Principles of Sentencing

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1. **Meaning of 'Penalty':** The word 'penalty' is an elastic term with different shades of meaning. Penalty always involves an idea of punishment**.** See:
   (i) Sova Ray Vs. Gostha Gopal Dey, (1988) 2 SCC 134
   (ii) N.K. Jain Vs. C.K. Shah, (1991) 2 SCC 495 and
   (iii) Shiv Dutt Rai Fateh Chand Vs. Union of India, (1983) 3 SCC 529.

2.1 **Object of Sentencing Policy**: Object of sentencing policy should be to see that crime does not go unpunished and victim of crime as also the society has satisfaction that justice has been done to it. See: Purushottam Dashrath Borate Vs. State of Maharashtra, (2015) 6 SCC 652 (Three-Judge Bench)

2.2 **Object of Penology:** The object of penology is to protect the society against the criminals by inflicting punishment upon them under the existing criminal law. Social defence is the criminological foundation of punishment. See: M.H. Hoskot Vs. State of Maharashtra, AIR 1978 SC 1548

3. **Sentencing as socio-legal process:** The Supreme Court held that "sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch" this process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. It is established that sentencing is a socio-legal process, where a judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the judges to give punishment, it becomes important to exercise the same in a principled manner. The Trial Court is obligated to give reasons for the imposition of sentence, as firstly, it is fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. See: X vs. State of Maharashtra, (2019) 7 SCC 1.
4. **Different Theories of Punishment:** Following are the main theories of punishments to offenders:
   (i) **Deterrent:** (capital punishment or such other exemplary / severe punishments which deter others to commit offences)
   (ii) **Preventive:** (disabling the offender from committing crimes again by detaining or imprisoning him for life or for other terms)

(iii) **Retributive:** (returning evil for evil, eye for eye, tooth for tooth, limb for limb, life for life)
(iv) **Reformative:** (probation, TRC, admonition etc.)
(v) **Expiatory:** (repentance, penance etc.)

5. Punishments awardable to offenders: Section 53 of the IPC provides for following punishments which can be awarded to offenders:
(i) Death
(ii) Imprisonment for life
(iii) Rigorous imprisonment
(iv) Simple imprisonment
(v) Fine
(vi) Forfeiture of property
(vii) Transportation: (Section 53A IPC, now omitted w.e.f. 01.01.1956)
(viii) Externment: (zilabadar under UP Control of Goondas Act, 1970)

5. **Policy of sentencing as declared by Supreme Court**: The Supreme Court while determining the questions relatable to sentencing policy has held as under:
(i) The court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.
(ii) In the opinion of the court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.
(iii) Life imprisonment is the rule and death sentence is an exception.
(iv) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature, circumstances of the crime and all relevant considerations.
(v) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime. See Ramnaresh vs State of Chhattisgarh, AIR 2012 (SC) (Cri) 711.

6. **A penalty not prescribed under law cannot be imposed:** In the case noted below, the Supreme Court has held that in a civilized society governed by the rule of law, the punishment not prescribed under the statutory rules cannot be imposed. **See:** Vijay Singh Vs. State of Uttar Pradesh & others, (2012) 5 SCC 242.
7. **Rehabilitary & reformative aspects in sentencing:** Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelity but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has

detetiorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries. See...Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926.

