LAW OF
CRIMINAL APPEALS

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1.1. Powers of Appellate Court (Section 386 CrPC): Powers to be exercised by an appellate court are provided u/s 386 of the CrPC. The powers of an appellate Court are as wide as of trial court and the appellate court can review whole evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. But where two views are possible on the same evidence and the findings recorded by the trial court are not perverse, appellate court should not interfere with the findings of the lower court. The appellate court can re-appreciate the entire evidence on record. The appellate court should normally give due weight to the decision of the trial court. The appellate court should keep it in mind that the trial court had distinct advantage of watching demeanor of the witnesses. See:

(ia) Allarakha Habib MenonVs. State of Gujarat,(2024) 9 SCC 546
(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(ii) Baby Vs. Inspector of Police, (2016) 13 SCC 333
(iii) Lalita Kumari Vs. State of UP, (2014) 2 SCC1
(iv) Manuwa Vs. State of Uttar Pradesh, AIR 2013 SC 1764
(v) Jugendra Singh Vs. State of UP, AIR 2012 SC 2254
(vi) State of AP through CBI Vs. M. Durga Prasad, AIR 2012 SC 2225
(vii) Ramesh Harijan Vs. State of UP, AIR 2012 SC 1979
(viii) State of Rajasthan Vs. Darshan Singh, AIR 2012 SC 1973
(ix) Kathi Bharat vajsur Vs. State of Gujrat, AIR 2012 SC 2163
(x) Anil Kumar Gupta Vs. State of U.P, 2011 CrLJ 2131(SC)
(xi) Arulvelu Vs. State, 2010 (68) ACC 5 (SC)
(xii) Dhanapal Vs. State, 2009 (67) ACC 697
(xiii) Gowrishankara Swamigalu Vs. State of Karnataka, AIR 2008 SC 2349
(xiv) State of M.P. Vs. Bacchudas alias Balaram, 2007 (57) ACC 540 (SC)

1.2. Duty of First Appellate Court u/s 386 CrPC: Where the first appeal preferred against the judgment of conviction of accused for offences u/s 302 read with Section 149 IPC was dismissed by the High Court without proper analysis of evidence almost in a summary way, it has been held by the Hon'ble Supreme Court that it was the mandatory duty of the first appellate court to make proper analysis of evidence and to consider whether trial court's assessment of evidence and its opinion regarding conviction deserved to be confirmed because the personal liberty of an accused is curtailed because of conviction. First appellate court's concurrence with the trial courts view would be acceptable only if it is supported by reasons. Judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. See**:**

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(ii) Dinesh Lal Vs. State of Uttarakhand, (2016) 1 SCC 590
(iii) Majjal Vs. State of Haryana, (2013) 6 SCC 798 (Three-Judge Bench).

1.3. Independent analysis of evidence and recording of findings u/s 386 CrPC by first appellate court mandatory: Appellate Court has to apply its independent mind and record its own findings by making independent assessment of evidence irrespective of whether the appeal has been preferred against acquittal or conviction. In the absence of independent assessment by the appellate court (High Court), its ultimate decision cannot be sustained. See :

(i) State of Gujarat Vs Bhalchandra Laxmishankar Dave, (2021) 2SCC 735 (Three-Judge Bench)
(ii) Bakshish Ram Vs. State of Punjab, AIR 2013 SC 1484.

1.4. Appellate court must examine evidence of each PW u/s 386 CrPC and record its findings: U/s Section 386 CrPC, appellate court has to examine evidence of each prosecution witness on issues relating to the case and then record its findings on it. Deciding appeal without appreciating evidence and without recording its own findings by the appellate court on any of the issues arising in the case is erroneous and liable to be set aside. See: Kaanubhai Bhagvanbhai Nayak Vs. State of Gujarat, AIR 2019 SC 544.

1.5. Where two views on evidence on record possible– view beneficial to accused to be taken: Where two views on the evidence available on record are possible, one of conviction and other of acquittal, the view beneficial to the accused should be taken by the appellate court. The burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. See:

(ia) CBI Vs. Shyam Bihari, (2023) 8 SCC 197
(i) Munishamappa Vs. State of Karnataka, (2019) 3 SCC 393
(ii) State of Gujarat VS. Jayrajbhai Punjabhai Varu, AIR 2016 SC 3218
(iii) Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256
(iv) State of Maharashtra Vs. D.L Rao, 2010 (70) ACC 849(SC)
(v) Arulvelu vs. State, 2010 (68) ACC 5 (SC)
(vi) Dhanapal vs. State, 2009 (67) ACC 697
(vii) Champaben Govindbhai vs. Popatbhai Manilal, 2009 (67) ACC 355 (SC)
(viii) State of Goa vs. Pandurang Mohite, AIR 2009 SC 1066
(ix) State of M.P. vs. Bacchudas alias Balaram, 2007 (57) ACC 540 (SC)
(x) M.S. Narayana Menon vs. State of Kerala, (2006) 6 SCC 39
(xi) Sachchey Lal Tiwari vs. State of U.P., 2005 (51) ACC 141 (SC)

(xii) Hem Raj vs. State of Punjab, 2004 (50) ACC 84 (SC)
(xiii) Anil Kumar vs. State of U.P., AIR 2004 SC 4662
(xiv) Shri Gopal vs. Subhash, AIR 2004 SC 4900
(xv) State of Rajasthan vs. Bhanwar Singh, AIR 2004 SC 4660

