property of which they were found in possession. No explanation was given by accused persons as to how they come in possession of gold ornaments in two bags. Possession of fruits of crime recently after it has been committed affords a strong and reasonable ground for presumption that party in whose possession they are found was the real offender, unless he can account for such possession in some way consistent with his innocence. Accused persons arrested and property seized five days later. Proximity of time of alleged incident of dacoity, arrest of four accused persons with loot of dacoity which was identified by PWs.1 to 4 as gold articles with specific marks and designs as belonging to them,

sufficient to draw a presumption that accused had committed offences, alleged against them, conviction of appellants not liable to be interfered with."

67. From the above judgment, presumption can be drawn that appellants/A-1 and A-2 are the persons who committed theft or received the goods knowing them to be stolen. The ornaments/ M.Os.3 to 92 and cash of Rs.18,340/- were recovered from the appellants immediately on the next day of commission of offence. The appellants failed to explain as to how the said ornaments came into their possession. The present case is not that there were only 2 or 3 ornaments, but there are number of ornaments weighing 3.543 Kgs. This much of ornaments cannot be planted and given to PW-1.

68. In cases where the direct evidence is scarce, the burden of proving the case of prosecution is bestowed upon motive and circumstantial evidence. It is the chain of events that acquire prime importance in such cases. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts, which are so closely associated with the fact in issue, if that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. In the present case, the evidence adduced by the prosecution, as discussed above, clearly proves the chain of events connecting the appellants to the guilt of commission of offence. The entire evidence brought on record by the prosecution, is not only convincing, but is also trustworthy.

69. It is relevant to note that the appellant/ A-2 had some injuries, found at the time of his arrest. Though the said injuries were of minor nature, even then, the appellant/ A-2 could not give any satisfactory explanation with regard thereto. The recovery of various articles at the instance of the appellants, that too, immediately after the incident, goes a long way in proving the guilt of the appellants. The possession of the fruits of the crime immediately after commission of such crime, gives rise to a strong and reasonable presumption that the party in whose possession they were found, was the real offender, unless he accounts for such possession in some way consistent with his innocence. The force of the rule of presumption depends upon the recency of the possession as related to the crime. If there is considerable interval of time, the presumption will be weakened. However, if the goods are of such kind as in the ordinary course such things frequently change hands, it is not possible to fix any precise period.

70. In the case in hand, the appellants could not give any explanation as to how they came in possession of various gold ornaments and other articles belonging to the family members of PW-1. In the facts and circumstances of the case, illustration (a) to Section 114 of the Evidence Act is fully applicable. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon and causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished, shall not be less than seven years. It is necessary to prove that, at the

time of committing robbery, the offender was armed with deadly weapons.

71. The present case is one of robbery and double murder, wherein, the acts of the accused persons were heinous as they brutally killed two persons, without any regard for human life. While committing the offence, the accused caused grievous injuries to deceased 1 and 2 with iron rods/ M.Os.1 and 2 in order that the injuries facilitate robbery within the meaning of Section 390 IPC. Thus, the offence under Section 392 r/w.397 of IPC is attractive, but not Section 394 of IPC. In the case in hand, A-1 and A-2, after committing robbery, left with booty. While running away from the house of PW-1, the direct witness/PW-6 saw both of them running with the bags. The other circumstantial evidence that the finger prints on the show-case of PW-1's residence in which gold ornaments are placed, were secured and the expert also confirmed that the said finger prints belongs to A-1 and A-2. The clothes of accused were sent to RFSL and it was found that there were human bloodstains on those clothes. The accused have not explained as to how bloodstains were available on the clothes wore by them. The weapons used for commission of offence were seized from the scene of offence immediately after the offence. The gold ornaments were recovered from A-2, basing on the confession of A-1. PW-6, who is a direct witness, had seen A-1 and A-2 running away from the house of PW-1 by holding bags. All these circumstances establish the presence of accused at the scene of offence.

72. The chain of circumstances when grouped together, establishes that it is the appellants, who have committed the offence. The circumstantial evidence in corroboration with the medical evidence, the weapons used and the manner in which the attack was made, clearly establish that the appellants intended to cause death of the inmates of the house of PW-1, which fulfills the essential ingredient of the offence under Section 300 IPC, punishable under Section 302 of IPC. Accordingly, the prosecution has established the cause of death of the deceased persons and it linked the same with the accused through circumstantial evidence, in corroboration with medical evidence, leaving no doubt to conclude that A-1 and A-2 have committed the offence. Accordingly, the learned trial Court, after considering the prosecution evidence and the material before it including the scientific evidence, has rightly convicted the appellants for the offences mentioned above.

73. In view of the above discussion, we find no merit in the present appeal and the same is accordingly dismissed. Pending miscellaneous applications, if any, shall stand closed.

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2018(3) L.S. 119 (Hyd.)

J U D G M E N T

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Dr.Justice
B. Siva Sankara Rao

Namineni Audi Seshaiah ..Petitioner
Vs.
Numburu Mohan Rao ..Respondent

EVIDENCE ACT, Sec.45 – CIVIL PROCEDURE CODE, Secs.94(e) & 151 – I.A. filed by Revision petitioner/ Defendant to send disputed pronote to an expert to ascertain age of ink in signatures of petitioner and recitals in pronotes was not allowed by Trial Court – Hence instant Civil revision.

Held – Direction to lower court to direct defendant to deposit Rs.20,000 and send document to Nutron Activation Analysis, BABC, Mumbai which is a Central Government Organization where facility of determination of age of ink available for its determination - Civil Revision Petition is allowed.

Mr.Kuriti Bhaskara Rao, Advocates For the Petitioner.
Mr.Uma Shankar Nemikanti, Advocate for the Respondent.

C.R.P.4656/2018 Date:25-9-2018

. The revision petitioner is the defendant in OS.No.228 of 2014 on the file of learned V Additional District Judge, Nellore. It is a suit based on 4 pro-notes said to have been executed by the defendant in favour of the plaintiff viz., 2 pronotes dated 04.02.2012 for Rs.10,00,000/- each and another pro-note of Rs.10,00,000/- on 09.03.2012 and another pronote of Rs.5,00,000/- on 13.08.2012 and that despite demands having failed to pay having issued cheque bearing No.374451 dated 17.06.2014 of Rs.50,00,000/- towards so called part payment out of it and the cheque later returned dishonoured and thereby entitled to the suit amount claimed of total Rs.58,00,332/- with interest on Rs.35,00,000/- from date of suit and for costs etc., is the sum and substance with supporting averments.

2. The defendant contested by filing written statement by denying the said averments with the say that the defendant never had any such necessity to borrow such huge amounts on the alleged dates. It was in relation to the venture of his son at Bangalore, the plaintiff's son had some disputes and the plaintiff, his son and one Aluru Srinivas Reddy colluded together and created and fabricated the documents referred and relied in the plaint of the present suit and in another suit filed against the defendant's son. The defendant is an agriculturalist and lives by its income and entitled to the benefit of Act No.4/38 otherwise and there is no cause of action for the suit hence to dismiss. Leave about

other contentions, the main contention of defendant is those are fabricated documents to say he never admitted execution of pro-notes and signed or received of amounts thereunder and also giving of cheque in question.

3. In the factual scenario I.A.No.122 of 2018 filed by the defendant before the trial Court under Section 94(e), 151 CPC and Section 45 of the Evidence Act to send the disputed pronote to an expert to ascertain the age of the ink in the signatures of the petitioner and the recitals in the pro-notes by saying suit claim based on the so called pro-notes are fabricated documents and by misusing the transactions between the plaintiff's son Venkateswara Rao in fabricating the suit pro-notes and thereby those are to be sent to expert to determine the age of the ink found in the signatures of him and of the alleged attestors and the recitals in the body of the pro-notes.

4. The counter filed by the plaintiff in opposing the petition before the trial Court is with contest of the petitioner/defendant borrowed amounts and executed the pro-notes. In the written statement he admitted the signatures but for contentions of plaintiff misused the transactions between the plaintiff and the son of the defendant, the suit pro-notes were executed in the year 2012 and after lapse of 6 years the age of the ink cannot be determined and even if such facility available, it cannot be sent for determination, in the cross examination of the defendant he admitted as DW.1 the signatures on the pronotes and that he is not in the habit of signing on blank pronotes and hence there is no need to sent suit pro-note to determine the age of the ink and placed reliance on the expression of this Court in **Kambala Nageswara Rao Vs. Kesana Bala Krishna (**2014 (1) ALD 521). The impugned order of the learned trial Judge is in dismissing the application with the observation that the contention of the defendant's counsel of plaintiff fabricated the suit pro-notes by making use of blank signed pro-notes containing the signatures of the defendant in respect of transaction between the plaintiff and son of defendant Venkateswara Rao. It is observed of the contest of other side is there is no procedure to be determined the age of the ink and even if there is such facility it leads to several complications, that the ink might have been manufactured or pen might have been manufactured long back and it was used after long time that is before using the same. Due to lapse of 6 years it is not possible to determine the age of ink as observed in the above expression of **Kambala supra**.

5. It is impugning the same the present revision is filed with the contentions in the grounds of revision the impugned dismissal order of the trial Judge is unsustainable and the proposition laid down in the expression of **Kambala supra** no way applicable to the facts on the case of hand as it is the contention of the petitioner/defendant of never borrowed any amount from plaintiff and plaintiff has no capacity to arrange such huge amounts and the so called documents inserted with words on the printed pro-note, the defendant given the

pro-note as surety during the business of plaintiff and son of defendant who were doing real estate business at Bangalore. The trial Judge should have been thereby considered the request instead of dismissal more particularly from the written statement contest also for the fact plaintiff admitted in his cross examination as PW.1 of the date of issuance of pro-note and filling of pro-note are not co-relating in seeking thereby to send to expert as necessitated.

6. The respondent even served and proof filed failed to attend. Heard learned counsel for the petitioner and taken as heard to revision respondent/plaintiff.

7. The learned counsel for the petitioner placed reliance on the expression of the Apex Court in **T.Rajalingam @ Sambam v. State of Telangana (**2017 Law suit (Hyd) 23 dated 19.01.2017) where it is in a cheque bouncing case from the defence of cheques given in the year 2007 and those were time barred and those were tampered by showing as if given in 2012 more than 5 years and thereby documents are to be send to expert for comparison and determination of the age of ink. It is observed that when the dispute as to the tampering with antedate and determination of age of ink that is valuable right of accused to establish by defence evidence and once wants to do so as held by this Court in **M/s. S.K. Health Care Formulations Pvt. Ltd v. M/s.Globe Glass Containers (**2016 (3) ALT (Crl.) 397) relying upon the expression of the Apex Court in **T.Nagappa v. Y.R.Muralidar (**AIR 2008 SC 2010); apart from the other settled expression in **M.S.Narayana Menon v. State of Kerala (**AIR 2006 SC 3366) relied upon in **Krishna Janardhan Bhat v. Dattatraya G.Hegde (**2008 (4) SCC 54) that was referred and explained by the three Judge Bench in **Rangappa v. Sri Mohan (**2010 (11) SCC 441) in relation to the reverse onus burden on the accused the Court has to afford an opportunity by preponderance of probabilities to rebut the presumptions available against him. It also referred the expression of **Kambala supra** where observed mere determination of age of ink, even there exists any facility for that purpose; cannot, by itself, determine the age of the signature and thereby no purpose be served by sending the disputed cheques which contain the admitted signatures of the accused and also referred the expression of the Punjab and Haryana High Court in **Yash Pal v. Kartar Singh (**AIR 2003 P&H 344) held that age of the ink cannot be determined by expert and the expression of the Madras High Court in **A.Inayathulla v. A.Ramesh (**2015 Lawsuit Mad 807), of age of ink is not determinable to consider the application of accused to send the disputed cheque to determine the age of ink. It referred earlier expression in **Elumalai v. Subramani (**2011 3 CTC 616) of it is possible to discover age of the ink from the reputed authors who are experts in the field, however the procedure is to be evolved for experiment with latest technology for achieving improvement on the subject. The Government has to provide necessary latest infrastructures in the Document Division of the Forensic Sciences Laboratory and also allot necessary funds for the constitution of sophisticated laboratory to elect

nondestructive technique.

8. In fact in 1964 the Supreme Court rendered decision in **Shashi Kumar Banerjee's Case** saying the expert had stated that the determination of the age of writings and ink could be ascertained definitely by a chemical test and once even prior to 1964, chemical test were in application to find out age of ink. Now, the science in this branch has prospered to considerable dimensions and it cannot hereafter be contended that it is not possible to ascertain the age of the ink by scientific method. In **A.Inayathulla supra** while referring to **Elumalai supra**, referred further **Yash Pal supra** of Punjab High Court that was followed in another Single Judge expression of Madras High Court in **S.Gopal v. D.Balachandran (**2008(1) Mad. LJ (Cri) 769), in saying age of the ink cannot be determined by the expert with scientific accuracy even does not mean not at all possible.

9. In **A.Inayathulla supra**, it also referred another expression of the Madras High Court in **V.Makesan v. T.Dhanalakshmi (**2010(2) Mad LJ (Cri) 762), where in a cheque bouncing case regarding dispute on the age of the ink of no expert in that field to give opinion by adopting any scientific method and also referred other expressions of the Madras High Court in **A.Sivagnana Pandian v. M.Ravichandran (**2011 (2) Mad LJ (Cri) 595 at para-32) and **A.Devaraj v. Rajammal (**2011(3) Mad LJ(Cri) 440), where the Madras High Court took the leaf of the disputed documents to be send to determine the age of the ink to the Central Forensic Department, Hyderabad, by referring to the earlier expression in **R.Jagadeesan v. N.Ayyasamy (**2010 (1) CTC 424), which referred earlier expression in **S.Gopal supra** and it is observed in **A.Inayathulla supra** and **A.Devaraj supra**.