8. **Reformative approach as object of criminal law:** The reformative approach to punishment should be the object of the criminal law. In order to promote rehabilitation of the offenders without offending their communal conscience and to secure social justice to them, the courts should prefer reformative approach towards the offenders instead of subjecting them to harsher punishments. **See:** Narotam Singh Vs. State of Punjab, AIR 1978 SC 1542.
9. **Psychiatric assistance for bringing reforms in offender:** In the matter of probability and possibility of reform of a criminal, it is seen that a proper psychological and psychiatric evaluation is hardly done. Without the assistance of such a psychological or psychiatric assessment and evaluation of the criminal, it would not be proper to hold that there is no possibility or probability of reform. The State has to bear in mind this important aspect while proving by evidence that the convict cannot be reformed or rehabilitated. See: Chhannu Lal Verma Vs. State of Chhattisgarh, AIR 2019 SC 243 (Three-Judge Bench).
10. **Rigorous and simple imprisonments: difference between?:** Rigorous imprisonment is one which is required by law to be completed with hard labour. While a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour. See: Phool Kumari Vs. Office of the Superintendent, Central Jail, Tihar, New Delhi, (2012) 8 SCC 183.
11. **Relevant considerations for determining quantum of sentence**: The courts should take into consideration the following factors while determining the quantum of sentence to be awarded against the convicts:
    (i) nature and gravity of offence
    (ii) penalty provided for the offence
    (iii) manner of commission of offence
    (iv) proportionality between crime & punishment
    (v) age and sex of the offender
    (vi) character of the offender
    (vii) antecedents (criminal history etc.)
    (viii) possibility of reforms
    (ix) impact of offence on social order and public interest
    (x) The personality of the offender as revealed by his age, character, antecedents and other circumstances and the tracebility of the offender to reform must necessarily play the most prominent role in determining the sentence. A judge has to balance the personality of the offender with the circumstances, situatiions and the reactions and choose the appropriate sentence to be imposed**.** See....

(i) Sushil Murmu Vs. State of Jharkhand, (2004) 2 SCC 338
(ii) Surjit Singh Vs. Nahar Ram, (2004) 6 SCC 513

12. **'Proper sentence': what is?:** Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionality. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically. See: Deo Narain Mandal Vs. State of UP (2004) 7 SCC 257
13. **Duty of prosecution & courts to collect past criminal history etc. of the convict before awarding sentence**: The investigating agency and courts are duty bound to collect additional evidence regarding past criminal history etc. of the convicted accused before imposing sentence on him. The courts are further duty bound to collect additional evidence relating to possibility of reformation, rehabilitation and criminal past of the convict to impose appropriate sentence u/s 354(3) CrPC. The state is obliged to furnish such materials to court. See: Anil Vs. State of Maharashtra, (2014) 4 SCC 69.
14. **Past criminal antecedents of convict not to be taken into consideration for purposes of determining quantum of sentence**: In the case noted below which related to rape and murder of three years old girl child, the DNA sample was taken from the bodies of the accused and the victim u/s 53-A and 164-A CrPC and was sent to the Forensic Sciences Laboratory for DNA test and DNA profiling but the same was not produced before the trial court and the accused was awarded death sentence. The Supreme Court converted the death sentence into life imprisonment by holding that non-production and non-explanation for not producing the DNA profiling report before the court was not justified. The convict was however directed to remain in jail for his entire normal life. Criminal history of the convict, including recidivism, cannot, by itself, be a ground for awarding the death sentence. There could be a situation where a convict had previously committed an offence and had been convicted and sentenced for that offence and thereafter, he commits a second offence for which he is convicted and sentence is required to be awarded against him. This does not pose any legal challenge or difficulty. But there could also be a situation where a convict has committed an offence and is under trial for that offence. During pendency of the trial, he commits a second offence for which he is convicted and in which sentence is required to be awarded. Section 54 of the Evidence Act prohibits the use of previous bad character evidence except when the convict himself chooses to lead evidence of his good character. The implication of this clearly is that the past adverse conduct of the convict ought not to be taken into consideration for the purposes of determining the quantum of sentence except in specified circumstances. See: Rajendra Prahladrao Wasnik Vs. State of Maharashtra, AIR 2019 SC 1 (Three-Judge Bench).
15. **Awarding lesser sentence than prescribed improper ---** If the legislature has provided for a minimum sentence, the same should ordinarily be imposed save and except some exceptional causes which may justify awarding lesser sentence than the

minimum prescribed (It was a case u/s. 3/7 of the E.C. Act, 1955). See---Harendra Nath Chakraborty vs. State of W.B., 2009(1) Supreme 272.

16. **Sentences which High Courts and Sessions Judges may pass (Section 28 CrPC):** Section 28 CrPC reads as under:
    (1) A High Court may pass any sentence authorized by law.
    (2) A Sessions Judge or Additional Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.
    (3) An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

17.1 Sentences which Magistrates may pass (Section 29 CPC): Section 29 CrPC reads as under:

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term **exceeding seven years.**

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term **not exceeding three years**, **or of fine not exceeding (ten thousand rupees) or of both**.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding (five thousand rupees) or of both.