1.6. No appeal, revision or bail application etc. can be heard and decided by an Additional or Assistant Sessions Judge unless transferred to him by the Sessions Judge: Expression "Court of Session" u/s 6 & 7 of the CrPC includes Sessions Judge and also Additional or Assistant Sessions Judge. Expression "Sessions Judge" however cannot be treated to include Additional or Assistant Sessions Judge unless the context otherwise requires. While the Sessions Judge presides over the Sessions Division, an Additional or Assistant Sessions Judge merely exercises jurisdiction in a Court of Session. The overall control of administration, in a given Sessions Division, rests in the Sessions Judge. Where ever the Code of Criminal Procedure intended that the power can be exercised only by a Sessions Judge, the Court has used the expression "Sessions Judge" and not the "Court of Session". Hearing of appeal by Additional or Assistant Sessions Judge or Judicial Magistrate shall be wholly without jurisdiction or nullity u/s 381(2) of the CrPC unless such appeal has been made over for hearing by the Sessions Judge. Power of revision u/s 397 and 400 CrPC is exercisable by the Sessions Court and the High Court and not by an Additional or Assistant Sessions Judge unless the Sessions Judge transfers the revision petition to the Additional Sessions Judge u/s 400 CrPC. Only Sessions Judge shall hear urgent bail applications u/s 438 and 439 CrPC. Only in the event of absence of the Sessions Judge or if he is unable to attend bail application for some other reason, such bail application can be taken up by the Additional or Assistant Sessions Judge. Without specific order by the Sessions Judge u/s 10(3) of the CrPC, an Additional or Assistant Sessions Judge cannot directly take up the bail application. Sessions triable case can be tried and decided by Additional or Assistant Sessions Judge on being directly committed to them by Magistrate u/s 194 CrPC if such trail is in terms of the order of the Sessions Court or High Court u/s 194 CrPC. Otherwise without any order of the Sessions Judge or High Court, such trial by the Additional or Assistant Sessions Judge shall amount to an irregularity. Magistrate shall not commit any Sessions Triable Case u/s 193 and 194 CrPC to the Additional or Assistant Sessions Judge on his own. In case of committal of such case on his own to Additional or Assistant Sessions Judge, such error must be objected to at the earliest stages. Such error cannot be made ground for interference with the finding of guilt or otherwise recorded on the basis of trial when no failure of justice is occasioned by such error. See: District Bar Association, Civil Court, Patna Vs. State of Bihar & Others, 2017 CrLJ 1 (Patna)(Full Bench).

2.1. **Appeal against acquittal (Sec. 378 CrPC): (1)** U/s378(1)(a) CrPC, the District Magistrate may direct the public prosecutor to file an appeal against acquittal recorded by Magistrate in respect of a cognizable and non-bailable offence.

(2) U/s 378(1)(b) CrPC, the State Government may direct the public prosecutor to file an appeal to the High Court from an original or appellate order of acquittal recorded by Sessions Judge.

(3) While deciding an appeal against a judgment/order of acquittal, the appellate court has powers to re-appreciate the evidence on record but when two views are reasonably possible on the basis of evidence on record, the view which is favourable to the accused should be adopted. If two views on the same evidence, one of acquittal and another of conviction, are equally possible, then the appellate court should normally not interfere with the judgment/order of acquittal recorded by the lower court. Where the findings recorded by the lower court are not perverse and based on surmises & conjectures, the scope for interference with the order of acquittal by the appellate court is limited. Acquittal recorded by the trial court should be disturbed by the appellate court only when there are substantial and compelling reasons. See:

(i) Allarakha Habib MenonVs. State of Gujarat,(2024) 9 SCC 546

(ia) CBI Vs. Shyam Bihari, (2023) 8 SCC 197

(i) Raja Vs. State of Karnataka, (2016) 10 SCC 506
(ii) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(iii) Mookkiah Vs. State of T.N., AIR 2013 SC 321
(iv) State of Rajasthan Vs. Shera Ram, AIR 2012 SC 1
(v) Arulvelu Vs. State, 2010 (68) ACC 5 (SC)
(vi) Dhanapal Vs. State, 2009 (67) ACC 697
(vii) State of M.P. Vs. Bacchudas alias Balaram, 2007 (57) ACC 540 (SC)
(viii) Ayodhya Singh vs. State of Bihar, 2005 (2) SCJ 650
(ix) N. Somashekar vs. State of Karnataka, AIR 2005 SC 1510
(x) Vilas Pandurang Patil vs. State of Maharashtra, (2004) 6 SCC 158
(xi) C. Antony vs. K.G. Raghavan Nair, AIR 2003 SC 182
(xii) State of Maharashtra vs. Laxmi Bai, 2002 (2) JIC 997 (SC)
(xiii) M.C Ali Vs. State of Kerala, 2010(69) ACC 683(SC)

2.2. **Appellate court can exercise its power u/s 386 CrPC to interfere with the order of acquittal only when there is perversity of fact & law:** Appellate court would interfere with the order of acquittal only when there is perversity of fact and law. The paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. See:

(ia) Allarakha Habib MenonVs. State of Gujarat,(2024) 9 SCC 546

(i) State of UP Vs Wasif Haider and others, (2019) 2 SCC 303

(ii) Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202
(iii) Bhagwan Jagannath Markad Vs. State of Maharashtra, AIR 2016 SC 4531*(para 28)*
(iv) (iv)Sadhu Saran Singh Vs. State of UP, AIR 2016 SC 1160 *(para 18)*

2.3. Appellate court should interfere against acquittal u/s 378 & 386 CrPC only when there are substantial and compelling reasons: Appellate court should interfere against acquittal u/s 378 & 386 CrPC only when there are substantial and compelling reasons. See:

(ia) Allarakha Habib MenonVs. State of Gujarat,(2024) 9 SCC 546
(i) Sham Lal Vs. State of Haryana, AIR 2019 SC 1898.
(ii) State of MP Vs. Chhaakki Lal, AIR 2019 SC 381.
(iii) Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202
(iv) Dilawar Singh Vs. State of Haryana, (2015) 1 SCC 737.

2.4. Power of appellate court u/s 386 r/w 378 CrPC to appreciate evidence against acquittal: In an appeal against acquittal, if a possible view has been taken by the lower court, then no interference is required by the appellate court u/s 378 r/w 386 CrPC. But if the view taken by the lower court is not legally sustainable, the appellate court has ample powers to interfere with the order of acquittal. See:

(i) Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202
(ii) State of Karnataka Vs. Suvarnamma, (2015) 1 SCC 323.

2.5. Powers exercisable by appellate court u/s 378 CrPC against acquittal: The Supreme Court, in the cases noted below, has clarified that the following powers can be exercised by the appellate courts while dealing with an appeal u/s 378 CrPC against acquittal of accused:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that

every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirm and strengthened by the Trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.