10. It is observed in **A.Inayathulla supra,** another expression of the Madras High Court in **K.Vairavan v. Selvaraj (**2012(5) CTC 596), and that though there is scientific method available, there is no expert available who can scientifically examine particularly at the Forensic Science Department of the Government of Tamilnadu. The Central Forensic Sciences Laboratory, Hyderabad, expert attended the Tamilnadu Judicial Academy to address the officials also stated that no expert is available there had and the fax message received from Assistant Director of Central Forensic Sciences Laboratory, Hyderabad, of there is no validated method in their laboratory to undertake examination to determine the relative or absolute age of the ink of the writings or signatures. It is observed in **A.Inayathulla supra**, by referring to the expression in **R.Jagadeesan supra** that there is one institution known as Nutron Activation Analysis, BABC, Mumbai, where there is facility to find out the approximate range of the time, during which the writings would have been made and it is a Central Government Organization. It was concluded in **A.Inayathulla supra** therefrom of no purpose that could be served in sending the cheque in question to Government handwriting expert Tamilnadu.

11. In **Rajalingam supra** referring to the

above it is observed at Para 10 as follows:

"10. In fact this Court relied upon the Apex Courts expression in **Shashi Kumar Banerjee v. Subodh Kumar Banerjee (**AIR 1964 SC 529 at 537) observed as follows:

Finally we may point out that the expert admitted in his evidence that it was only by a chemical test that it could be definitely stated whether a particular writing was of a particular year or period. He also admitted that he applied no. chemical tests in this case. So his opinion cannot on his own showing have that value which it might have had if he had applied a chemical test. Besides we may add that Osborn on "Questioned Documents" at p. 464 says even with respect to chemical tests that "the chemical tests to determine age also, as a rule, are a mere excuse to make a guess and furnish no. reliable data upon which a definite opinion can be based.

It further observed that the time and place of execution of promissory note in dispute including as to difference in ink, opinion of handwriting expert can be sought for under Section 45 of the Act and such opinion is not totally irrelevant for adjudication of the dispute from the opinion sought for determining the age of the disputed handwriting, it is crystal clear of the handwriting as to the year of writing can be given by expert opinion is the conclusion before the Supreme Court in its approving to consider way back in 1964 and referring to it way back in 1994 this Court held opinion as to age of writing or signature can be sought from the expert. It is no doubt in relation to a civil dispute."

12. From this coming to **Kambala Nageswara Rao supra**, what it is observed even facility available on facts no purpose served by referring to the expression of the Karnataka High Court in **Ishwar v. Suresh (**2010 CrLJ 1510).

13. It is observed at Para 12 even therefrom once the Apex Court expression is very clear that an expert opinion as to determine the age of writing of ink can be possible and to admit is relevant, it is premature to determine its evidentiary value as whether it can be basis or not and whether to serve as a piece of corroboration and if so to what extent is ultimately to be determined from the reasons assigned in the opinion of the expert as even opinion on handwriting is a developing science and not conclusive as reiterated by the Apex Court in the recent expression of the settled law in **SPS Rathore v. CBI (**2016 3 ALT (Crl) 307 at paras 27 to 30).

14. Further in view of the above expression in **A.Inayathulla supra** of no useful purpose can be served or no opinion can be possible are untenable and it is observed at Para 14 that the Apex Court in **Kalyani Baskar v. M.S.Sampoornam (**2007 1 SCC (Crl) 577) having set aside the order of the Magistrate upheld in revision of dismissing the application of the accused in a cheque bouncing case and allowed the request of the accused to send the disputed signatures to handwriting expert saying that is valuable right of defence, unless the Court thinks

that the object of the application itself is vexatious or with a delay tactics such request cannot be negated. Further the Full Bench expression of this Court in **Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu (died) per L.Rs. and Others (**2016 2 ALT 248) by referring to earlier Division Bench expression in **Janachaitanya Housing Limited Vs. Divya Financiers (**2008 3 ALT 409), observed that non-availability of contemporary relevancy and even from long gap between the admitted and disputed signatures not a ground to refuse nor as to any said Rules as to at which stage the application to be filed for each case to be determined on own facts it is thereby ultimately concluded in allowing the revision to entertain the application of accused by the learned Magistrate to send to determine the age of the ink.

15. No doubt there is another earlier single judge expression of this Court in **Takkella Radhakrishnaiah vs. Ganipaineni Nagaraju** in CRP.No.1698 of 2016 dated 23.12.2016 where **Kambala supra** referred besides Madras High Court **R.Jagadeesan supra** among others and stated that in the absence of scientific expert even if the arguments of the petitioner was to be considered on age can be determined for the impracticability involved it cannot be a futile exercise. Same is quoted by the learned selfsame Judge in another CRP.No.1079 of 2017 dated 03.03.2017 and from the said expression the technology is available and in the absence of facility it is a futile exercise.

16. As referred in **Rajalingam supra** it is crystal clear of Para 4 of **Inayathulla supra** speaks referring in **Jagadeesan supra** of there is one institution known as Nutron Activation Analysis, BABC, Mumbai where the facility to find out the approximate range of the time during which the writings would have been made and that is also a Central Government Organization.

17. Once such is the case, the facility available and the expert is also available. Thus there is no meaning in arguing of no practical use or purpose or sending to determine age of the ink is a futile exercise.

18. Having regard to the above, this Civil Revision Petition is allowed by setting aside the order of the lower Court by restoring and allowing the application with a direction to the lower Court to direct the defendant to deposit Rs.20,000/- and send the document to the Nutron Activation Analysis, BABC, Mumbai which is a Central Government Organization where the facility of determination of age of the ink available for its determination, on petitioner's ascertain the full and correct address and availability of the facility and from deposit of the amount.

Miscellaneous petitions, if any, shall stand closed

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2018(3) L.S. 125 (Hyd.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
Challa Kodanda Ram

A. Rama Mohan Reddy & Ors., ..Petitioners

Vs.

A. Vijaya Kumar & Anr., ..Respondents

EVIDENCE ACT,Sec.47 – Whether it is permissible for a Court to recall a plaintiffs' witness, on an Application, at the stage of arguments, to fill–in a gap in the evidence and whether provisions of Order 18 Rule 17 CPC permits such exercise.

Held - Law of Evidence is a substantive one and CPC being a procedural law, same is required to be in conformity with the substantive law - Recalling of witness at instance of the plaintiffs, that too, after completion of the evidence of the defendants and when matter is listed for arguments, to fill-up a gap, being impermissible, the order under Revision, allowing recall of a witness suffers from irregularity – Hence Civil Revision Petition is allowed.

C.R.P.No.1624/2018 Date: 28-9-2018

Mr.P. Narahari Babu, Advocate for the Petitioners.

Mr.A. Hanumanth Reddy, Advocate for the Respondents.

J U D G M E N T

This Revision is directed against the order dated 24.01.2018, whereby and whereunder the learned Senior Civil Judge at Penukonda allowed I.A. No. 17 of 2018 in O.S. No. 38 of 2007, taken out by the respondents – plaintiffs to recall P.W.5 for further examination to prove Ex.A10.

Petitioners herein are the defendants against whom the respondents – plaintiffs filed the above said suit seeking declaration of their right over the suit property. During the course of examination, when Ex.A10 – permanent Khararu Dasthaveju was confronted to D.W.1, he denied the signature thereon. The case of the respondents is that P.W.5 is one of the attestors of Ex.A10, but he was not confronted with the said document due to oversight, at the time of his examination. Hence, it became necessary to recall P.W.5. The trial Court, on finding that Ex.A10 was not confronted to P.W.5 by the respondents-plaintiffs, due to oversight, opined that filing of the aforesaid I.A. cannot be said to be malice and hence, allowed the same by the order under Revision.

Learned counsel for the petitioners submits that the evidence of the respective parties was closed and at the stage of arguments, the respondents – plaintiffs filed the present

I.A. under Order 18 Rule 17 of the Code which is impermissible in law.

Learned counsel for the respondents vehemently opposes the Revision. Placing reliance on the judgment of Punjab & Haryana 4 High Court in **O.Prakash v. Sarupa (**AIR 1981 P H 157)**,** learned counsel submits that the Court has ample power to recall the witness. According to her, for the mistake on the part of the counsel, the respondents – plaintiffs' cause cannot be put to jeopardy. The learned counsel further submits that as per the provisions of Section 47 of the Indian Evidence Act, 1872, it is absolutely necessary to prove a document. In support of her contentions, the learned counsel also places reliance on the judgment of this Court in A.S. No. 294 of 1930 **(Suryanarayana v. Achamma).**

It is to be borne in mind that the Civil Procedure Code prescribes the method and manner of conducting trial of the cases and in particular, the order of production of witnesses and leading of evidence. Though there is a provision for examination–in–chief, cross-examination and thereafter, re-examination, the provision contained under Order 18 Rule 17 CPC is an exception to allow recalling of witness for cross-examination.

Order 18 Rule 17 reads as under:

"**Court may recall and examine witness:-** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."

If one examines Order 18 Rule 17, one would find that the discretion of the Court to recall a witness, who was examined earlier and put such questions to him as the Court deems fit, is limited; in the sense, firstly, if the Court seeks any clarification, such power is to be exercised, which means that the same is not available to the parties to the proceedings; secondly, recall of a witness for re-examination is subject to the Law of Evidence for the time being in force. So far as the examination of witnesses under the Indian Evidence Act is concerned, it may be noted, the same is governed by the provisions of Section 135, 136, 137 and 138 thereof.

Admittedly, the suit is at the stage of arguments. The reason stated in the affidavit filed in support of the present Application by plaintiff No.2 was that Ex.A10 was executed by the defendants in the presence of his father and other witnesses and one of the attestors is P.W.5, but he was not confronted with the said document by mistake and oversight. It was further stated that since D.W.1 had denied execution of the same and appending his signature thereon, in his cross-examination, it had become necessary to recall P.W.5, as it is an extremely important piece of evidence supporting the claim of the plaintiffs. It is only by inadvertence, P.W.5 was not confronted with the document and as such, it had become necessary for the plaintiffs to seek recall of P.W.5 for the limited

purpose, as stated above.

The case of the petitioners in the I.A., as can be seen from the above, is that, Ex.A10 document is of great importance to prove their case. The fact that Ex.A10 and its contents are required to be proved is evident from the pleadings and submissions of the respondents-plaintiffs. In other words, in the assessment and judgment of the respondents, there is a gap in the evidence with respect to Ex.A10 which requires to be bridged.

In this factual backdrop, the question which requires to be considered is 'Is it permissible for a Court to recall a plaintiffs' witness, on an Application, that too, at the stage of arguments, to fill–in a gap in the evidence and whether the provisions of Order 18 Rule 17 CPC permits such exercise'.

As noticed supra, Order 18 Rule 17 is hedged with a condition that recall of a witness is permissible subject to the provisions of the Indian Evidence Act. The method and manner, the sequence of examination of a witness i.e., examination-in-chief, cross-examination and re-examination is governed by Sections 135, 136, 137 and 138 of the said Act. It may be noted that Law of Evidence is a substantive one and the CPC being a procedural law, the same is required to be in conformity with the substantive law. Order 18 Rule 17 makes it clear that recalling of a witness is circumscribed by the provisions of the Evidence Act. It may also be noted that the Evidence Act, by itself, does not use the word 'recalling of a witness'' except for re-examination. In other words, recalling of a witness, as provided under Order 18 Rule 17 is required to be understood as recalling of a witness for reexamination which should be in conformity with the provisions of the Evidence Act.

In those circumstances, the recalling of witness at the instance of the plaintiffs, that too, after completion of the evidence of the defendants and when the matter is listed for arguments, to fill-up a gap, being impermissible, the order under Revision, allowing recall of a witness suffers from irregularity.

The Civil Revision Petition is hence, allowed, setting aside the order dated 24.01.2018 in I.A. No. 17 of 2018 in O.S. No. 38 of 2007 on the file of the Court of the Senior Civil Judge at Penukonda. No costs.

Consequently, the miscellaneous Applications, if any stand closed.

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2018(3) L.S. 128 (Hyd.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
T.Amarnath Goud

Tirupathi Subhash & Ors., ..Petitioners
Vs.
The State of A.P., & Ors., ..Respondents

A.P. LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, Sec.8 - Writ petition is filed seeking to declare G.O. served on petitioners as illegal and arbitrary.

Held - It is not for this Court to give a finding with regard to disputed question of facts as to who is in possession of subject lands, but as per the record, it is obvious that paper possession (symbolilc possession) is in favour of 5th respondent - Unless petitioners establish their title, they cannot question action of Government in issuing the impugned G.O., alienating the subject lands in favour of 5th respondent association for allotting house sites to its members - Writ petition stands dismissed.

Mr.Shafath Ahmed Khan, Advocates for the Petitioners.
Government Pleader for Revenue, Advocate for the R1 to R4.
Mr.P. Roy Reddy, Advocate for the R5.

W.P.No.10368 /2007 Date:28-9-2018

J U D G M E N T

This writ petition is filed seeking to declare G.O.Ms.No.1147 Revenue (Assignments-II) Department dated 15.06.2005, which was served on the petitioners on 03.05.2006 and also the action of the respondents 1 to 4 in allotting the land in Sy.Nos.1684, 1685 and 1686 admeasuring Ac.2.30 guntas, situated in Sitaram Nagar Colony, Nizamabad belonging to the petitioners to the 5th respondent as illegal, arbitrary and against the principles of natural justice and consequently set aside the same.