17.2 Sentences in cases of conviction of several offences at one trial (Section 31 CrPC): Section 31 CrPC reads as under:

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trail before a higher Court: Provided that:
    (a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;
    (b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose 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.

18. **20 years RI awarded for different offences in violation of Sec. 31 CrPC set aside by the Supreme Court:** Interpreting the provisions of Section 31 CrPC, it has been held by the Supreme Court that where the accused was convicted for several offences and 20 years aggregate sentence was consecutively awarded by the M.P. High Court, the same was illegal as u/s 31 CrPC the convict/accused could not have been sentenced to imprisonment for period longer than 14 years and sentence of 20 years rigorous imprisonment being illegal was set aside by the Supreme Court. See: Chatar Singh vs. State of M.P., AIR 2007 SC 319.
19. **Delay in disposal of appeal no ground for awarding sentence below minimum prescribed:** In the matter of conviction of an accused under Section 7 & 13(1)(d)(ii) of the P.C. Act, 1988, it has been ruled by the Hon'ble Supreme Court that delay in disposal of appeal is no ground for awarding sentence below minimum prescribed. See A.B. Bhaskara Rao Vs. Inspector of Police, CBI, 2011 (75) ACC 619 (SC)
20. **Loss of service due to conviction no ground for awarding sentence below minimum prescribed:** In the matter of conviction of an accused under Section 7 & 13(1)(d)(ii) of the P.C. Act, 1988, it has been ruled by the Hon'ble Supreme Court that delay in disposal of appeal is no ground for awarding sentence below minimum prescribed. Loss of job by the delinquent due to conviction and the quantum of amount taken as graft is also immaterial for reduction of sentence below the minimum prescribed. See… A.B. Bhaskara Rao Vs. Inspector of Police, CBI, 2011 (75) ACC 619 (SC)
21. **Awarding meagre sentence counter-productive and against the interest of the society:** Awarding meagre sentence by courts is counter productive and against the interest of the society. See... State of UP Vs. Kishan, 2005(1) SCJ 390

    Note : It was a case of conviction by trial court under section 304, part II of the IPC by the Sessions Judge, Sitapur (UP) who had awarded 7 years R.I. In appeal, the Lucknow Bench of the Hon'ble Allahabad High Court reduced the sentence to period already undergone in Jail wihtout indicating as to what the period already undergone was. On appeal being filed by the State before the Hon'ble Supreme Court, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court with the direction to re-hear on the question of sentence.
22. **In the event of compromise, sentence can be reduced by court even in non-compoundable offences:** Section 320(9) CrPC explicitly prohibits any compounding except as permitted under Section 320 CrPC. But in the event of a settlement or compromise between the parties, quantum of sentence can be reduced by the court even in serious non-compoundable offences**.** See: Murali Vs State, (2021) 1 SCC 726 (Three-Judge Bench)
23. **Undue sympathy to impose inadequate sentence to harm the judicial system & undermine public confidence**: Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and the society can not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence by having regard to the nature of the offence and the manner in which it was executed or committed. Imposition of sentence without considering its effect on the social order in many cases may in reality be a futile exercise. The social impact of the crime, e.g. where it relates

to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. See---

(i) Mofil Khan vs. State of Jharkhand, (2015) 1 SCC 67
(ii) State of Punjab Vs. Bawa Singh, (2015) 3 SCC 441
(iii) State of M.P. Vs. Najab Khan & Others, (2013) 9 SCC 509
(iv) Gopal Singh Vs. State of Uttarakhand, (2013) 7 SCC 545
(v) Guru Basavaraj Vs. State of Karnataka, (2012) 8 SCC 734
(vi) Sahdev vs. Jaibar, 2009 (67) ACC 483 (SC)
(vii) State of M.P. vs. Sheikh Shahid, AIR 2009 SC 2951 (Three-Judge Bench)
(viii) Sevaka Perumal vs. State of T.N., AIR 1991 SC 1463

23. **Awarding inadequate sentence illegal :** The Supreme Court, in many recent decisions, has declined to follow the theory of reformation of the accused persons as propounded by the former Supreme Court Judge Hon'ble Krishna Iyer in Phul Singh Vs. State of Haryana, (1979) 4 SCC 413 and has ruled that awarding lesser sentence than the minimum prescribed is illegal. See..... State of MP Vs. Balu, (2005) 1 SCC 108