(6) If the appellate court decides to interfere with the order of acquittal recorded by the trial court, it must assign reasons for differing with the decision of the trial Court. See:

(i) H.D.Sundara Vs. State of Karnataka, (2023) 9 SCC 581 (Para 8)
(ii) Sampat Babso Kale Vs. State of Maharashtra, AIR 2019 SC 1852.
(iii) Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202
(iv) Satya Narain Yadav vs. Gajanand, 2008 (62) ACC 1006 (SC)
(v) Chandrappa vs. State of Karnataka, 2007 (58) ACC 402 (SC)

2.6. Principles to be kept in mind by appellate court while dealing with appeal against acquittal: The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(1) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(2) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(3) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(4) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(5) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. See:

(ia) Allarakha Habib MenonVs. State of Gujarat,(2024) 9 SCC 546

(i) Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202
(ii) Raja Vs. State of Karnataka, (2016) 10 SCC 506
(iii) Ganpat Vs. State of Haryana, 2011 CrLJ 701 (SC) *(para 5)*=(2010) 12 SCC 59

2.7. Only appeal to High Court & not revision lies against acquittal by Magistrate in complaint case: In view of the provisions in Sec. 378(4) and 401(4) CrPC, only

appeal lies to High Court against acquittal recorded by Magistrate in complaint case. These twin Sections read as under:

(1) **Sec. 378(4) CrPC:** If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complaint in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(2) **Sec. 401(4) CrPC**: Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

2.8. **Appeal against acquittal by Magistrate in complaint case lies to the High Court and not to the Sessions Court (Sec. 378(4)CrPC):** Sub-section (4) of Section 378 makes provisions for appeal against an order of acquittal passed in case instituted upon complaint. It states that in such case if the complainant makes an application to the High Court and the High Court grants special leave to appeal, the complainant may present such an appeal to the High Court. This sub-section speaks to 'special leave' as against sub-section (3) relating to other appeals which speaks to 'leave'. Thus, complainant's appeal against an order of acquittal is a category by itself. The complainant could be a private person or a public servant. Sub-Section (6) further provides that if 'special leave' is not granted to the complainant to appeal against an order of acquittal the matter must end there. Neither the District Magistrate nor the State Government can appeal against that order of acquittal. The idea appears to be to accord quietus to the case in such a situation. Thus if in a case instituted on a complaint an order of acquittal is passed, whether the offence be bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 3778(4) for special leave to appeal against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378 (1)(b), it can in any case, that is even in a case instituted on a complaint, direct the public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than High Court. But there is, an important inbuilt and categorical restriction on the State's power. It cannot direct the public prosecutor to present an appeal from an order of acquittal passed by a Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Sessions Court. See: Subhash Chand Vs. State (Delhi Administration), AIR 2013 SC 395

3. **Appeal to Sessions Judge against conviction by Magistrate (Sec. 374 r/w Sec. 31(3) CrPC): (1)** According to Sec. 374 (2) CrPC, a person convicted and awarded sentence of imprisonment not exceeding seven years by Magistrate may appeal to

the Court of Sessions.

(2) **Sec. 31(3) CrPC**: For the purposes of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

(3) **Court of first instance must direct u/s 31 CrPC whether sentences awarded to the accused at one trial for several offences would run concurrently or consecutively:** It is legally obligatory upon the court of first instance that while awarding sentence at one trial for several offences to specify u/s 31 CrPC in clear terms in the order of conviction as to whether sentences awarded to the accused would run concurrently or consecutively. See: Nagaraja Rao Vs. CBI, (2015) 4 SCC 302.

4. **Appeal when does not lie – Sec. 375, 376 CrPC: (1)** As per Sec. 375 CrPC, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal:

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Sessions, Metropolitan Magistrate of the first or second class, except as to the extent or legality of the sentence.

(2) **Sec. 376(b) CrPC:** "Where a Court of Sessions or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine."

(3) **Sec. 376(c) CrPC**: "Where a Magistrate of the first class passes only a sentence of fine not exceeding on hundred rupees."

5.1. **Appeal against sentence only – Sec. 377 & Sec. 386 (c) & (e) CrPC : Sec. 377 CrPC**: **"(1)** Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy:

(a) to the Court of session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other court.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy--

(a) to the Court of sessions, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Sessions or, as the may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."

5.2. Enhancement of sentence by appellate court u/s 386 (c) & (e) CrPC: An appellate court can enhance the sentence in appeal but the sentence can be enhanced only after giving an opportunity of showing cause to the accused against such enhancement. The appellate court u/s 386 (b) (iii) CrPC cannot enhance sentence without issuing notice to the accused for its enhancement. See: Kumar Ghimirey Vs. State of Sikkim, AIR 2019 SC 2011.

5.3. Victim/complainant of offence also has right to prefer an appeal against acquittal, conviction for lesser offence or imposing inadequate compensation: Proviso to Section 372 CrPC, as inserted w.e.f. 31.12.2009, reads thus : **"***Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.***"**

5.4. Nature and scope of Proviso to Section 372 CrPC: Proviso to Section 372 CrPC was introduced w.e.f. 31-12-2009. The nature and scope of the Proviso extends and encompasses into it. (1) a substantive right, (2) available against orders of acquittal rendered after 31-12-2009 and (3) for exercising which right, no leave is required to be sought. Steps like victim impact statements, victim impact assessment, must be given due recognition so that an appropriate punishment is awarded to the convict. See: Mallikarjun Kodagali Vs State of Karnataka and others (2019) 2 SCC 752

6.1. Time barred appeals and condonation of delay: Period of limitation governing preferring of appeals to High Court or other appellate courts against judgment/order of acquittal or conviction/sentence, under different situations, is 90, 60, 30 days. As per Sec. 115(b)(ii) of the Limitation Act, 1963 period of limitation for preferring an appeal to the court of Sessions Judge is 30 days from the date of sentence or order.