2. It is the case of the petitioners that they are the owners of the open plots in Sy.Nos.1684, 1685 and 1686, situated at Sitaram Nagar Colony, Nizamabad. They purchased the said plots from the original owner B.Satyanarayana and others through registered sale deeds in the year 1981 onwards. Originally one B.Gangaram (Golla Gangaram) and his brother Laxmikantha Rao are the owners and pattadars of the land admeasuring Ac.2.19 guntas in Sy.Nos.1684, Ac.1.38 guntas in Sy.No.1685 and Ac.2.36 guntas in Sy.No.1686, total Ac.7.07 guntas. They furnished declaration under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 in respect of their lands in Sy.Nos.1684, 1685 and 1686 along with their other lands. The Special Deputy Collector, Nizamabad has determined the holding vide proceedings No.1245/NZB/75 dated 29.11.1975 declaring that said G.Gangaram and his brother Laxmikantha Rao are having equal share in the above said land as owners. Later

on, their successors, Satyanarayana and others have partitioned the land vide Memorandum of Partition dated 20.02.1978 and 08.03.978. They made the said land into plots and sold away the same during 1980-83 to different persons through registered sale deeds. The petitioners also purchased the plots from the successors of Gangaram and Laxmikantha Rao through registered sale deed vide document No. 1539/81, dated 9.04.1981 etc., and they are in possession of the land.

3. It is further stated that while the matter stood thus, on 18.03.2006, the officials of 4th respondent have come to the above land and tried to demarcate the same. On enquiry, the petitioners came to know that the Government has allotted the land to 5th respondent under the pretext that the land belongs to the Government. Immediately, the petitioners made a representation to the 4th respondent, stating that the land in Sy.Nos.1684, 1685 and 1686 belong to them and the Government has nothing to do with the land. The 4th respondent informed the petitioners that the Government has already allotted the land to an extent of Ac.2.30 guntas in Sy.No.1686 KK, situated at Nizamabad in favour of 5th respondent vide G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005. The 4th respondent has also issued Memo in Lr.No.A5/18253/99, dated 23.08.2005, directing the 5th respondent to pay the market value at the rate of Rs.275/- per Sq.yard, total Rs.36,60,250/-. It is stated that the G.O., was issued on a false report filed by the District Collector, Nizamabad that the land belongs to the Government. The 4th respondent has also collected revenue tax from the original pattadars. During the life time of the original pattadars G.Gangaram and his brother Laxmikantha Rao and over a period of 3 decades, they were in possession of the land i.e., prior to 1975 and also after 1975. Thereafter, their successors were in possession of the land as owners and they perfected their title by prescription. Since 1981 onwards, the petitioners are in possession of the land by virtue of registered sale deed stated supra. Now the Government cannot allot the land of the petitioners to the 5th respondent without acquiring the same under Land Acquisition Act. The 2nd respondent did not give any prior notice to the petitioners or other purchasers who constructed the houses before sending the report to the Government.

4. The respondents 1 to 4 filed a counter affidavit, contending that as per the revenue records, the lands are Government lands and names of Golla Yellaiah and Gangaram recorded as occupants in possession column. Though G.Gangaram filed declaration under Section 8 of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, declaring that the above lands are in his possession, but he does not get any right to become owner of Government lands. More over, the declarant Gangaram admitted in his statement that the above lands are Kharij Khata and they are only in his possession as seen from the ceiling file bearing No.CC/1246/Nzb/75. The notices in Form No.7 issued under A.P. Land Encroachment Act, 1905 dated 02.11.1999 were served on Yashwant Rao and Vasanth Kumar, the sons of late Golla Gangaram on 14.11.1999 and they gave reply to the

said notice on 23.11.1999. Subsequently considering the same, order was passed under Section 6 of Land Encroachment Act, 1905 vide reference No.A5/18523/99, dated 26.06.2000 and the same was served on the sons of the declarant on 8.07.2000. The Mandal Revenue Inspector took the lands in Sy.No.1685, in an extent of Ac.1.30 guntas and Sy.No.1686, in an extent of Ac.2.30 guntas into custody under a panchanama on 23.10.2000. Subsequently at the request of the 5th respondent, proposals were sent to the Government for allotment of the land in Sy.No.1686 in an extent of Ac.2.30 guntas to the 5th respondent on payment of market value through the District Collector, Nizamabad and Chief Commissioner of Land Administration, A.P., Hyderabad. Thereafter, considering the issue, the Government allotted the land in an extent of Ac.2.30 guntas in Sy.No.1686 to the 5th respondent on payment of market value vide G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005. Accordingly, the 5th respondent remitted the entire market value of Rs.36,60,250/- to the Government and thereafter, possession of the above land has been handed over to 5th respondent on 2.03.2006 under a cover of panchanama.

5. The 5th respondent filed a counter affidavit, contending that the Government of Andhra Pradesh issued G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005 allotting an extent of Ac.2.30 guntas of land in Sy.No.1686 KK of Nizamabad in his favour in terms of Rule 10 of the A.P. (TA) Alienation of State Land Rules, 1975 and that the petitioners have no *locus standi* to assail the said G.O., and if at all they have any grievance, it is for them to establish and prove their claims before a competent civil Court. It is further stated that one Gangaram who is shown to be the occupant of these lands in the pahanies from 1969-70 to 1997-98 was an un-authorised occupant, upon whom encroachment tax was imposed under the A.P. Land Encroachment Act, 1905. He further contended that mere filing of declarations under the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 does not confer any right or title in respect of any land and that said Gangaram made a categorical admission before the Land Reforms Tribunal, Nizamabad in C.C.No.1246/NZB/75 admitting that the lands were Kharij Khata (Government land) and he was only in occupation of the same. When the persons through whom the petitioners are alleged to have derived title, did not have any right in respect of the land in question as they could not have passed on better title than what they originally possessed and said Gangaram was not in possession of the land in question subsequently. There are no merits in the writ petition and therefore prayed to dismiss the same.

6. Heard.

7. Admittedly, the petitioners have purchased the subject land vide registered sale deeds way back in the year 1981. Initially, the documents were kept pending due to deficiency of stamp duty and vide proceedings dated 2.11.1983 of the District Collector, Nizamabad, defivient stamp duty was collected and documents were released in favour of the petitioners and since then,

they are in peaceful possession and enjoyment of the open plots. No notice is said to have been issued to the petitioners by the official respondents before initiating any action adverse to the interest of the petitioners.

8. Admittedly, the vendors of the original owners who are the successors of the occupants of the subject lands, though filed their declarations before the concerned authority under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, are only occupants and cultivating the lands, but they are not owners as per the revenue records i.e., kasra pahani of the year 1954 onwards. It is evident from the ownership column that the subject land is a Government land and the persons in occupation are the declarants. In view of the fact that the vendors of the petitioners themselves have no alienable right and title, they cannot transfer better title in favour of the petitioners. The petitioners cannot purchase the Government lands from un-authorised persons and the sale deeds cannot confer any title upon them whether they are registered or un-registered. The doctrine of *caveat emptor* comes in the way of the petitioners' claim. The petitioners are duty bound to verify the antecedents of title before they could enter into the sale transaction with the owners of the land.

9. In so far as the action of the District Collector, Nizamabad in ordering collection of deficit stamp duty in respect of the sale deeds is concerned, it cannot be taken as shelter for conferring title upon the petitioners as there cannot be a promissory estoppel against the State if its employee acts contrary to the provisions of law. This Court in **The State of Andhra Pradesh V. Bheemunipatnam Co-operative Building Society Limited (**2004 (5) ALD 748)held:

"Promissory estoppel against the State cannot be applied when an officer of the State has acted directly contrary to the general instructions issued by the Government. In such cases, the plea of promissory estoppel is not available as the Doctrine of ultra vires becomes applicable. Promissory Estoppel cannot legitimise an ultra vires act of any governmental authority."

10. The vendors of the petitioners have no *locus standi* to alienate the Government land in favour of the petitioners. One can possess the Government lands either by way of getting pattas regularized by the competent authority and the other mode is to get a decree and judgment by the competent civil Court by filing a suit for declaration of title. The petitioners have not invoked any of these methods for obtaining title upon the Government lands. All through, the petitioners were under the impression that they are holding alienable right and title upon the subject lands. The petitioners possession on land by virtue of the above sale deeds would be un-authorised and is by way of adverse possession.

11. The Government never recognized the petitioners as owners in respect of the subject lands and on the other hand, the Government has taken all precautions to protect the lands and have issued notice

to the legal heirs of the original declarants under the Land Encroachment Act, 1905 vide notice dated 2.11.1999, which was served on 14.11.1999, for which they filed reply dated 23.11.2000 and final orders of eviction dated 26.06.2000 were passed by the competent authority and also by a separate Memo dated 22.6.2000 was issued rejecting the request of the declarants that mere possession of lands by them cannot confer any right as pattadars and the above lands are Karij Khatha (Government lands). Later, the Government by way of a panchanama dated 8.11.2000, taken possession of the lands. The petitioners, who are successors in interest or the legal heirs of the declarants/vendors have not chosen to challenge the encroachment proceedings of the year 2000 and allowed it to become final.

12. The Government, upon the application filed by the 5th respondent and after due enquiry and upon taking into consideration all the aspects, alienated the subject lands in favour of the 5th respondent by collecting the market value of Rs.36,60,250/- for allotting 105 house sites in favour of members of 5th respondent association and issued G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005 and by way of a panchanama dated 2.3.2006 hand over possession to the 5th respondent association. Sy.No.1686 KK is not a sub division of survey number, but it denotes Karij Khata i.e., Government land. It is not for this Court to give a finding with regard to the disputed question of facts as to who is in possession of the subject lands, but as per the record, it is obvious that paper possession (symbolilc possession) is in favour of the 5th respondent.

13. Unless the petitioners establish their title, they cannot question the action of the Government in issuing the impugned G.O., alienating the subject lands in favour of the 5th respondent association for allotting house sites to its members.

14. For the reasons stated above, no relief can be granted under Article 226 of Constitution of India as this Court found no illegality in issuing the impugned Government Order. Hence, the writ petition is dismissed. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

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19. It is further propounded that the directions in certain paragraphs of the judgment in **Rajesh Sharma** (supra) entrusting the power to dispose of the proceedings under Section 498-A IPC by the District and Sessions Judge or any other senior judicial officer nominated by him in the district in cases where there is settlement, are impermissible, for an offence under Section 498-A is not compoundable and hence, such a power could not have been conferred on any District and Sessions Judge or any senior judicial officer nominated by him. Elaborating the said submission, it is canvassed that the High Court is empowered under Section 482 CrPC to quash the proceeding if there is a settlement between the parties. Learned Amicus Curiae further submitted that the recovery of disputed dowry items may not itself be a ground for denial of bail which is the discretion of the court to decide the application of grant of bail in the facts and circumstances of the case and thus, this tantamounts to a direction which is not warranted in law. Criticism has been advanced with regard to the direction in paragraph 19(v) which states that for persons who are ordinarily residing out of India, impounding of passports or issuance of Red Corner Notice should not be done in a routine manner. It is urged that if an accused does not join the investigation relating to matrimonial/ family offence, the competent court can issue appropriate directions to the concerned authorities to issue Red Corner Notice which will depend on the facts of the case.

20. Learned Amicus Curiae has further put forth that dispensation of personal appearance of outstation family members is unwarranted, for in a criminal proceeding, the competent court which deals with application of exemption should be allowed to exercise the judicial discretion and there should not have been a general direction by this Court. Certain suggestions have been given by the learned Amicus Curiae which we shall refer to at the relevant stage.

21. To appreciate the controversy, it is necessary to understand the scope of Section 498-A of IPC. It reads thus:-

"**498-A. Husband or relative of husband of a woman subjecting her to cruelty**.— Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

22. The said offence is a cognizable and non-bailable offence. This Court in **Arnesh**

Kumar v. State of Bihar and another (2014) 8 SCC 273)has observed that the said offence which is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. The Court has taken note of the statistics under "Crime in India 2012 Statistics" published by the National Crime Records Bureau, Ministry of Home Affairs which shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A. Showing concern, the Court held that arrest brings humiliation, curtails freedom and casts scars forever and the police had not learnt its lesson which is implicit and embodied in the Criminal Procedure Code. Commenting on the police, the Court said:-"It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

23. The Court, thereafter, has drawn a distinction between the power to arrest and justification for the exercise of it and analysed Section 41 CrPC. Section 41 stipulates when police may arrest without warrant. The said provision reads as follows:-

"**41. When police may arrest without warrant.—**(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under subsection (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a

Magistrate."

24. Scrutinising the said provision, the Court held as under:-

"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

x x x x x

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

25. The learned Judges, thereafter, referred to Section 41-A CrPC which has been inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009). The said provision is to the following effect:-

"**41-A. Notice of appearance before police officer**.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails

to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice."

Explaining the said provision, it has been ruled:-

"9. …The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

The Court further went on to say that:-

"10**.** We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued."

The directions issued in the said case are worthy to note:-

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused,

be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

26. The aforesaid decision, as is perceptible, is in accord with the legislative provision. The directions issued by the Court are in the nature of statutory reminder of a constitutional court to the authorities for proper implementation and not to behave like emperors considering the notion that they can do what they please. In this context, we may refer with profit to a passage from **Joginder Kumar v. State of U.P and others** (1994) 4 SCC 260):-

"20. … No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

27. Again, the Court in **Joginder Kumar** (supra), while voicing its concern regarding complaints of human rights pre and after arrest, observed thus:-

"9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively;

of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first—the criminal or society, the law violator or the law abider…."

28. In **D.K. Basu v. State of W.B.** (1997) 1 SCC 416), after referring to the authorities in **Joginder Kumar** (supra), **Nilabati Behera v. State of Orissa and others** (1993) 2 SCC 746)and **State of M.P. v. Shyamsunder Trivedi and others** (1995) 4 SCC 262), the Court laid down certain guidelines and we think it appropriate to reproduce the same:-

"(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of

approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

29. In **Lalita Kumari v. Government of Uttar Pradesh and others** (2014) 2 SCC 1), the Constitution Bench, referring to various provisions of CrPC, adverted to the issue of conducting a preliminary enquiry. Eventually, the Court opined that the scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence and, thereafter, proceeded to state thus:-

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

30. From the aforesaid, it is quite vivid that the Constitution Bench had suggested that preliminary enquiry may be held in matrimonial/family disputes.