24. **Long pendency of case not a ground to award lesser sentence:** Just and appropriate sentence should be imposed by courts after giving due consideration to the facts and circumstances of each case. Long pendency of case is no ground to award lesser sentence. See..... State of MP Vs. Ghanshyam Singh, AIR 2003 SC 3191

25. **Undue sympathy not to be shown to the convict in awarding sentence**: Undue sympathy to impose inadequate sentince would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or commited etc. See.....Union of India Vs. Devendra Nath Rai, (2006) 2 SCC 243

Note: In this case the trial court had sentenced the convit/accused u/s 307, 324, 504 IPC to undergo ten years imprisonment which was reduced by the High Court to period already undergone.

26. **Showing Undue sympathy to accused in awarding lesser sentence to harm the society and the judicial system :** Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine public confidence in the efficacy of law and the society could not long endure under such serious threats. It is, therefore, duty of every court to award proper sentence having regard to the nature of

the offence and the manner in which it was executed or committed etc. See: Shailendra Jasvantbhai Vs. State of Gujarat, (2006)2 SCC 359

27. **Sentence for offence u/s. 376 IPC:** An offence which affects the morale of the society should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim, should be eschewed, particularly when Parliament itself had laid down minimum sentence. Rape, being a violation with violence of the private person of a woman, causes mental scare. Thus, not only a physical injury but a deep sense of some deathless shame is also inflicted. Sentenc less than the minimum prescribed under Section 376(1) & (2) of the IPC can only be awarded with special and adequate reasons. Mere existence of a discretion by itself does not justify its exercise. In the facts of the case, minimum sentence ought to have been maintained. See--- State of M.P. vs. Bablu Natt, 2009 (1) Supreme 131

28. **Marriage by rapist with the victim not a ground to award sentence less than 07 years** : In a case of offence of rape for purposes of awarding sentence u/s 376(1) of the IPC, in the case noted below where the age of the victim girl was 14 years, it has been held by the Supreme Court that conduct of the accused at the time of commission of the offence of rape, age of prosecutrix and consequences of rape on prosecutrix are some of the relevant factors which the court should consider while considering the question of reducing sentence to less than minimum sentence of 07 years. Fact that the rapist had since got married, was the sole breadwinner, had a family etc are not adequate and special reasons to reduce sentence of rape below statutory minimum. See : Parminder Vs. State of Delhi, (2014) 2 SCC 592.

29. **Court cannot award less than minimum sentence provided by statute:** Offence of atrocity was committed by the accused u/s 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. The trial court had convicted and sentenced the accused with imprisonment for six months and Rs. 500/- as fine. On appeal, the High Court reduced the minimum sentence of six months to the period already undergone by the accused in jail and enhanced the fine from Rs. 500/- to Rs. 3000/-. The Supreme Court set aside the said penalty awarded by the High Court and restored the penalty awarded by the trial court. The Supreme Court further held that court cannot impose less than minimum sentence contemplated by the statute. Even the provisions of Article 142 of the Constitution of India cannot be resorted to impose sentence less than the minimum sentence provided by law. See: State of Madhya Pradesh Vs. Vikram Das, AIR 2019 SC 835.

30. **Sentence u/s 376 IPC less than minimum prescribed not to be awarded**--- Sentence u/s 376 IPC less than minimum prescribed cannot be awarded on the ground that the accused was rustic and illiterate labourer belonging to scheduled tribe. Impact of offence on social order and public interest cannot be lost sight of while exercising such discretion. See--- State of M.P. vs. Basodi, AIR 2009 SC 3081 (Three-Judge Bench)

31. **Illiteracy not a ground for awarding lesser sentence:** Sentence u/s 376 IPC less than minimum prescribed cannot be awarded on the ground that the accused was rustic and illiterate labourer belonging to scheduled tribe. Impact of offence on social order and public interest cannot be lost sight of while exercising such discretion. See--- State of M.P. vs. Basodi, AIR 2009 SC 3081 (Three-Judge Bench)