6.2. Condonation of delay in time barred appeals: Sec. 5 of the Limitation Act, 1963 applies in relation to question of condonation of delay in preferring criminal appeals. If the refusal to condone delay in preferring the appeal results into grave miscarriage of justice, the appellate court should condone the delay and permit the filing of the accused. Court should not adopt a pedantic or hyper-technical approach while considering the question of condonation of delay. The court should rather

adopt a rational and pragmatic approach and substantial justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain delay for every day for the reason that if delay for every day is required to be explained by the party/appellant, then why not delay for every hour, every minutes and every second. See:

(i) Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)
(ii) State of Nagaland vs. Lipok AO and others, 2005 (52) ACC 788 (SC)
(iii) Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222
(iv) State of Haryana vs. Chandra Mani, 1996 (3) SCC 132
(v) Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750
(vi) G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897
(vii) Prabha vs. Ram Prakash Kalra, 1987 Suppl. SCC 339
(viii) Collector L.A. Anentnag vs. Smt. Kitiji, AIR 1987 SC 1353
(ix) O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66
(x) Milavi Debi vs. Dina Nath, 1982 (3) SCC 366
(xi) New India Insurance Co. vs. Shanti Misra, 1975 (2) SCC 840

7.1. **No dismissal of appeal in default:** An appellate court cannot dismiss the appeal in default but must dispose of the appeal on merits on perusal of the record even when the appellant or his counsel does not appear to press or prosecute the appeal**.** There is no provision in CrPC for dismissing the appeal in default. See:

(i) Man Singh vs. State of U.P., 2003 (46) ACC 834 (All)
(ii) G. Rajmallaih vs. State of A.P., 1998 (5) SCC 123
(iii) Bani Singh vs. State of U.P., (1996) 4 SCC 720
(iv) Nathu Ram vs. State of U.P., 1989 (26) ACC 98 (All)
(v) Shyam Deo Pandey vs. State of Bihar, AIR 1971 SC 1606

7.2. **Appeal to be decided on merits even when not pressed by the appellant:** Where the criminal appeal preferred by the convict of offence u/s 376 IPC was not pressed by the counsel for the appellant as regards the judgment of conviction and had pressed only on the point of sentence and the appellate court/High Court had then reduced the sentence to already undergone by the convict in jail, it has been held by the Supreme Court that even when the appeal was not pressed on merits but was pressed only on sentence, yet the appellate court had to see u/s 386 CrPC whether the conviction was proper. See: State of Haryana Vs. Janak Singh, AIR 2013 SC 3246.

8.1. **Additional evidence at appellate stage (Sec. 391 CrPC):** Filling up gap or lacuna in evidence can not to be allowed u/s 391 CrPC. The provision u/s 391 CrPC for production of additional evidence at appellate stage has been made for just and fair play and not to fill up gap or lacuna. Sec. 391 CrPC forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and the powers being an exception shall always have to be exercised with

caution and circumspection so as to meet ends of justice. See:

(i) Ashok Tshering Bhutia vs. State of Sikkim, 2011 CrLJ 1770(SC)
(ii) Anil Sharma vs. State of Jharkhand, (2004) 5 SCC 679
(iii) Rambhan vs. State of Maharashtra, 2001(2) JIC 444 (SC)
(iv) Kulbul vs. State of U.P., (2001) JIC 262 (All)
(v) Bir Singh vs. State of U.P., (1977) 4 SCC 420

8.2. **No strait-jacket formula for exercising powers u/s 391 CrPC**: No strait-jacket formula of universal and invariable application can be formulated for production of additional evidence u/s 391 CrPC at appellate stage and permitting or not permitting the production of additional evidence would depend upon the facts of case to case. See: Zahira Habibullah Sheikh vs. State of Gujarat, (2004) 4 SCC 158.

8.3. **Test for grant of application u/s 391 CrPC**: Court should objectively consider acceptability of an application u/s 391 CrPC. If any witness wants to give evidence different from that given by him earlier at the trial, the appellate court should consider genuineness of the prayer in the context of whether the witness concerned had fair opportunity to speak the truth earlier and should not accept it in a routine manner. Additional evidence cannot be received in such a way so as to cause any prejudice to the accused. Order must not ordinarily be made if the party (prosecution) has had a fair opportunity and had not availed of it. See:

(i) Anil Sharma vs. State of Jharkhand, (2004) 5 SCC 679
(ii) Rambhan vs. State of Maharashtra, 2001(2) JIC 444 (SC)
(iii) Rajeshwar Prasad Mishra vs. State of W.B., AIR 1965 SC 1887

9. **Non-appealing convicts–benefit of appellate order to extend to them**: In case the appellate court comes to the conclusion that the case of the non-appealing accused also stands on the same footing and no conviction of any accused including the non-appealing convicted accused was/is possible, the benefit of the appellate decision must be extended to the non-appealing accused as well in spite of the fact that the non-appealing accused had not challenged the lower courts judgment of conviction in appeal. See:

(i) Deep Narayan Chourasia Vs. State of Bihar, AIR 2019 SC 1148
(ii) Anjlus Dungdung vs. State of Jharkhand, 2005 (51) ACC 147 (SC)
(iii) Pawan Kumar vs. State of Haryana, AIR 2003 SC 2987
(iv) Gurucharan Kumar vs. State of Rajasthan, JT 2003 (1) SC 60
(v) Suresh Chaudhary vs. State of Bihar, (2003) 4 SCC 128
(vi) Bijoy Singh vs. State of Bihar, (2002) 9 SCC 147
(vii) Dandu Lakshmi Reddy vs. State of A.P., (1999) 7 SCC 69
(viii) Chellappan Mohandas vs. State of Kerala, AIR 1995 SC 90.