31. In **Rajesh Sharma** (supra), as is noticeable, the Court had referred to authorities in **Arnesh Kumar** (supra) and **Lalita Kumari** (supra) and observed that:-

"16. Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable. (Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India : (2012) 10 SCC 603, Para 52; SCBA v. Union of India : (1998) 4 SCC 409, Para 47; Union of India v. Raghubir Singh (d) by Lrs. : (1989) 2 SCC 754, Para 7; Dayaram v. Sudhir Batham

: (2012) 1 SCC 333)Just and fair procedure being part of fundamental right to life, (State of Punjab v. Dalbir Singh : (2012) 3 SCC 346, Paras 46, 52 & 85)interpretation is required to be placed on a penal provision so that its working is not unjust, unfair or unreasonable. The court has incidental power to quash even a non-compoundable case of private nature, if continuing the proceedings is found to be oppressive. (Gian Singh v. State of Punjab : (2012) 10 SCC 303, Para 61)While stifling a legitimate prosecution is against public policy, if the proceedings in an offence of private nature are found to be oppressive, power of quashing is exercised.

17. We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on Petitions (September, 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.

18. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose."

32. After so stating, the directions have been issued which we have reproduced in paragraph 15 hereinabove.

33. On a perusal of the aforesaid paragraphs, we find that the Court has taken recourse to fair procedure and workability of a provision so that there will be no unfairness and unreasonableness in implementation and for the said purpose, it has taken recourse to the path of interpretation. The core issue is whether the Court in **Rajesh Sharma** (supra) could, by the method of interpretation, have issued such directions. On a perusal of the directions, we find that the Court has directed constitution of the Family Welfare Committees by the District Legal Services Authorities and prescribed the duties of the Committees. The prescription of duties of the Committees and further action therefor, as we find, are beyond the Code and the same does not really flow from any provision of the Code. There can be no denial that there has to be just, fair and reasonable working of a provision. The legislature in its wisdom has made the offence under Section 498-A IPC cognizable and non-bailable. The fault lies with the investigating agency which sometimes jumps into action without application of mind. The directions issued in **Arnesh Kumar** (supra) are in consonance with the provisions contained in Section 41 CrPC and Section 41-A CrPC. Similarly, the guidelines stated in **Joginder Kumar** (supra) and **D.K. Basu** (supra) are within the framework of the Code and the power of superintendence of the authorities in the hierarchical system of the investigating

agency. The purpose has been to see that the investigating agency does not abuse the power and arrest people at its whim and fancy.

34. In **Rajesh Sharma** (supra), there is introduction of a third agency which has nothing to do with the Code and that apart, the Committees have been empowered to suggest a report failing which no arrest can be made. The directions to settle a case after it is registered is not a correct expression of law. A criminal proceeding which is not compundable can be quashed by the High Court under Section 482 CrPC. When settlement takes place, then both the parties can file a petition under Section 482 CrPC and the High Court, considering the bonafide of the petition, may quash the same. The power rests with the High Court. In this regard, we may reproduce a passage from a three-Judge Bench in **Gian Singh** (supra). In the said case, it has been held that:-

"61. … Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim."

35. Though **Rajesh Sharma** (supra) takes note of **Gian Singh** (supra), yet it seems to have it applied in a different manner. The seminal issue is whether these directions could have been issued by the process of

interpretation. This Court, in furtherance of a fundamental right, has issued directions in the absence of law in certain cases, namely, **Lakshmi Kant Pandey v. Union of India (1984) 2 SCC 244)**, **Vishaka and others v. State of Rajasthan and others** (1997) 6 SCC 241)and **Common Cause (A Registered Society) v. Union of India and another** (2018) 5 SCC 1)and some others. In the obtaining factual matrix, there are statutory provisions and judgments in the field and, therefore, the directions pertaining to constitution of a Committee and conferment of power on the said Committee is erroneous. However, the directions pertaining to Red Corner Notice, clubbing of cases and postulating that recovery of disputed dowry items may not by itself be a ground for denial of bail would stand on a different footing. They are protective in nature and do not sound a discordant note with the Code. When an application for bail is entertained, proper conditions have to be imposed but recovery of disputed dowry items may not by itself be a ground while rejecting an application for grant of bail under Section 498-A IPC. That cannot be considered at that stage. Therefore, we do not find anything erroneous in direction Nos. 19(iv) and (v). So far as direction No. 19(vi) and 19(vii) are concerned, an application has to be filed either under Section 205 CrPC or Section 317 CrPC depending upon the stage at which the exemption is sought.

36. We have earlier stated that some of the directions issued in **Rajesh Sharma** (supra) have the potential to enter into the legislative field. A three-Judge Bench in **Suresh Seth v. Commissioner, Indore Municipal Corporation and others** (2005) 13 SCC 287)ruled thus:-

"5. … In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Assn. v. Union of India (1989) 4 SCC 187)(SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. …"

37. Another three-Judge Bench in **Census Commissioner and others v. R. Krishnamurthy** (2015) 2 SCC 796), after referring to **N.D. Jayal and another v. Union of India and others** (2004) 9 SCC 362), **Rustom Cavasjee Cooper v. Union of India** (1970) 1 SCC 248), **Premium Granites and another v. State of T.N. and others** (1994) 2 SCC 691), **M.P. Oil Extraction and another v. State of M.P. and others** (1997) 7 SCC 592), **State of Madhya Pradesh v. Narmada Bachao Andolan and another** (2011) 7 SCC 639)and **State of Punjab and others v.**

Ram Lubhaya Bagga and others (1998) 4 SCC 117), opined:- "33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

38. In the aforesaid analysis, while declaring the directions pertaining to Family Welfare Committee and its constitution by the District Legal Services Authority and the power conferred on the Committee is impermissible. Therefore, we think it appropriate to direct that the investigating officers be careful and be guided by the principles stated in **Joginder Kumar** (supra), **D.K. Basu** (supra), **Lalita Kumari** (supra) and **Arnesh Kumar** (supra). It will also be appropriate to direct the Director General of Police of each State to ensure that investigating officers who are in charge of investigation of cases of offences under Section 498-A IPC should be imparted rigorous training with regard to the principles stated by this Court relating to arrest.

39. In view of the aforesaid premises, the direction contained in paragraph 19(i) as a whole is not in accord with the statutory framework and the direction issued in paragraph 19(ii) shall be read in conjunction with the direction given hereinabove.

40. Direction No. 19(iii) is modified to the extent that if a settlement is arrived at, the parties can approach the High Court under Section 482 of the Code of Criminal Procedure and the High Court, keeping in view the law laid down in **Gian Singh** (supra), shall dispose of the same.

41. As far as direction Nos. 19(iv), 19(v) and 19(vi) and 19(vii) are concerned, they shall be governed by what we have stated in paragraph 35.

42. With the aforesaid modifications in the directions issued in **Rajesh Sharma** (supra), the writ petitions and criminal appeal stand disposed of. There shall be no order as to costs.

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2018 (3) L.S. 51 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Abhay Manohar Sapre &
The Hon'ble Mr.Justice
Vineet Saran

Dr. S.K. Jhunjhunwala ..Appellant
Vs.
Dhanwanti Kumar & Anr., ..Respondents

MEDICAL NEGLIGENCE - Appellant is a doctor by profession - Whether National Commission was justified in allowing respondent No.1's appeal by holding that appellant was negligent in performing the Surgery of Gall Bladder of respondent No.1 and, in consequence thereof, was justified in awarding Rs.2 lakhs by way of compensation to respondent No.1.

Held - Suffering of ailment by patient after surgery is one thing, which may be due to myriad reasons known in medical jurisprudence - Whereas suffering of any such ailment as a result of improper performance of the surgery and that too with degree of negligence on the part of Doctor is another thing - To prove case of negligence of a doctor, the medical evidence of experts in field to prove latter is required - Simply proving former is not sufficient - Respondent No. 1 was not able to prove that ailments which she suffered after returning home from hospital were a result of faulty surgery performed by the appellant - Appeal stands allowed.

J U D G M E N T

(per the Hon'ble Mr.Justice
Abhay Manohar Sapre)

1. This appeal is directed against the final judgment and order dated 01.09.2009 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission"), at New Delhi in First Appeal No. 93 of 2004 whereby the National Commission allowed the appeal filed by respondent No.1 and set aside the order dated 19.01.2004 of the State Commission, West Bengal, Kolkata in Complaint Case No.698/O/1997.

2. In order to appreciate the issue involved in the appeal, it is necessary to set out the relevant facts hereinbelow.

3. The appellant was the opposite party No.1 whereas the respondent No.1 herein was the complainant and respondent No.2 herein was the opposite party No.2 in the complaint out of which this appeal arises.

4. The appellant is a doctor by profession and is practicing in Calcutta since 1969. He is a qualified Surgeon having expertise, especially in gall bladder surgery. He obtained his MBBS degree from Banaras Hindu University in 1968 and thereafter went to England and obtained FRCS degree in 1976. He then worked for seven years in various hospitals in England as a Surgeon and returned to India in 1978 and settled in Calcutta. He was a visiting consultant to several Hospitals out of which one wasLife Line Diagnostic Center and Nursing Home

(respondent No.2 herein) at Calcutta where he used to perform operations on his patients.

5. Respondent No.1(complainant)a lady, who, at the relevant time, was residing in Calcutta felt pain in her abdomen in June 1996. She, therefore, consulted a local doctor but she did not get any relief. Therefore, she consulted Dr. Lakshmi Basu who, on examination, advised her to get some medical tests done such as Xray, PA Chest, Ultrasound of upper abdomen Endoscopy, Blood Tests etc. Respondent No.1, as advised, carried out these medical tests. On examination of the reports of respondent No.1, Dr. Basu opined that her Gall Bladder had two calculi in its lumen and the same could be cured only by operation. Dr. Basu accordingly advised respondent No.1 to undergo laparoscopic surgery from any good Surgeon and suggested the name of the appellant.

6. Respondent No.1, as advised, consulted Dr. S.K. Jhunjunwalathe appellant herein who, after her examination and also her medical test reports, agreed with the advise of Dr. Basu and accordingly advised respondent No.1 for undergoing Surgery of her Gall Bladder. The appellant also advised respondent No.1 to get herself admitted in respondent No.2's Hospital for undergoing Surgery.

7. On 07.08.1996, respondent No.1 got herself admitted in respondent No.2's Hospital as an indoor patient. On 08.08.1996 the appellant performed the laparoscopy and after that open surgery and removed the Gall Bladder of respondent No.1. Respondent No.1 was in the hospital for about a week or ten days for postoperative care and thereafter she was discharged.

8. In December 1997, respondent No.1 filed a complaint under Section 10 of the Consumer Protection Act, 1986 (for short, "the Act") against the appellant (opposite party No.1) and respondent No.2 (opposite party No.2) claiming compensation for the loss, mental suffering and pain suffered by her throughout after the surgery on account of negligence of the appellant in performing the surgery of her Gall Bladder on 08.08.1996. Respondent No.1, in substance, complained that firstly, she had never given her consent for performing general Surgery of her Gall Bladder rather she had given consent for performing laparoscopy Surgery only but the appellant performed general surgery of her Gall Bladder which resulted in putting several stitches and scars on her body, Secondly, even the surgery performed was not successful inasmuch as respondent No.1 thereafter suffered for several days with various ailments, such as dysentery, loss of appetite, reduction of weight, jaundice etc., Thirdly, in June 1997, she was, therefore, required to undergo another Surgery in Ganga Ram Hospital, Delhi for removal of stones which had slipped in CBD. It was alleged that all these ailments were incurred due to the negligence of the appellant, who did not perform the surgery properly and rather performed the surgery carelessly leaving behind for respondent No.1 only mental agony, pain, harassment and money loss and hence she filed a complaint to claim the reasonable amount of compensation under various heads as mentioned above.

9. The appellant filed his reply and denied the allegations made by respondent No.1 in her complaint. In substance, the appellant stated in his reply that he, after examining respondent No.1, advised her to go for surgery of Gall Bladder, which may even include removal of Gall Bladder. It was stated that consent of respondent No.1 for performing the laparoscopic cholecystectomy was duly obtained before performing the surgery. The appellant stated that after starting laparoscopic surgery, he noticed swelling, inflammation and adhesion on her Gall Bladder and, therefore, he came out of the Operation Theater and disclosed these facts to respondent No.1's husband and told him that in such a situation it would not be possible to perform laparoscopic surgery and only conventional procedure of surgery is the option to remove the malady. The husband of respondent No.1 agreed for the option suggested by the appellant and the appellant accordingly performed conventional surgery. Respondent No.1 was discharged after spending few days in the Hospital for postoperative care. The appellant, therefore, denied any kind of negligence or carelessness or inefficiency on his part in performing the surgery on respondent No.1 and stated that all kinds of precautions to the best of his ability and capacity, which were necessary to perform the surgery were taken by him and by the team of doctors that worked with him in all such operational cases.

10. Parties adduced affidavit evidence in support of their respective cases set up in their pleadings. The State Commission, by order dated 19.01.2004, dismissed the complaint filed by respondent No.1 finding no merit therein. Respondent No.1 felt aggrieved and filed appeal before the National Commission.

11. By impugned order, the National Commission allowed the appeal filed by respondent No.1 in part and awarded a total compensation of Rs.2 lakhs to be paid by the appellant to respondent No.1 on account of negligence on his part in performing the surgery which gives rise to filing of the present appeal by way of special leave in this Court by the appellantDr. S.K. Jhunjhnwala(opposite party No.1).

12. The short question, which arises for consideration in this case, is whether the National Commission was justified in allowing respondent No.1's appeal and was, therefore, justified in holding the appellant (opposite party No.1) negligent in performing the Surgery of Gall Bladder of respondent No.1 and, in consequence thereof, was justified in awarding Rs.2 lakhs by way of compensation to respondent No.1.

13. Heard Mr. Ateev Kumar Mathur, learned counsel for the appellant and Mrs. Rupali Samanta Ghosh, learned counsel for respondent No.1.

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order restore the order of the State Commission for the following reasons.

15. Before we proceed to examine the facts of this case, it is apposite to take note of legal principle that governs the controversy involved in the appeal.

16. The question as to how and by which principle, the Court should decide the issue of negligence of a professional doctor and hold him liable for his medical acts/advise given by him/her to his patient which caused him/her some monetary loss, mental and physical harassment, injury and suffering on account of doctor's medical advise/ treatment (oral or operation) is no longer res integra and settled long back by the series of English decisions as well as the decisions of this Court.

17. The classic exposition of law on this subject is first laid down in a decision of Queens Bench in a leading case of **Bolam** vs. **Friern Hospital Management Committee** [1957]1WLR 582 = (1957) 2 All ER 118 (QBD).

18. McNair J., in his opinion, explained the law in the following words:

"**Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill ….. It is wellestablished law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art**"

19. The aforesaid principle of law was reiterated and explained by Bingham L.J. in his speech in **Eckersley** vs. **Binnie** (1988) 18 Con LR 1 in the following words:

"From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in the knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet."

20. All along and till date, the law laid down in **Bolam's case** (supra) is consistently followed by all the Courts all over the World including Indian Courts as laying down the correct principle of law on the subject. It is known as **Bolam Test**.

21. So far as this Court is concerned, a Three Judge Bench in the case of **Jacob**

Mathew vs. **State of Punjab** [(2005) 6 SCC 1] examined this issue. Chief Justice R.C. Lahoti, (as he then was) speaking for the Bench extensively referred to the law laid down in **Bolam's case** (supra) and in **Eckersley's case** (supra) and placing reliance on these two decisions observed in his distinctive style of writing that the classical statement of law in **Bolam's case** (supra) has been widely accepted as decisive of the standard of care required by both of professional men generally and medical practitioner in particular and it is invariably cited with approval before the Courts in India and applied as a touchstone to test the pleas of medical negligence.

22. It was held that a Physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100 % for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is what the entire person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did not possess.

23. It was further observed that the fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. It was held that the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident and not at the date of trial. It was held that the standard to be applied for judging whether the person charged has been negligent or not would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. His Lordship quoted with approval the subtle observations of Lord Denning made in **Hucks** vs. **Cole** (1968) 118 New LJ 469, namely, "a medical practitioner was not be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be held liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field."

24. In our view, the facts of the case at hand has to be examined in the light of the aforesaid principle of law with a view to find out as to whether the appellanta doctor by profession and who treated respondent No.1 and performed surgery on her could be held negligent in performing the general surgery of her Gall Bladder on 08.08.1996.

25. It is not in dispute that the appellant is a professionally trained doctor and has

acquired the postgraduate degree in the subject (FRCS) from London way back in 1976 and worked there (UK) for seven years and earned enough experience in the field of surgery. It is also not in dispute that since 1976/1977, he has been in the field of surgery in India till the date he performed operation of respondent No.1 on 08.08.1996.

26. These undisputed facts, in our opinion, clearly prove that the appellant is a qualified senior doctor with an experience in the field and had also possessed the requisite knowledge and skill in the subject to perform the surgery of Gall Bladder.

27. It is also not in dispute that initially he proceeded to perform the laparoscopy surgery of the Gall Bladder of respondent No.1 as advised but while so performing he noticed some inflammation, adhesion and swelling on the Gall Bladder and, therefore, decided to perform the conventional surgery, which he actually did on respondent No.1, to remove the Gall Bladder.

28. According to respondent No.1, the appellant could not have done so because she had not given her consent to him to perform this surgery on her. In other words, according to respondent No.1, she had given her express consent in writing to perform only "laparoscopy surgery" but the appellant instead of performing "laparoscopy surgery" proceeded to perform conventional surgery and in that process removed her Gall Bladder. It is due to this reason, according to respondent No.1, a clear case of negligence on the part of the appellant is made out which entitles respondent No.1 to claim compensation in terms of money.

29. The State Commission did not accept the aforementioned submission of respondent No.1 but this submission found favour to the National Commission for holding the appellant guilty of negligence in performance of his duty in performing the surgery. We do not agree with the reasoning of the National Commission on this issue for more than one reason mentioned below.

30. First, clause 4 of the Consent Form dated 07.08.1996 at page 282 of the SLP paper book, which is duly signed by respondent No.1, in clear terms, empowers the performing doctor to perform such additional operation or procedure including the administration of a blood transfusion or blood plasma as they or he may consider substitute necessary or proper in the event of any emergency or if any anticipated condition is discovered during the course of the operation.

31. Second, in terms of clause 4 of the Consent Form, the appellant was entitled to perform the conventional surgery as a substitute to the former one having noticed some abnormalities at the time of performing Laparoscopy that it would not be possible for the team of doctors attending respondent No.1 to continue further with laparoscopy of the Gall Bladder.

32. In other words, we are of the view that there was no need to have another Consent Form to do the conventional surgery in the light of authorization contained in clause 4 itself because the substitute operation was of a same organ for which the former one was advised except with a difference of another well known method known in

medical subject to get rid of the malady.

33. Third, there is an evidence on record and we are inclined to accept the evidence that the appellant having noticed while performing laparoscopy that there was some inflammation, adhesion and swelling on Gall Bladder, he came out of operation theater and informed respondent No.1's husband who was sitting outside the operation theater about what the condition of respondent No.1's gall bladder and sought his consent to perform the substitute operation. It is only after the consent given by the husband of respondent No.1, the appellant proceeded to do conventional surgery.

34. In our opinion, there is no reason to disbelieve this fact stated by the appellant in his evidence. It is, in our opinion, a natural conduct and the behavior of any prudent doctor, who is performing the operation to apprise the attending persons of what he noticed in the patient and then go ahead accordingly to complete the operation.

35. It is not the case of respondent No.1 that her husband was neither present in the hospital on that day nor he was not sitting outside the Operation Theater and nor he ever met the appellant on that day.

36. In our opinion, a clear case of grant of consent to the appellant to perform the substituted operation of Gall Bladder of respondent No.1 was, therefore, made out to enable the appellant to perform the conventional surgery, which he actually performed.

37. The National Commission while recording the finding on the issue of consent against the appellant relied upon the decision of this Court in the case of **Samira Kohli** vs. **Dr. Prabha Manchanda & Anr.** (2008) 2 SCC 1. In our view, the said decision itself has made an exception to the cases observing in para 49 of the judgment which reads as under:

"The only exception to this rule is where the additional procedure though unauthorised, is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay such unauthorised procedure until patient regains consciousness and takes a decision."

38. In our opinion, the case of the appellant also falls in the excepted category mentioned by this Court because the appellant having noticed the abnormalities in the Gall Bladder while performing laparoscopy surgery proceeded to perform the conventional surgery and that too after obtaining fresh consent of respondent No.1's husband. In other words, it was not an unauthorized act of the appellant and he could legally perform on the basis of original consent (clause 4) of respondent No.1 as also on the basis of the further consent given by the respondent No.1's husband.

39. That apart, we also find that respondent No.1 never raised the objection of "consent issue" to the appellant or/and opposite party respondent No.2 Hospital and it was for the first time in the complaint, she raised this issue and made a foundation to claim

compensation from the appellant. Nothing prevented her or her husband to raise the issue of consent immediately after performance the surgery while she was in hospital as an indoor patient and even after discharge that being the natural conduct of any patient. It was, however, not done.

40. It is not in dispute that respondent No.1 failed to prove any specific kind of negligence of the appellant while performing the operation or/and thereafter. Indeed, even the National Commission in Para 18 held this issue in favour of the appellant in following words:

"18. Yet another grievance of the complainant is that she was not treated with care during her hospitalization from 07.08.96 to 18.08.96. No specific instances which can amount to carelessness or negligence on the part of the surgeon or the nursing home have been brought on record and, therefore, we are unable to hold that there was any lack of care amounting to negligence during her stay in the nursing home for which either the surgeon or nursing home can be made liable."

41. Likewise the National Commission further held in favour of the appellant in para 19 that the stones, which were removed in the second operation at Ganga Ram Hospital after 11 months (04.06.1997) were the same which were noticed by the appellant while performing the first surgery on 08.08.1996 and remained inside. In other words, respondent No.1 failed to prove with the aid of any medical evidence that the stones, which were noticed in the second surgery performed after 11 months, were the same stones which the appellant failed to remove from the Gall Bladder. It is apposite to note the finding of the National Commission in para 19 hereinbelow.

"……We have already found that from the material placed on record that it is not possible to hold with certainty that any of the calculi which were removed from the bile duct of the complainant at Sir Ganga Ram Hospital was the same for which she had undergone Cholecystectomy at the hands of the surgeon and, therefore, the only lapse which we can find on the part of the surgeon is that he did not care to bestow the kind of attention which the problem of complainant required when she consulted him after the procedure of Cholecystectomy, more particularly during AprilMay 1997……."

42. Had it been so, the appellant could be held liable for failure on his part to remove the stones and allowed them to remain in the Gall Bladder for such a long time. There was no medical evidence adduced by respondent No.1 to prove this fact.

43. In our opinion, no medical evidence of any expert was adduced by respondent No.1 to prove any specific kind of negligence on the part of the appellant in performing the surgery (conventional surgery) of Gall Bladder except raising the issue of "nongiving of express consent". This issue we have already dealt with above and found no merit therein. In our view, respondent

No.1 was under legal obligation to prove a specific kind of negligence on the part of the appellant in performing the surgery and also was required to prove that any subsequent ailment which she suffered on her return to home such as, jaundice, dysentery, fever, loss of weight etc. were suffered by her only due to improper performance of conventional surgery by the appellant and if the surgery had been successful, she would not have suffered any kind of these ailments.

44. In our opinion, there has to be a direct nexus with these two factors to sue a doctor for his negligence. Suffering of ailment by the patient after surgery is one thing. It may be due to myriad reasons known in medical jurisprudence. Whereas suffering of any such ailment as a result of improper performance of the surgery and that too with the degree of negligence on the part of Doctor is another thing. To prove the case of negligence of a doctor, the medical evidence of experts in field to prove the latter is required. Simply proving the former is not sufficient.

45. In our considered opinion, respondent No. 1 was not able to prove that the ailments which she suffered after she returned home from the Hospital on 08.08.1996 were as a result of faulty surgery performed by the appellant.

46. Learned counsel for respondent No.1 (complainant) vehemently argued that respondent No.1 suffered immensely due to the surgery performed by the appellant and that she was rightly, therefore, awarded the compensation by the National Commission.

47. Learned counsel for respondent No.1 also placed reliance on the Discharge Certificate which, according to her, mentions that Laparoscopy surgery was performed on respondent No.1. On this basis, learned counsel contended that respondent No.1 had not given her consent for performing general surgery.

48. In the light of the detailed discussion made above on the issues arising in the case including the issue of grant of consent, we are unable to accept the aforesaid submissions of learned counsel for respondent No.1.

49. It is apt to remember the words of the then Chief Justice of India when he said in **Jacob Mathew's case** (supra) which reads as under:

"The subject of negligence in the context of medical profession necessarily calls for treatment with a difference. There is a marked tendency to look for a human actor to blame for an untoward event, a tendency that is closely linked with a desire to punish. Things have gone wrong and therefore somebody must be found to answer for it. An empirical study reveals that background to a mishap is frequently far more complex than may generally be assumed. It can be demonstrated that actual blame for the outcome has to be attributed with great caution. For a medical accident or failure, the responsibility may lie with the medical practitioner, and equally it may not. The inadequacies of the system, the specific circumstances of the case, the nature of

human psychology itself and sheer chance may have combined to produce a result in which the doctor's contribution is either relatively or completely blameless. The human body and its working is nothing less than a highly complex machine. Coupled with the complexities of medical science, the scope for misimpressions, misgivings and misplaced allegations against eh operator i.e. the doctor, cannot be ruled out. One may have notions of best or ideal practice which are different from the reality of how medical practice is carried on or how the doctor functions in real life. The factors of pressing need and limited resources cannot be ruled out from consideration. Dealing with a case of medical negligence needs a deeper understanding of the practical side of medicine. The purpose of holding a professional liable for his act or omission, if negligent, is to make life safer and to eliminate the possibility of recurrence of negligence in future. The human body and medical science, both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an indepth understanding of the working of a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability."

50. In the light of what we have held above, we cannot concur with the reasoning and the conclusion arrived at by the National Commission. As a consequence, the appeal succeeds and is accordingly allowed. The impugned order is set aside and that of the order passed by the State Commission is restored.

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2018 (3) L.S. 60 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:

The Hon'ble Mr. Chief Justice of India
Dipak Misra
The Hon'ble Mr.Justice
A.M.Khanwilkar &
The Hon'ble Dr.Justice
Dhananjaya Y.Chandrachud

Swapnil Tripathi & Ors., ..Petitioners
Vs.
Supreme Court of India
& Ors., ..Responhdents

MODEL GUIDELINES FOR BROADCASTING OF THE PROCEEDINGS AND OTHER JUDICIAL EVENTS OF SUPREME COURT OF INDIA - Petitioners have sought a declaration that Supreme Court case proceedings of "constitutional importance having an impact on the public at large or a large number of people" should be live streamed in a manner that is easily accessible for public viewing.

Held - it is necessary for judiciary to move a pace with technology - Chief Justices of High Courts should be commended to consider adoption

W.P.(Civil) Nos.1232 /2017 etc. Dt:26-9-18

of live-streaming both in the High Courts and in the district judiciaries in phases, commensurate with available resources and technical support - High Courts would have to determine the modalities for doing so by framing appropriate rules.