10.1. **Hearing of accused or his counsel not necessary when their absence is deliberate:** Relying on its earlier Three-Judge Bench decision rendered in the case of Bani Singh & Others Vs. State of UP, AIR 1996 SC 2439, the Two-Judge Bench

of the Hon'ble Supreme Court has, in the case noted below, declared its earlier Two-Judge Bench decisions in **M.D. Sukur Ali Vs. State of Assam, AIR 2011 SC 1222 and in A.S. Mohammed Rafi Vs. State of Tamil Nadu, AIR 2011 SC 308** *per incuriam* by holding (in para 36) thus : "In view of the aforesaid annunciation of law, it can safely be concluded that the dictum in M.D. Sukur Ali Vs. State of Assam, AIR 2011 SC 1222 to the effect that the court cannot decide a criminal appeal in the absence of counsel for the accused and that too if the counsel does not appear deliberately or shows negligence in appearing, being contrary to the ratio laid down by the larger Bench in **Bani Singh & Others Vs. State of UP, AIR 1996 SC 2439 (Three-Judge Bench)** is per incuriam. We may hasten to clarify that barring the said aspect, we do not intend to say anything on the said judgment as far as engagement of amicus curiae or the decision rendered regard being had to the obtaining factual matrix therein or the role of the Bar Association or the lawyers. Thus, the contention of the learned counsel for the appellant that the High Court should not have decided the appeal on its merits without the presence of the counsel does not deserve acceptance. That apart, it is noticeable that after the judgment was dictated in open court, the counsel appeared and he was allowed to put forth his submissions and the same have been dealt with." See: K.S. Panduranga Vs. State of Karnataka, AIR 2013 SC 2164 (para 36).

10.2. Court must ask the convict/appellant whether he requires legal assistance: Where the criminal appeal of the convict/appellant Rajoo filed before the High Court against the judgment of conviction and sentence awarded for the offence of gang rape was upheld by the High Court without asking the convict appellant whether he required legal assistance, explaining the scope of Article 21 & 39-A of the Constitution, it has been held by the Hon'ble Supreme Court that both at trail as well as appellate stage an accused not represented by counsel is entitled to free legal aid at the expenses of State. The High Court's order upholding the conviction without asking the convict appellant whether he required legal assistance was set aside by the Hon'ble Supreme Court and the case was remanded to the High Court for re-hearing. See: Rajoo Vs. State of MP, AIR 2012 SC 3034.

10.3. Deciding appeal without hearing appellant or his counsel illegal: After finding that the advocate appointed by the appellant was absent, the appellate court/ High Court ought to have appointed a lawyer to espouse the cause of the appellant. Deciding the appeal without hearing the appellant or his counsel was illegal. See: Chandra Pratap Singh Vs.State of MP, (2023)10 SCC 181 (Para 12)

10.4. Hearing of parties in criminal appeal: Hearing of counsel must in criminal appeal. Relying upon earlier Supreme Court decisions rendered in the matters of (i)

A.S Mohammed Rafi vs. State of T.N, AIR 2011 SC 308 (ii) Man Singh vs. State of M.P, (2008) 9 SCC 542 & (iii) Bapu Limbaji Kamble vs. State of Maharashtra, (2005) 11 SCC 413, it has been held by the Supreme Court in **Md. Sukur Ali vs. State of Assam, 2011 CrLJ 1690 (SC),** that "criminal case, whether trial, appeal or revision should not be decided against accused in absence of his counsel. Liberty of a person is the most important feature of our Constitution. Art.21 which guarantees protection to life and personal liberty is the most important fundamental right of citizens guaranteed by the Constitution. Art. 21 can be said to be the 'heart and soul' of the fundamental rights. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of counsel, there will be violation of Art.21 of the Constitution. As such even if the counsel for the accused does not appear because of his negligence or deliberately, even then the court should not decide the criminal case against the accused in the absence of his counsel since the accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as **amicus curiae** to defend the accused. Even in the Nuremberg trials, the Nazi war criminals responsible for killing millions of persons, were yet provided counsel. Therefore, when we say that the accused should be provided counsel we are not bringing into existence a new principle but simply recognizing what already existed and which civilized people have long enjoyed. The Founding Fathers of our constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula ***'Na vakeel, na daleel, na appeal'*** (No lawyer, no hearing no appeal). Many of them were lawyers by profession, and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1), and that provision must be given the widest construction to effectuate the intention of the Founding Fathers." Similar view has also been taken by the Supreme Court in L. Laxmikanta Vs. State, (2015) 4 SCC 222 *(para 19).*

Note : *In view of the larger Bench (Three-Judge Bench) decision in Bani Singh & Others Vs. State of UP, AIR 1996 SC 2439, the Division Bench decision of the Hon'ble Supreme Court in K.S. Panduranga Vs. State of Karnataka, AIR 2013 SC 2164 (para 36) has to be followed and not the other contrary smaller Bench decisions.*

11.1. Remand for re-trial: Where evidence was not properly appreciated by the Trial Judge/ASJ in a trial of offences u/s 302, 394 IPC and the accused was acquitted and the High Court in appeal had remanded the case back to the trail court for re-trial, the remand order of the High Court was upheld by the Supreme Court. See: Issac vs. Ronald Cheriyan & Others, (2018) 2 SCC 278.

11.2. Ex-parte proceeding in criminal appeal: Interpreting Sec 385 CrPC, it has been held by the Supreme Court that proceeding to decide an appeal involving conviction of accused ex-parte with the assistant of APP in the absence of lawyer & without even ascertaining that lawyer for appellant may have been absent for some special reasons is improper. The appeal should be dealt with assistance from accused's point of view & with some amount of seriousness as otherwise entire justice delivery system of the country would be at peril. Continuance of the ex-parte hearing cannot be ascribed to be in accordance with law. See: Ganesh Vs. State of Maharashtra, (2010) 3 SCC (Cri) 616.

12. Powers of appellate court to record conviction for charge not framed : In view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. But the following conditions must be satisfied for recording conviction for a charge not framed:

(1) That the accused was aware of the basic ingredients of that offence.

(2) That the main facts sought to be established against him were explained to him clearly.

(3) That the accused had got a fair chance to defend himself.

See: Dalbir Singh vs. State of U.P., (2004)5 SCC 334 (Three-Judge Bench)

Note: (a) In the case of Dalbir Singh, charges by trial court were framed u/s 302, 498-A, 304-B IPC but the appellate court convicted the accused for the offence u/s 306 IPC though no charge u/s 306 IPC was framed.