Model guidelines for broadcasting of the proceedings and other judicial events of Supreme Court of India :

A. Kind of matters to be live-streamed

1. Proceedings involving the hearing of cases before the Supreme Court shall be live-streamed in the manner provided below:

a) Cases falling under the following categories shall be excluded as a class from live-streaming:

(i) Matrimonial matters, including transfer petitions;

(ii) Cases involving sensitive issues as in the nature of sexual assault; and

(iii) Matters where children and juveniles are involved, like POCSO cases.

b) Apart from the general prohibition on streaming cases falling in the above categories, the presiding judge of each courtroom shall have the discretion to disallow live-streaming for specific cases where, in his/her opinion, publicity would prejudice the interests of justice. This may be intimated by the presiding judge in advance or live-streaming may be suspended as and when a matter is being heard; and

c) Where objections are filed by a litigant against live-streaming of a case on grounds of privacy, confidentiality, or the administration of justice, the final authority on live-streaming the case shall lie with the presiding judge.

2. In addition to live-streaming of courtroom proceedings, the following events may also be live-streamed in future subject to the provisions of the Rules:

(a) Oath ceremonies of the Judges of the Supreme Court and speeches delivered by retiring judges and other judges in the farewell ceremony of the respective Supreme Court Judges; and

(b) Addresses delivered in judicial conferences or Full Court References or any event organized by the Supreme Court or by advocate associations affiliated to the Supreme Court or any other events.

J U D G M E N T

(per the Hon'ble Mr.Justice A.M. Khanwilkar)

The petitioners and interventionists, claiming to be public spirited persons, have sought a declaration that Supreme Court case proceedings of "constitutional importance having an impact on the public at large or a large number of people" should be live streamed in a manner that is easily accessible for public viewing. Further direction is sought to frame guidelines to enable the determination of exceptional cases that qualify for live streaming and to place those guidelines before the Full Court of this Court. To buttress these prayers, reliance has been placed on the dictum of a nine-Judge Bench of this Court in†**Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors., (1966) 3 SCR 744**†which has had an occasion to inter alia consider the arguments of journalists that they had a fundamental right to carry on their occupation under Article 19(1)(g) of the Constitution; that they also had a right to attend the proceedings in court under Article 19(1)(d); and that their right to freedom of speech and expression guaranteed under Article 19(1)(a) included their right to publish a faithful report of the proceedings which they had witnessed and heard in Court as journalists. The Court whilst considering the said argument went on to emphasise about the efficacy of open trials for upholding the legitimacy and effectiveness of the Courts and for enhancement of public confidence and support. It would be apposite to reproduce the relevant extract from the said decision propounding about the efficacy of hearing of cases in open courts, in the following words:

"20..... It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court room. As Bentham has observed :

'In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity'.†**(Scott v. Scott [(1911) All. E.R. 1, 30])**"

2. Indeed, the right of access to justice flowing from Article 21 of the Constitution or be it the concept of justice at the doorstep, would be meaningful only if the public gets

access to the proceedings as it would unfold before the Courts and in particular, opportunity to witness live proceedings in respect of matters having an impact on the public at large or on section of people. This would educate them about the issues which come up for consideration before the Court on real time basis.

3. As no person can be heard to plead ignorance of law, there is corresponding obligation on the State to spread awareness about the law and the developments thereof including the evolution of the law which may happen in the process of adjudication of cases before this Court. The right to know and receive information, it is by now well settled, is a facet of Article 19(1)(a) of the Constitution and for which reason the public is entitled to witness Court proceedings involving issues having an impact on the public at large or a section of the public, as the case may be. This right to receive information and be informed is buttressed by the value of dignity of the people. One of the proponents has also highlighted the fact that litigants involved in large number of cases pending before the Courts throughout the country will be benefitted if access to Court proceedings is made possible by way of live streaming of Court proceedings. That would increase the productivity of the country, since scores of persons involved in litigation in the courts in India will be able to avoid visiting the courts in person, on regular basis, to witness hearings and instead can attend to their daily work without taking leave.

4. As the debate has actuated momentous issues, we had requested the learned Attorney General for India, Shri K.K. Venugopal to collate the suggestions given by him as well as the petitioners and interventionists and submit a comprehensive note for evolving a framework, in the event the relief claimed in the writ petition(s) was to be granted. We shall advert to the same a little later.

5. We have heard Mr. K.K. Venugopal, learned Attorney General for India, Ms. Indira Jaising, learned Senior Advocate, Mr. Virag Gupta learned counsel, Mr. Mathews J. Nedumpara, learned Advocate and other petitioners/intervenors appearing in-person.

6. Indisputably, open trials and access to the public during hearing of cases before the Court is an accepted proposition. As regards the pronouncement of judgments by the Supreme Court, there is an express stipulation in Article 145(4) of the Constitution that such pronouncements shall be made in open Court. Indeed, no such express provision is found in the Constitution regarding "open Court hearing" before the Supreme Court, but that can be traced to provisions such as Section 327 of the Code of Criminal Procedure, 1973 (CrPC) and Section 153-B of the Code of Civil Procedure, 1908 (CPC) which read thus:

Section 327 CrPC

"327.†**Court to be open.**- (1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain

them;

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into the trail of rape or an offence under section 376, section 376-A, section 376-B, section 376-C [section 376-D or section 376-E of the Indian Penal Code (45 of 1860)] shall be conducted in camera;

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court;

[Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.]

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court:]

[Provided that the ban on printing or publication of trail proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.]"

Section 153-B CPC

"153-B.†**Place of trial to be deemed to be open Court.**- The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Provided that the presiding Judge may, if he thinks fit, order at any state of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court."

7. Notably, in Naresh Shridhar Mirajkar (supra), this Court, in no uncertain terms, expounded that open trial is the norm but, at the same time, cautioned that there may be situations where the administration of justice itself may make it necessary for the Courts to hold in-camera trials. Applying the underlying principles, it may be appropriate to have a proper and balanced regulatory framework before the concept of live streaming of Court proceedings of this Court or any other courts in India is put into action.

8. Indubitably, live streaming of Court proceedings has the potential of throwing up an option to the public to witness live court proceedings which they otherwise could not have due to logistical issues and infrastructural restrictions of Courts; and would also provide them with a more direct sense of what has transpired. Thus, technological solutions can be a tool to facilitate actualization of the right of access

to justice bestowed on all and the litigants in particular, to provide them virtual entry in the Court precincts and more particularly in Court rooms. In the process, a large segment of persons, be it entrants in the legal profession, journalists, civil society activists, academicians or students of law will be able to view live proceedings in propria persona on real time basis. There is unanimity between all the protagonists that live streaming of Supreme Court proceedings at least in respect of cases of Constitutional and national importance, having an impact on the public at large or on a large number of people in India, may be a good beginning, as is suggested across the Bar.

9. Live streaming of Court proceedings is feasible due to the advent of technology and, in fact, has been adopted in other jurisdictions across the world. Live streaming of Court proceedings, in one sense, with the use of technology is to "virtually" expand the Court room area beyond the physical four walls of the Court rooms. Technology is evolving with increasing swiftness whereas the law and the courts are evolving at a much more measured pace. This Court cannot be oblivious to the reality that technology has the potential to usher in tangible and intangible benefits which can consummate the aspirations of the stakeholders and litigants in particular. It can epitomize transparency, good governance and accountability, and more importantly, open the vista of the court rooms, transcending the four walls of the rooms to accommodate a large number of viewers to witness the live Court proceedings. Introducing and integrating such technology into the courtrooms would give the viewing public a virtual presence in the courtroom and also educate them about the working of the court.

10. We must hasten to add that our attention was invited to the decision taken by the Advisory Council of the National Mission of Justice Delivery and Legal Reforms on the proposal to initiate audio video recording on an experimental basis in the Courts. In its meeting held on 26th August, 2014, it was noted that audio video recording of Court proceedings was proposed in the Policy and Action Plan Document for Phase II for the e-Courts Mission Mode Project. However, in the meeting of the E-Committee held on 8th January, 2014, the issue was taken up but was deferred as it required consultation with Hon'ble Judges of the Supreme Court and the High Courts. Indeed, consultation with the Hon'ble Judges of the Supreme Court and the High Courts may become essential for framing of rules for live streaming of Court proceedings so as to ensure that the dignity and majesty of the Court is preserved, and, at the same time, address the concerns of privacy and confidentiality of the litigants or witnesses, matters relating to business confidentiality in commercial disputes including prohibition or restriction of access of proceedings or trials stipulated by the Central or State legislations, and, in some cases to preserve the larger public interest owing to the sensitivity of the case having potential to spring law and order situation or social unrest. These are matters which may require closer scrutiny. While doing so, the modules adopted by courts in other jurisdictions may be useful. The position in some of the Courts in other jurisdictions (arranged in

alphabetical order) as culled out from the material pointed out to us, is as follows:

I. Australia

1. High Court: Allows recordings of its proceedings to be published on its website†(Available on the Australian High Court website at: http://www.hcourt.gov.au/cases/recent-av-recordings).

Since 1st October, 2013, the High Court of Australia, which is its apex court, has made available on its website audio-visual recordings of all full-court hearings held in Canberra†(Media Release: Audio-Video Recordings of Full Court proceedings available on the Australian High Court website at: http://www.hcourt.gov.au/index.php ? option = com_acymailing & ctrl=archive&task=view&listid=6-judgment-delivery-notification&mailid=28-media-release).

a. The content of the coverage is vetted and recordings are posted usually within day or two of the hearing;
b. The High Court has issued certain terms for use of such recordings on its website, which include restrictions on recording or copying without prior permission of the Court and retention of copyright over the proceedings by the Court†(**"Terms of use:**

Access to the audio-visual recordings of the Court is subject to the following conditions:

(1) You will not record, copy, modify, reproduce, publish, republish, upload, post, transmit, broadcast, rebroadcast, store, distribute or otherwise make available, in any manner, any proceeding or part of any proceeding, other than with prior written approval of the Court. However, schools and universities may broadcast/rebroadcast proceedings in a classroom setting for educational purposes without prior written approval.

(2) The audio-visual material available via our web-site of Court proceedings does not constitute the official record of the Court.

(3) Copyright of the footage of the proceedings is retained by the Court.

By clicking "I agree/play" (when available), you agree to be bound by these terms of use."

Available on the Australian High Court website at: http://www.hcourt.gov.au/cases/recent-av-recordings]);

c. The High Court permits members of the public to take photographs inside courtrooms when the Court is not in session, for private purposes. Audio-video recording of Court proceedings by private parties is expressly banned. The Court however, on certain occasions, permits film crews to film parts of proceedings like the arrival of the Justices and them sitting at the bench, the Court staff positioned in the Court, and the barristers and solicitors at their tables in the courtroom. Such permission is granted on a case-to-case basis and subject to certain conditions imposed by the Court†(**Photography and Recording**†available on the Australian High Court website at: http://www.hcourt.gov.au/

about/photography-and-recording]);

2. Lower Courts†(**In-Court Media Coverage - a consultation paper**†available on the website of the New Zealand Judiciary at: https://courtsofnz.govt.nz/In-Court-Media-Review/In-Court-Media-Review/In-Court-Media-Coverage_-_consultation-paper_.pdf]),†(**Report to Chief Justice on In-Court Media Coverage**†available on the website of the New Zealand Judiciary at: https://www.courtsofnz.govt.nz/In-Court-Media-Review/In-Court-Media-Review/Reportto Chief Justice on in court media coverageF6_7_15_20150720.pdf]):-There are no statutory restrictions on media coverage of lower court proceedings and permission for broadcast of hearings differs from court to court.

a. Federal Court of Australia:†Allows the media to broadcast proceedings on a regular basis and also publishes videos of certain judgment summaries on its website.

i. In the Federal Court of Australia (having appellate jurisdiction), television camera coverage is coordinated and supervised by the Court's Director of Public Information.

ii. The Court itself has not imposed any rigid conditions on recordings. Most recordings are permitted on an ad-hoc basis and on certain conditions, including that the proceedings are not disturbed, that no artificial lighting is used, that cameras remain in fixed positions once proceedings have commenced, and that the Court retains the right to veto the use of any part or of all footage recorded.

iii. The website of the Federal Court also contains a video archive of certain judgment summaries, accompanied by text versions†(Available on the website of the Federal Court at: http://www.fedcourt.gov.au/digital-law-library/videos).

iv. Rule 6.11 of the Federal Court Rules, 2011†(* "**6.11 Use of communication device or recording device in place where hearing taking place**

(1) In this rule:

communication device†includes a mobile telephone, audio link, video link or any other electronic communication equipment.

recording device†means a device that is capable of being used to record images or sound, including a camera, tape recorder, video recorder, mobile telephone or digital audio recorder.

(2) A person must comply with any directions made by the Court at the hearing of any proceeding in the Court relating to the use of a communication device or recording device.

(3) A person must not use a recording device for the purpose of recording or making a transcript of the evidence or submissions in a hearing in the Court.

(4) A person must not use a communication device or a recording device that might:

(a) disturb a hearing in the Court; or

(b) cause any concern to a witness or other

participant in the hearing; or

(c) allow a person who is not present in the Court to receive information about the proceeding or the hearing to which the person is not entitled.

Note 1 The Court may have regard to any relevant matter, including the following:

(a) why the person needs to use the device in the hearing;

(b) if an order has been given excluding one or more witnesses from the Court - whether there is a risk that the device could be used to brief a witness out of court;

(c) whether the use of the device would disturb the hearing or distract or cause concern to a witness or other participant in the hearing.