(b) Where accused was charged for offence u/s 121 IPC and after trial was convicted u/s 121 and 123 IPC as well, the Supreme Court held that the accused could have been convicted for the minor offence u/s 123 IPC even without framing of charge and the accused could have taken his defence for the offence u/s 121 IPC as well. See: Shaukat Hussain Guru vs. State (NCT) Delhi, AIR 2008 SC 2419

13.1. Relevant considerations for bail in appeal (Sec. 389 CrPC): During the pendency of an appeal, an appellate court is empowered u/s 389 CrPC to release the convict/appellant on bail and may also, for the reasons to be recorded in writing, suspend the judgment of conviction and order of sentence passed by the lower court. The relevant considerations for releasing the convict/appellant on bail u/s 389 CrPC are as under :

(1) Nature of accusations made against the accused.

(2) Manner in which the offence was committed.

(3) Gravity of the offence and desirability of releasing the accused on bail keeping in view the seriousness of the offence committed by him. See:

(i) State of Haryana vs. Hasmat, (2004) 6 SCC 175
(ii) Vijay Kumar vs. Narendra, (2002) 9 SCC 364
(iii) Ramji Prasad vs. Rattan Kumar Jaiswal, (2002) 9 SCC 366

13.2. Relevant considerations for grant of bail u/s 389 CrPC: Effect of bail granted during trial loses its significance when on completion of trial accused is found guilty. It is only in exceptional cases that benefit of suspension of sentence (by High Court in serious offences like murder) can be granted. The relevant considerations for grant or refusal of bail and suspension of sentence u/s. 389 CrPC are the nature of accusations made against the accused, the manner in which the crime was committed, gravity of the offence and desirability of releasing the accused on bail after they have been convicted for committing the offences of serious nature. See: Kishori Lal vs. Rupa, AIR 2005 SC 1481.

13.3. Suspension of sentence by appellate court u/s 389 CrPC: When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously, the appellate court bestow special concern in the matter of suspending the sentence, so as to make the appellant's right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted. See: Bhagwan Rama Shinde Gosai vs. State of Gujarat, 1999 (39) ACC 302 (SC).

13.4. Suspension of conviction & sentence by appellate court u/s 389(1) CrPC discretionary but the same must be exercised after considering the moral conduct of the convict: In para 3 of the case noted below, the Hon'ble Supreme Court has observed thus : "the respondents in these four appeals are the Government employees. All the four were convicted by the Judicial Magistrate, Erode for various criminal offences and sentenced to undergo various sentences. The said conviction and sentences were affirmed by the Sessions Judge/Special Judge, Erode. The respondents then approached the High Court in Criminal Revision accompanied with an application under S.389(1), Cr. P.C. for suspension of

convictions as well as the sentences. The High Court after considering the ambit and scope of the provisions contained in Ss.374 and 389(1) of the Code of Criminal Procedure and the relevant provisions of law and relying on the decision of this Court rendered in Rama Narang v. Ramesh Narang (1995) 2 SCC 513, took the view that for the reasons to be recorded in writing by the appellate Court, the conviction or order of sentence can be suspended during the pendency of the same. The High Court also took the view that the power of the appellate Court or the High Court to suspend the conviction or sentence is always inherent and can be exercised at any stage, subject to the condition that the appellate Court should be approached and satisfied with the reasonings to be recorded in writing and further, if any one wants to stop the proceedings which have been initiated for disqualification or removal from service or reduction in rank in respect of a public servant one has to look into the moral conduct very much involved in such a case and only when the Court is satisfied with such conduct, then the remedy provided under different statute cannot at all be stopped. After taking the aforesaid view and on consideration of the fact that the respondents will loose the meagre stipend, if the prayer for suspending the conviction during the pendency of the revisions is not granted, passed the impugned orders suspended the conviction as well as the sentences awarded to the respondents. It is against these orders that the State has filed these appeals. The submission of the learned counsel appearing for the State is that the High Court has passed the impugned orders relying on the decisions in Rama Narang's case (supra) wherein this Court took the view that in appropriate cases the conviction and sentences can be suspended in exercise of powers under S.482, Cr. P.C. After going through the decision referred to above and facts of the present case we find that the decision relied upon has no application to the facts of the cases before us. In Rama Narang's case (1995 (2) SCC 513) (supra) the conviction and sentences both were suspended on the reasoning that if the conviction and sentences are not suspended the damage would be caused which could not be undone if ultimately the revision of the appellants of that case was allowed. But in the present case, we find that in the event the revision against their conviction and sentences are allowed by the High Court the damages, if any, caused to the respondents with regard to payment of stipend etc. can well be revived and made good to the respondents. If such trifling matters are taken into consideration, we think then every conviction will have to be suspended pending appeal or revision involving the slightest disadvantage to convict. That being so that facts of the decision relied on have no application to the present case. This apart, the High Court though made an observation but did not consider at all the moral conduct of the respondents inasmuch as respondent Jaganathan who was the Police Inspector attached to Erode Police Station has been convicted under Ss.392, 218 and 466,

IPC, while the other respondents who are also public servants have been convicted under the provision of Prevention of Corruption Act. In such a case the discretionary power to suspend the conviction either under S.389(1) or under S.482, Cr.P.C. should not have been exercised. The orders impugned thus cannot be sustained." See: State of T.N. Vs. A. Jaganathan , AIR 1996 SC 2449.

13.5. Appellate Court u/s 389 CrPC can suspend only the execution of the sentence or order and not the conviction or sentence: Overruling its previous two decisions reported in Shri Manni Lal Vs. Parmai Lal, AIR 1971 SC 330 and Vidya Charan Shukla Vs. Purshottam Lal Kaushik, AIR 1981 SC 547, a Constitution Bench of the Supreme Court has, in the case noted below, ruled thus: “What is relevant for the purpose of Section 8(3) of the Representation of the People Act 1951 is the actual period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the Court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person convicted may have filed an appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A Court of appeal is empowered under Section 389 CrPC to order that pending an appeal by a convicted person the execution of the sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. Therefore, an appellate judgement of a date subsequent to the date of nomination or election, as the case may be, and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact disqualified from filing nomination and contesting the election on the date of nomination or election as the case may be. See: K. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688 (Five-Judge Bench) (paras 40, 41, and 42)

13.6. Disqualification due to conviction and sentence continues even after pardon or remission of sentence: A person convicted and sentenced to a term of rigorous imprisonment of more than two years is disqualified u/s 7(b) of the Representation of the people Act, 1951 when Five years have not passed after his release from jail and the disqualification has not been removed by the Election Commission. The remission of his sentence u/s 401 CrPC and his release from jail before two years of actual imprisonment would not relax his sentence into one of a period of less than

two years and save him from incurring the disqualification u/s 7(b) of the above Act. An order of remission doesn't in anyway interfere with the order of the court. It affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. See: Sarat Chandra Rabha & others. Vs. Khangendra Nath and others, AIR 1961 SC 334 (Five-Judge Bench) *(para 4).*

13.7. Stay of conviction by appellate court u/s 389 CrPC only in exceptional cases: Where in appeal, the conviction of the accused for the offences u/s 302, 147, 148 IPC was stayed by the High Court u/s 389 of the CrPC on the ground that the accused would be deprived of his source of livelihood, it has been held by the Hon'ble Supreme Court that such order of the High Court cannot be appreciated as the stay of conviction can be granted by the appellate court only in exceptional cases and even for suspension of sentence the court has to record reasons in writing u/s 389(1) CrPC. See: Shyam Narain Pandey Vs. State of UP, 2015 (88) ACC 515 (SC).

13.8. Suspension of sentence by appellate court u/s 389(i) CrPC held improper: Where the accused being government servants were convicted for offences u/s 392, 218, 466 IPC and their appeal was also dismissed by the Special Sessions Judge, the suspension of their conviction u/s 389(1) CrPC by the revisional court/High Court without taking into consideration the moral conduct of the convicts was held improper exercise of discretion by High Court u/s 389(1) CrPC. See: State of Tamil Nadu vs. A. Jaganathan, AIR 1996 SC 2449.

13.9. Suspension of conviction u/s 389 CrPC for murder on the ground of likely loss of job and livelihood not proper: Suspension of conviction for commission of murder on the ground that the convict would lose job and source of livelihood cannot be sufficient ground to stay conviction of murder convict. See: 2015 CrLJ 250 (SC).

13.10. Stay order when and how to be passed: The Supreme Court has issued following directions regarding the manner of passing of the stay orders and durations thereof in revisions and appeals filed against the orders of the trial courts:

(1) There must be a speaking order while granting stay of the proceedings

(2) Once an stay order is passed, the challenge should be decided within two to three months and the matter should be taken up on a day today basis

(3) Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.

(4) Stay order shall automatically lapse after six months if not extended further and the proceeding before the trial court shall automatically commence

(5) Extension of stay order can be passed only by an speaking order showing extra-ordinary situation

(6) The above directions shall apply to both the civil as well as criminal matters

(7) The above directions shall apply to both civil and criminal appellate and revisional jurisdictions. See: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench)

Note: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench) has now been overruled by a Five-Judge Constitution Bench of the Hon'ble Supreme Court by its judgement dated 29.02.2024 passed in High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

13.11. No automatic expiration of interim stay order after six months: Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an interim stay order would not expire after expiration of six months from the date of passing of the stay order. See: High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

13.12. Second bail application u/s 389 CrPC: An order passed on a bail application is only an interlocutory order and cannot be treated as judgment or final order disposing of a case and the bar contained u/s 362 CrPC is not attracted to entertaining a second bail application u/s 389 CrPC by the appellate court. There is no provision in CrPC creating a bar against the maintainability of a second bail application u/s 389 CrPC in an appeal. A second bail application would be maintainable only on some substantial ground where some point which has a strong bearing on the fate of the appeal and which may have the effect of reversing the order of conviction of the accused is made out. Apart from the ground on the merits of the case, a second application for bail would also be maintainable on the ground of unusual long delay in hearing of the appeal as in the event the appeal is not heard

within a reasonable time and the convicted accused undergoes a major part of the sentence imposed upon him, the purpose of filing of the appeal itself may be frustrated. A strong humanitarian ground which may not necessarily pertain to the accused himself but may pertain to someone very close to him may also, in certain circumstances, be a ground to entertain a second bail application. These are some of the grounds on which second bail application may be entertained. It is not only very difficult but hazardous to lay down the criteria on which a second application for bail may be maintainable as it will depend upon peculiar facts and circumstances of each case. See: Dal Chand vs. State of U.P., 2000 CrLJ 4579 (All—D.B.)

14. **Judgment in appeal by Sessions Judge**: The provisions relating to judgments of trial courts contained u/s 353 to 365 CrPC, so far as may be practicable, apply to the judgments in appeal of Sessions Judge. But according to the Proviso to Section 387 CrPC, unless the appellate court otherwise directs, the accused shall not be brought up, or required to attend to hear judgment delivered.

15.1. **Abatement of appeal (Sec. 394 CrPC):** As per Sec. 394 CrPC, an appeal against conviction abates on the death of the accused except an appeal from a sentence of fine. See:

(i) Harnam Singh vs. State of H.P., AIR 1975 SC 236
(ii) Om Prakash vs. State of Haryana, AIR 1979 SC 1266
(iii) P.R. Anjanappa vs. Yurej Agencies Pvt. Ltd., 2004 Cr.L.J. 2565 (Karnataka- wherein it has been held that the provisions u/s. 394 CrPC can be safely applied to criminal revisions as well).

15.2. **LR of the deceased appellant when to be permitted to continue the appeal (394 CrPC):** But according to the Proviso to Section 394(2) CrPC, where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the appellate court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

16.1. **Jail Appeals (Sec. 383 CrPC):** Sec. 383 CrPC provides for preferring an appeal by a prisoner/convict from jail. Sec. 383 CrPC reads thus, "If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer-in-charge of the jail, who shall thereupon forward such petition and copies to the proper appellate court."