Note 2 The Court may dispense with compliance with this rule - see rule 1.34. available on the website of the Australian Government at: https://www.legislation.gov.au/Details/F2011L01551])†seems to indicate that private parties may also take recordings of proceedings, subject to restrictions laid down therein.

b. Supreme Courts:†Permission for broadcast varies, depending on the court.

i. The Supreme Courts (having trial jurisdiction) for the various Australian districts differ on permission for media broadcasting. For example, the Queensland Supreme Court allows for a live or delayed broadcast of only 'judgment remarks'†(For definitions and explanations, see†**Protocol for the Recording and Broadcasting of Judgment Remarks**†available on the website of the Supreme Court of Queensland at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/485224/protocol-for-recording-and-broadcasting-judgment-remarks.pdf)†and has also issued practice directions in that regard†(**Amended Practice Direction Number 8 Of 2014**†available on the website of the Courts of Queensland at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/225553/sc-pd-8of2014.pdf]).

ii. Filming court proceedings is permitted in certain situations in certain Supreme Courts like New South Wales†(See the following documents available on the website of the New South Wales Supreme Court:

Recording and broadcasting of judgment remarks policy†at:

http://www. supreme court.justice. nsw. gov.au/Documents/Forms%20and%20Fees/Media%20Forms/recording _and _ broadcasting _of_ judgment _remarks _policy_1014v2.pdf

and

Media Guidelines On Reporting Criminal Proceedings†at:

http://www. supreme court.justice. nsw. gov.au/ Documents /Publications / Media%20 Guidelines _ Reporting %20 Criminal%20 Proceedings %20in %20 the %20NSW % 20 Supreme %20 Court

_April% 20 2016.pdf]), Northern Territory†(**Media Guide**†available on the website of the Northern Territory Courts website at:

http://www.nt.gov.au/justice/ntmc/media/documents/Media_Guide.pdf]), Western Australia†(**Transcripts and Videos**†available on the website of the Supreme Court of Western Australia at:

https://www.supremecourt.wa.gov.au/T/transcripts_and_videos_2018.aspx?uid=9348-5501-0341-3842])†and Tasmania†(**Media Guidelines**†available on the website of the Tasmanian Supreme Court at:

https://www.supremecourt.tas.gov.au/__data/assets/pdf_file/0014/414221/Media-Guidelines-May-2018.pdf]), after an application is made to the presiding Judge or to the registrar in some courts.

c. Trial Courts:†Rarely admit cameras and when they do, allow recording mostly for ceremonial events or for stock footage.

II. Brazil

1. Supreme Court:†Allows live video and audio broadcast of Court proceedings, including the deliberations and voting process undertaken by the judges in court.

a. The Brazilian congress enacted a law, which was sanctioned by the President on 17th May, 2002, enabling the creation of a public television channel, TV JustiÁa, dedicated to the judiciary.

b. From 14th August, 2002 onwards, Supreme Court proceedings have been telecast live on TV Justica†(TV Justica official website at: http://www.tvjustica.jus.br). A separate radio channel, Radio Justica†(Radio Justica official website at: www.radiojustica.jus.br/)†broadcasts audio proceedings.

c. Both the television and radio stations are owned by the Brazilian judicial branch and operated by the Supreme Court.

d. There are also two YouTube channels, one titled ‘Tv Justica’†(Official Youtube channel at: https://www.youtube.com/user/TVJustica])†which shows discussions and commentaries on the judicial system and the other titled ‘STF’†(Official Youtube channel at: https://www.youtube.com/user/STF]), which broadcasts live proceedings of hearings before the Supreme Court.

2. Lower Courts:

a.†Superior Court of Justice: This Court is the highest appellate court in Brazil for non-constitutional questions of federal law. Proceedings are broadcast on the TV Justica channel;

b. Trial Courts: Do not show broadcast of proceedings.

III. Canada

1. Supreme Court (**See In-Court Media Coverage - a consultation paper**†at footnote 6):†Allows broadcast and live streaming of its proceedings.

a. The Canadian Supreme Court has

permitted media coverage of its proceedings since 1994, on public broadcast service provided by the Cable Parliamentary Affairs Channel (CPAC)†(Official website at: http://www.cpac.ca/en/programs/supreme-court-hearings/). A formal agreement between the Court and the CPAC governs this media coverage.

b. The Supreme Court retains copyright over the broadcast material, and has ultimate say in use of the coverage. Only the Court's own sound facilities can be used for recording, and permanently installed cameras within the courtroom are used for visual coverage. The agreement between the Supreme Court and CPAC also requires broadcast of proceedings to be accompanied by explanations of each case and the overall processes and powers of the Court.

c. The Supreme Court has also started broadcasting/webcasting live video streams of court hearings on its website since 2009†(Available on the website of the Supreme Court of Canada at: https://www.scc-csc.ca/case-dossier/info/hear-aud-eng.aspx]) and has an archive of its previous broadcasts†(Available on the website of the Supreme Court of Canada at: https://www.scc-csc.ca/case-dossier/info/webcasts-webdiffusions-eng.aspx]).

2. Lower Courts

a. Federal Courts:†Permit media coverage by broadcasters The Federal Court of Appeal allows audio-video media coverage of proceedings as per published guidelines†("Media coverage of proceedings with audio-visual equipment is only permitted in accordance with the following guidelines:

a. A media request to cover a specific proceeding must be made sufficiently in advance to allow for necessary permissions to be obtained.

b. A decision as to whether to allow media coverage will be made by the Chief Justice, after consultation with the panel of judges hearing the particular case, as well as with the parties.

c. The Chief Justice or panel of judges hearing the proceeding may limit or terminate media coverage to protect the rights of the parties; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate in the interest of the administration of justice.

d. Nothing in these guidelines shall prevent the Chief Justice from placing additional restrictions, or prohibiting altogether, media access to the Court's facilities.

e. Only equipment which does not produce distracting sound or light shall be employed to cover proceedings.

f. The Chief Justice or his designate may limit or circumscribe the placement or movement of the media personnel and their equipment."

Guidelines on Public and Media†available on the website of the Federal Court of Appeal of Canada at: http://www.fca-caf.gc.ca/fca-caf_eng/media_eng.html]). The Federal Court also

has its own set of guidelines regulating coverage of proceedings†(**"Electronic Media Coverage of Federal Court Proceedings**

1. General

a. With reasonable advance notice in writing to the Chief Justice of the Federal Court, the media may make an application for electronic media coverage of judicial review proceedings.

b. The Chief Justice will consult with the judge hearing the proceeding and counsel for the parties.

c. The Chief Justice or the presiding judge may at any time impose conditions on, or terminate, media coverage to protect the rights of the parties; to preserve the dignity of the Court; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate in the best interest of justice.

d. No direct public expense is to be incurred for equipment, wiring or personnel needed to provide media coverage.

e. There shall be no audio pickup or broadcast of conferences which occur in a court facility between counsel and their clients, between co-counsel of a client, or between counsel and the Court held at the bench.

2. Equipment and Personnel

a. Unless otherwise permitted, electronic media coverage is to be limited to:

i. two portable television cameras, each operated by one camera person;

ii. one still photographer;

iii. one audio system using existing court audio systems or unobtrusive microphones and wiring.

b. If two or more media representatives apply to cover a proceeding, their representatives are expected to agree upon a pooling arrangement, including designation of pool operators, procedures for cost sharing, access to and dissemination of material, and a pool representative.

c. The media must show that they will use only equipment that does not produce distracting sound or light, or use flash attachments, other artificial light sources, signal lights or devices indicating that it is activated.

d. The presiding judge may specify the location of equipment in the courtroom and require modification of light sources at media expense.

e. Media personnel are expected to place, replace, move or remove equipment, or change film, film magazines or lenses before court proceedings, after adjournment or during recesses.

3. Use of Materials

Within 10 days of publication or broadcast of any material generated through electronic

media coverage, media are to provide the Court with a copy."

Policy on Public and Media Access†available on the website of the Federal Court of Canada at: http://www.fct-cf.gc.ca/fc_cf_en/MediaPolicy.html]).

A written application has to be made for permission to record proceedings but the general policy is to allow such applications if they are made within a reasonable time.

b. Courts of Appeal (See In-Court Media Coverage - a consultation paper at footnote 6):†Courts of Appeal in the provinces allow or deny permission to broadcast court proceedings based on their own guidelines†(For example, the Nova Scotia Court of Appeal has its own guidelines while the Ontario Court of Appeal introduced a pilot for broadcast of court proceedings but permanent implementation of such scheme was hampered by express prohibitions on broadcast of proceedings laid down in Section 136 of the Ontario Court of Justice Act, 1990.).

c. Courts of first instance/Trial Courts:†Broadcast of proceedings is rare. Although each province maintains its own guidelines for coverage, in practice, approval for broadcast of proceedings is rarely given.

IV. China:

Live streaming and recorded broadcasts of court proceedings are being implemented across the judiciary, from the trial courts right up till the Supreme People's Court of China.

1. Supreme People's Court:

a. The Supreme Court has allowed proceedings of its public hearings to be broadcast live†(Official website for streaming at: http://tingshen.court.gov.cn/court/0)†from July 2016 onwards. These broadcasts are governed by the 2010 regulations issued by the Supreme Court, 'Provisions on the Live Broadcasting and Rebroadcasting of Court Trials by the People's Courts'†(Available at:

http://www.law-lib.com/law/law_view.asp?id=324868]). These regulations focus on the type of cases to broadcast.†(**Article 2:**†The people's court may choose the openly tried cases of higher public attention, greater social impact, and of legal publicity and education significance to make live broadcasts of and rebroadcast court trials. The live broadcasting and rebroadcasting of court trials are prohibited for the following cases:

(1) Cases that are not openly tried in accordance with the law since any national secret, trade secret, individual privacy, or juvenile delinquency, among others, is involved;

(2) Criminal cases on which procuratorial organs clearly require the non-live broadcasting and rebroadcasting of court trials for justifiable reasons;

(3) Civil and administrative cases on which the parties clearly require the non-live broadcasting and rebroadcasting of court trials for justifiable reasons; and

(4) Other cases of which the live broadcasting and rebroadcasting are inappropriate.

[Translated version]])

b. Additionally, cases involving matters like review of death sentences and review of decisions on foreign arbitral awards are not broadcast. Politically sensitive cases are broadcast at the discretion of the Court.

c. The 2010 Regulations have been supplemented by The People's Court Courtroom Rules, 2016†(English copy available at: https://www.chinalawtranslate.com/courtrules/?lang=en Also see the official website for Chinese courts:

http://www.court.gov.cn/fabu-xiangqing-19372.html]). These new rules indicate that court proceedings can only be broadcast by the official Court machinery and that other parties are restrained from recording court proceedings in any manner†(**Article 11:**†In any of the following situations, for trial activities that are conducted openly in accordance with law, the people's courts may use television, the internet or other public media to broadcast or record images, audio or videos:

(1) a high degree of public concern;

(2) a larger social influence;

(3) the value for legal publicity and education is quite strong.

***

Article 17:†During court proceedings, all personnel shall follow the instructions of the chief judge, or a judge hearing the case alone, respect judicial etiquette, abide by courtroom discipline, and shall not conduct the following actions:

(1)***

(2) ***

(3) ***

(4) Taping, videotaping, or taking pictures of trial activities or using mobile communication tools to propagate trial activities;

(5) ***

[Translated version]]).

d. These regulations are rules are silent on taking consent from parties involved the matter.

2. Lower Courts:

a. Proceedings of several courts, including High Courts and family courts, have been made available on a centralised, official website, the Chinese Open Trial Network†(Available at: http://tingshen.court.gov.cn)†from September 2016 onwards, in consonance with the aforementioned People's Court Courtroom Rules, 2016. Majority of the cases being broadcast are civil in nature, with some criminal and administrative matters also being made available.

b. Proceedings of around 3500 lower courts

have been made available on the website, with many videos available in High Definition (HD) format. In 2017 alone, more than 1.27 million trials had been broadcast on the website.

c. Some High Courts also make their proceedings available on their own websites†(For example, see the Zhejiang High Court's website at:

http://www.zjsfgkw.cn/CourtHearing/Video and http://zj.sifayun.com/?courtId=5168;]).

V. England:

1. Supreme Court:†The media is permitted to broadcast court proceedings and hearings are live streamed and recorded.

a. Till 2005, recording of court proceedings was a crime†(Section 41 of the Criminal Justice Act, 1925 (as originally enacted):

"41. Prohibition on taking photographs, &c, in court

(1) No person shall-

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof; and if any person acts in contravention of this section he shall, on summary conviction, he liable in respect of each offence to a fine not exceeding fifty pounds.

(2) For the purposes of this section-

(a) the expression " court" means any court of justice, including the court of a coroner :

(b) the expression "judge" includes recorder, registrar, magistrate, justice and coroner :

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.'

Available on the website of the UK Legislature at:
https://www.legislation.gov.uk/ukpga/Geo5/15-16/86/section/41])†and also amounted to contempt of court†(Section 9 of the Contempt of Court Act, 1981 (as originally enacted):

"9. Use of tape recorders

(1) Subject to subsection (4) below, it is a contempt of court-

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave

of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication ;

(c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings"

Available on the website of the UK Legislature at:

https://www.legislation.gov.uk/ukpga/1981/49]).

b. With the implementation of the Constitutional Reforms Act, 2005†(**"47. Photography etc**

(1) In section 41 of the Criminal Justice Act 1925 (c. 86) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute-

"(a) the expression "court" means any court of justice (including the court of a coroner), apart from the Supreme Court;".