16.2. **Legal aid to convict/appellant to prefer appeal from jail at the expenses to be borne by the State:** Interpreting the scope of Article 21 & 39-A of the Constitution, the Supreme Court has laid down that a convict/prisoner must be supplied copy of judgment of conviction and he is also entitled to prefer an appeal

against his conviction and sentence at the expenses to be borne by the state. A convict/prisoner is also entitled to free legal aid in the form of counsel etc. and special duty has been cast upon the authorities of the jail detaining such convict/prisoner. See: M.H. Hoskot vs. State of Maharashtra, AIR 1978 SC 1548.

17.1. Compounding in appeal: Sec. 320(5) CrPC: Section 320(5) CrPC reads thus : *"When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard."* Also see the cases noted below:

(i) K. Kandasamy vs. K.P.M.V.P. Chandrasekaran, 2005 CrLJ 2597 (SC): Compounding of offence u/s 500 IPC permitted u/s 320(5) CrPC.

(ii) Chhotey Singh vs. State of U.P., 1980 CrLJ 583 (All) : Compounding not permissible after final disposal of appeal.

17.2. Distinction between power of High Court and the Sub-ordinate Court u/s 320 & 482 CrPC for allowing compounding of offences: Power of compounding of offences conferred on a court u/s 320 CrPC is materially different from power conferred on High Court u/s 482 CrPC. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC. See: State of Rajasthan Vs. Shambhu Kewat, (2014) 4 SCC 149.

18. Rewriting overruled judgment amounts to judicial indiscipline: If a judgment is overruled by the higher court, the judicial discipline (on remand) requires that the Judge whose judgment is overruled must submit to the judgment (of the higher court). He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See:

(i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(para 31)*

(ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 *(para 28)*

19.1. Award of compensation by trial/appellate court to victim u/s 357 CrPC mandatory: It is mandatory duty of criminal court to apply its mind to question of awarding compensation u/s 357 CrPC in every case. This power is not ancillary to other sentences but in addition thereto. Use of the word "may" in section 357 CrPC does not mean that court need not consider applicability of Section 357 CrPC in every criminal case. Section 357 CrPC confers power coupled with duty on court to mandatorily apply its mind to question of awarding compensation in every criminal case. Court must also disclose that it has applied its mind to such question by recording reasons for awarding/refusing grant of compensation. Power given to courts u/s 357 CrPC is intended to re-assure victim that he/she is not forgotten in criminal justice system. Very object of Section 357 CrPC would be defeated if courts choose to ignore Section 357 CrPC and do not apply their mind to question

of compensation. Courts are directed to remain careful in future as to their mandatory duty u/s 357 CrPC. *Copy of order directed to be forwarded to Registrars General of all High Court for its circulation amongst judges handling criminal trials and hearing criminal appeals*. See: Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 6 SCC 770.

19.2. Awarding compensation u/s 357 CrPC to the victim of offence by keeping in view his financial capacity mandatory: Awarding compensation u/s 357 CrPC to the victim of offence by keeping in view his financial capacity mandatory. See:

(i) Manohar Singh Vs. State of Rajasthan, 2015 (89) ACC 266.
(ii) Ankush Shivaji Gaikwad Vs. State of Maharashtra, 2013 (82) ACC 312 (SC**).**

19.3. Victim Compensation Scheme, 2011: Relying on the directions of the Supreme Court issued in Laxmi Vs. Union of India, (2014) 4 SCC 427 and State of HP Vs. Rampal, (2015) 11 SCC 584, the Supreme Court, in the case noted below, while referring to the amended provisions of Section 357-A CrPC w.e.f. 31.12.2009 and the victim compensation scheme 2011, awarded Rs. 1,50,000/- as compensation to be paid by the convict to the injured victim of acid attack after his conviction for the offences u/s 326/34 IPC. See: State of Himachal Pradesh Vs. Vijay Kumar, AIR 2019 SC 1543.

19.4. Reasons must be recorded for not granting compensation: Trial court must record reasons why it is not possible to release the convict on probation. Similarly, grant of compensation to the victim is equally a part of just sentencing. Reason should be recorded for not granting compensation. A Trail Judge must be alive to alternate methods of mutually satisfactory disposition of a case. See: State Vs. Sanjiv Bhalla, 2014 (86) ACC 938 (SC).

19.5. Direction for imparting training to Judicial Officers at NJA, Bhopal regarding award of interim or final compensation u/s 357, 357-A CrPC to the victim of the offence at any stage of the criminal proceedings: Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section357-A CrPC when the accused is not in a position to pay fair compensation as laid down by the Supreme Court in its (unreported) judgment dated 28.11.2014 delivered in Criminal Appeal No. 420 of 2012, Suresh Vs. State of Haryana. The Supreme Court in the case of Suresh had held thus **:** *"We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation*

being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factor as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful." See: State of MP Vs. Mehtab, 2015 (89) ACC 306 (SC) *(Para 8).*

19.6. Rape victim's illegitimate child entitled to compensation u/s 357A CrPC: Word 'victim' occurring in Section 357-A CrPC and UP Victim Compensation Scheme, 2014 should include a child also born out of illegal act of sexual abuse with minor and such child of the rape victim is also entitled to compensation. See: "A" through her father "F" Vs. State of UP, AIR 2016 (NOC) 396 (All)(DB)(LB).

20. POCSO Court to try both the cases where accused charged under SC/ST Act also: A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the

persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the **later enactment must prevail over the earlier one.** Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In **KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498**, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See:

(i) State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP) *(paras 14, 15, 16, 17, 19 & 20).*

(ii) KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498,

21. **Appeal by third party/private party when to be entertained? :** Court should be liberal in allowing any third party having bona fide connection with the matter to maintain appeal with a view to advance substantial justice. However, power of allowing third party to maintain appeal should be exercised with due care and caution. Persons unconnected with the matter under consideration or having personal grievance against accused should be checked. Strict vigilance is required to be maintained in such regard. See: Amanullah Vs. State of Bihar, (2016) 6 SCC 699.

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