***"

Available on the website of the UK Legislature at:

https://www.legislation.gov.uk/ukpga/2005/4/section/47]

[38* Sections 31, 32 and 33 of the Act, available at:

http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted]), the Supreme Court was exempted from the prohibition imposed under the Criminal Justice Act, 1925. The Crime and Courts Act, 2013†[38*]†also exempted recording of Supreme Court proceedings from the ambit of the Contempt of Court Act.

c. Since its inception, the Supreme Court has given broadcasters access to footage of its hearings. These hearings are governed

by protocols with such broadcasters. The Supreme Court has also issued a practice note which broadly sets out the scope and structure of such broadcasts†(Practice Note 8.17.1:

"Broadcasting

8.17.1. The President and the Justices of the Supreme Court have given permission for video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice and the recording and broadcasting is conducted in accordance with the protocol which has been agreed with representatives of several UK broadcasters. Permission to broadcast proceedings must be sought from the President or the presiding Justice on each occasion and requires his or her express approval. Where the President or the presiding Justice grants permission, he or she may impose such conditions as he or she considers to be appropriate including the obtaining of consent from all the parties involved in the proceedings."

Available at: https://www.supremecourt.uk/docs/practice-direction-08.pdf]).

d. The Supreme Court allows for hearings to be live streamed on its own website†(See official website at: https://www.supremecourt.uk/live/)†with a delay of around one minute and also has a Youtube channel which shows selected broadcasts from the live stream†(Official Youtube channel at: https://www.youtube.com/user/UKSupremeCourt). Broadcast of proceedings is subject to the discretion of the Law Lords, who reserve the right to withdraw coverage for sensitive appeals.

2.†**Lower Courts:**†The Crime and Courts Act, 2013 amended the existing laws to facilitate broadcasting in courts and tribunals by providing exceptions to the Criminal Justice Act, 1925 (Amended Section 41 of Criminal Justice Act, 1925:

"41. Prohibition on taking photographs, etc., in court.

(1) No person shall-

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof;

and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding fifty pounds.

[F1(1A)See section 32 of the Crime and Courts Act 2013 for power to provide for exceptions.]

(2) For the purposes of this section-

[**F2**(a)the expression "court" means any court of justice (including the court of a coroner), apart from the Supreme Court;]

(b) the expression "Judge" includes . . .**F3**, registrar, magistrate, justice and coroner:

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid."]) and prescribing conditions subject to which recordings could be made. Broadcast of court proceedings is allowed in a limited number of courts across the country.

a. Court of Appeal for England and Wales†(See: https://www.theguardian.com/law/2013/oct/30/court-of-appeal-proceedings-televised])**:**†The Court broadcasts its proceedings live with a 70-second broadcast delay system

i. The broadcast system is operated by a specialist video journalist who takes orders from the court.

ii. The broadcast is conducted by cameras, some of which are operated completely wirelessly, and can be moved from court to court. Subject to the judges' approval, the video journalist can take his cameras into any of the courtrooms in which the Court of Appeal may sit.

iii. Lawyers' arguments and judges' comments appear in the broadcast but defendants, witnesses and victims are not shown.

iv. Footage can be used for news and current affairs but not in other contexts such as comedy, entertainment or advertising.

b.†Crown Court: The Crown Court (Recording) Order, 2016†(Available on the website of the UK Legislature at:

http://www.legislation.gov.uk/uksi/2016/612/pdfs/uksi_20160612_en.pdf])†partially lifts the prohibition on recording proceedings in order to facilitate a pilot project of recording sentencing remarks in the Crown Courts. Since then, several Crown Courts have trialled broadcast of proceedings.

VI. European Court of Human Rights (ECHR)

1. The ECHR allows for broadcast of court proceedings, as a corollary of its court rules, which set out that all hearings are public†("**Rule 63 - Public character of hearings**

1. Hearings shall be public unless, in accordance with paragraph 2 of this Rule, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.

2. The press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly

necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.

3. Any request for a hearing to be held in camera made under paragraph 1 of this Rule must include reasons and specify whether it concerns all or only part of the hearing."

Available on the official website of the ECHR at:
https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf]).

2. All the Court's public hearings are broadcast on the Court's website†(Available on the official website of the ECHR at:

https://www.echr.coe.int/Pages/home.aspx"p=hearings&c]). Hearings held in the morning can be viewed in the afternoon while those held in the afternoon are available during the evening.

3. All the Court's public hearings since 2007 have been filmed and can be viewed, with interpretations available in French and English.

VII. Germany:

Germany has passed legislation which allows for live broadcasting of court proceedings in the Federal and Supreme Courts, although actual instances of such broadcasts are rare owing to the strict restrictions imposed by the said legislation.

1. Federal Constitutional Court and Supreme Courts

a. Section 169 of The Court Constitution Act forbade radio and television broadcasts of trials, and sound and film recordings made for the purposes of public presentation†(**'section 169**

The hearing before the adjudicating court, including the pronouncement of judgments and rulings, shall be public. Audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content shall be inadmissible."

English version of The Court Constitution Act available at:

https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html]).

b. In October 2017, the German parliament passed the 'Act to Increase Media Access in Court Proceedings and to Improve Communication Aid for People with Speech or Hearing Impairments'†(English translation; In German, Gesetz zur Erweiterung der Medienˆffentlichkeit in Gerichtsverfahren und zur Verbesserung der Kommunikationshilfen f¸r Menschen mit Sprach- und Hˆrbehinderungen (Gesetz ¸ber die Erweiterung der Medienˆffentlichkeit in Gerichtsverfahren- EMˆGG), available on the website of the German Judiciary at:

https://www.bmjv. de/ Shared Docs / Gesetzge bungs verfahren /Dokumente / BGBl _ EM%C 3% B6GG. pdf; jsessionid = B96 F37ED 7F0 163627 DB 7B0BF 3343C555.2 _ cid297" __blob = publication File & v=1]). The amendment act provides for the possibility of broadcasting and

recording the pronouncements of the judgments and the sentencing of the Federal Constitutional Court of Justice and the five Supreme Federal Courts. Such broadcast is permissible if the proceedings are deemed to be of historical significance for Germany but can be prohibited to protect the legitimate interests of parties to the proceedings or even of third parties.

c. The recordings will not be made public but will be handed over to the German Federal Archives or a State Archive where they can be accessed subject to certain conditions.

d. Broadcasts of proceedings will happen in separate media rooms. The decision to provide broadcasting in the media room or to even to permit broadcasting or recording at all, is the judge's discretion and cannot be appealed.

e. Since there are restrictions imposed by the law regarding broadcast of proceedings and owing to the strict privacy protection granted to parties to proceedings, combined with the narrow scope of what constitutes a case of 'historical significance', actual broadcasts of court cases in Germany rarely occur.

2. Lower Courts:†The amendment act only mentions the possibility of broadcasting proceedings of the Federal Constitutional Court and Supreme Federal Courts and makes no mention about broadcast of proceedings in lower courts.

VIII. International Criminal Court (ICC)

1. The ICC allows for live streaming of its proceedings with a 30-minute delay to allow for any necessary redactions of confidential information†(Official website for streaming at: https://www.icc-cpi.int

Also see 'Understanding the International Criminal Court' available on the official ICC website at: https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf]).

2. The ICC has an official Youtube channel where it publishes programmes concerning cases, proceedings, informative sessions, press conferences, outreach activities and other events at the Court†(Official Youtube channel: https://www.youtube.com/user/IntlCriminalCourt/featured). The channel allows viewers to follow various cases before the ICC, in several languages, through the weekly postings of summaries of proceedings.

IX. International Criminal Tribunal for the former Yugoslavia (ICTY)

1. Court proceedings are available for viewing on the website of the ICTY†(Available on the official website: http://icr.icty.org).

2. ICTY also has a Youtube channel where selected clips of guilty pleas, witness testimonies and short documentaries are made available. Additionally, the ICTY has social media accounts in order to 'bring the activities of the court closer to the public'†(Official press release by the ICTY available at: http://www.icty.org/en/press/tribunal-social-media-channels-go-live).

3. The United Nations International Residual Mechanism for Criminal Tribunals (IRMCT),

a court created to perform a number of remaining functions previously carried out by the ICTY, amongst others, also contains video recordings of ICTY proceedings on its website†(Official website: http://www.irmct.org/en/cases#all-cases)†and official Youtube channel†(Official Youtube channel: https://www.youtube.com/channel/UCNPOPvnINPwtfjwEnYtlvYw).

X. Ireland (Northern):

1.†**Supreme Court:**†The United Kingdom Supreme Court has jurisdiction over Northern Ireland and accordingly, hearings of cases which arise in respect of Northern Ireland are live streamed.

a. Just as in England, media coverage of courts in Northern Ireland was prohibited by the Criminal Justice (Northern Ireland) Act, 1945†(**"29 Prohibition on taking photographs, etc., in court.**

(1) No person shall-

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction of such photograph, portrait or sketch; and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding [**F1**†level 3 on the standard scale].

(2) For the purposes of this section-

[**F2**†(a)the expression "court" means any court of justice (including the court of a coroner), apart from the Supreme Court;]

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid."]), which was similar to the original Criminal Justice Act, 1925, and which applied identical restrictions to photography or sketching in the courts of Northern Ireland. Section 9 of the Contempt of Court Act, 1981 also extended to Northern Ireland.

b. With the implementation of the Constitutional Reforms Act, 2005, the United Kingdom Supreme Court was exempted from the prohibition imposed under the Criminal Justice (Northern Ireland) Act. The Crime and Courts Act, 2013 exempted recording of Supreme Court proceedings from the ambit of the Contempt of Court Act†(See position in England at Point V).

c. The UK Supreme Court has also sat in Northern Ireland and proceedings of the same have been live streamed on the website of the Court. During the session, the Supreme Court allowed proceedings to be broadcast live in a separate 'overflow

courtroom' within the Court premises.†(A list of provisions made for broadcast of its hearings in Ireland is available on the official website of the Supreme Court at: https://www.supremecourt.uk/news/access-to-supreme-court-hearings-in-belfast.html])

2. Lower Courts:†Although the government has indicated its intention and willingness to allow court proceedings to be recorded†(**Research and Information Service Briefing Paper on Broadcasting in Courts**, available on the website of the northern Ireland Assembly at:

http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/3812.pdf]), actual broadcast of lower court proceedings remains restricted.

XI. Ireland (Republic):

Although there are no statutory provisions which prohibit photography or sound, television or video recordings in courts, broadcast of court proceedings, whether photography or audio-video recording, without permission, is restricted as a practice†(See Report on Contempt of Court by the Law Reform Commission of Ireland, Chapter 4.43, available at: http://www.lawreform.ie/_fileupload/Reports/rContempt.htm]).

1.†**Supreme Court:**†Has allowed cameras into the Court on rare instances.

The first broadcast of Court proceedings was in October 2017, when the delivery of two judgments of the Supreme Court was broadcast live on the state broadcaster, RTE, using small robotic cameras inside the court room†(See: https://www.bbc.com/news/world-europe-41732226).

2.†**Lower courts:**†Do not appear to allow broadcasting of proceedings, as on date.

XII. Israel†(See Audio-Visual Coverage Of Court Proceedings In A World Of Shifting Technology by Itay Ravid available at:

http://www.cardozoaelj.com/wp-content/uploads/2017/02/35.1-Ravid.pdf])**:**

1.†**Supreme Court:**†Has approved of live-broadcasting court proceedings.

a. The Israeli Courts Act, 5744-1984†(Title 70(b) of Act, 'Prohibited Publications'; Israeli Courts Act available in Hebrew at:

http://www.wipo.int/wipolex/en/details.jsp?id=15289])†imposes criminal punishment for taking and publishing pictures in a court room unless the court grants permission. The media however can report on events occurring in most Israeli courts, subject to the limitations imposed by the audio-visual coverage mentioned in the Act.

b. Earlier, a legal presumption existed against audio-visual coverage of courts in Israel. In September 2014, a limited pilot was launched to allow live coverage of court hearings at the Supreme Court although there was no formal administrative legislation or regulation issued in that regard.

c. Thereafter, in November 2014, the Chief Justice of Israel approved of live

broadcasting of Court proceedings†(See: https://www.ynetnews.com/articles/0,7340,L-4592208,00.html]).

2.†Lower Courts:†Do not generally allow for broadcast of proceedings but exceptions have been made in cases of historical significance.

a. Reporting on court proceedings by media is allowed but broadcast of such proceedings is not. Certain courts allow the media to photograph the judges entering the courtrooms, but request the media to stop recording before hearings begin.

b. Permission has also been given to cover events in honour of retiring judges as also for hearings of quasi-judicial committees.

c. Permission to record and broadcast trial court hearings has been granted on five occasions in Israel's history. Two cases involved trials of Nazi personnel and were allowed because the trials were deemed to be of historical significance. One case involved a defamation lawsuit filed against an Israeli newspaper, another was the trial of a man charged with the assassination of the Israeli Prime Minister and the final instance was in 1999 when the Jerusalem District Court allowed the broadcast of the decision given in the criminal case of a former Israeli Minister.

XIII. New Zealand:

1.†**Supreme Court:**†Allows for broadcast of its proceedings.

a. Media guidelines have been issued for regulating broadcast of Supreme Court proceedings†(**"10.5 Appendix E: Supreme Court media guidelines**

1. Subject to paragraph (5), all applications to televise or otherwise record proceedings of the Supreme Court will be deemed to be approved unless a party indicates, within three days of being advised by the registrar of the application, that the party objects to it.

2. Any such objection must be communicated to the registrar in written form and must include the grounds upon which the objection is made.

3. The registrar must immediately communicate the objection to the news media applicant and to all other parties to the proceedings. They must make any submissions they wish to make in relation to the objection in writing within three days of receiving it. The court or a judge will then determine the application.

4. An application under paragraph 1 must be made in sufficient time before the hearing of the proceedings to which it relates to enable the steps referred to in paragraphs 1 and 3 to be taken. The registrar may waive this requirement for good cause and may abridge any of the times referred to accordingly.

5. If an application under paragraph 1 is made in circumstances in which the registrar considers there is insufficient time to comply with paragraphs 1 and 3, or to enable the court properly to consider the application, the registrar must refer the matter to a judge who may decline the application or give such directions concerning the application as he or she thinks fit.

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