32. **Discretion in awarding sentence must be justifiably exercised:** Mere existence of a discretion by itself does not justify its exercise. Discretion in awarding sentence should be exercised in a justified manner. See--- State of M.P. vs. Bablu Natt, 2009 (1) Supreme 131

33. **Penalty when the same act punishable under two different statutes---** Where the accused was convicted for the offences u/s 111 & 135 of the Customs Act, 1962 and also u/s 85 of the Gold Control Act, 1968, the Supreme Court has held that if the ingredients of the two offences are different, the accused should be punished for both the offences under both the Acts and the bar of principle of double jeopardy contained u/s 300 CrPC as interpreted in V.K. Agarwal, Asstt. Collector of Customs vs. Vasantraj, AIR 1988 SC 1106 & P.V. Mohammed vs. Director, 1993 Suppl. (2) SCC 724 would not attract. If the offences are distinct, there is no question of the rule of double jeopardy as embodied in Art. 20(2) of the Constitution. See---

(i) A.A. Mulla vs. State of Maharashtra, AIR 1997 SC 1441

(ii) State of Bombay vs. S.L. Apte, AIR 1961 SC 578 (Four Judge Bench)

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

34.2 Seven years imprisonment for attain to commit rape held proper under POCSO Act, 2012 : Where the accused had tried to commit rape on a seven years old child while she was coming from school and her testimony was also supported by other students studying in her school and the medical evidence, the Supreme Court held that conviction of the accused for the offence u/s 9 and 10 of the POCSO Act, 2012 and seven years imprisonment was proper. See: Kumar Ghimirey Vs. State of Sikkim, AIR 2019 SC 2011.

34.3. Sentence awardable for the offences under POCSO Act: The Hon'ble Supreme Court while dealing with the queries raised in the case noted below has clarified the sentence of imprisonment to be awarded by the court for the offences under the POCSO Act, 2012 as under.

(a) Pass an order clarifying that pursuant to the Judgment of this Hon'ble Court dated 19.04.2022 in Criminal Appeal No. 612 of 2018, the sentence to be served by the Applicant is life imprisonment simplicitor for the offence under Section 302, 5(m), (i) and 6 of the Protection of Children under Sexual Offences Act, 2012 (POCSO), imprisonment for a term of 20 years for the offence under Section 376A, IPC, rigorous imprisonment for 10 years for the offence under Section 366, IPC and rigorous imprisonment for 7 years for the offence under Section 363, IPC.

(b) Pass an order clarifying that the sentence imposed by the Ld. Sessions Judge, Seoni under Sections 376(2)(m) and 376(2)(i), IPC has been substituted/subsumed by this Hon'ble Court in Judgment dated 19.04.2022 in Criminal Appeal 612 of 2018 by imposing a sentence of imprisonment for 20 years under Section 376A, IPC.

(c) Pass an order clarifying that the sentence to be served by the applicant for the offence under Sections 5(m) and (i), 6, POCSO is life

imprisonment and not life imprisonment for the reminder of natural life.

(d) Pass an order directing the Ld. Sessions Judge Seoni to modify the order of supersession in accordance with the Prayers A to C.

(e) Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

Punishments prescribed for the offences under Sections 376(2)(i), 376(2)(m) and under Section 376(A) of IPC as also for the offence under Section 5(i) and Section 5(m) read with Section 6 of the POCSO Act, for which the petitioner-accused has held guilty and punished, and to the observations made by this Court in the judgment dated 19.04.2022, it appears that the Court, while commuting the sentence of death for the sentence of life imprisonment for the offence punishable under Section 302 of IPC, and while imposing sentence to undergo imprisonment for 20 years and not imprisonment for the remainder of his natural life for the offence under Section 376A, IPC, had tried to balance the scales of retributive justice and restorative justice. The Court, at the same time had confirmed the conviction and sentence recorded by the Courts below for the other offences under the IPC and the POCSO Act which included offence under Sections 376(i) and 376(m) of IPC and Section 5(i) and 5(m) read with Section 6 of POCSO Act. Hence, as rightly submitted by the learned Senior Advocate Mr. Marlapalle, if the sentence of life imprisonment imposed by the Sessions Court and confirmed by the High Court, is also confirmed by this Court for the offence under Sections 376(2)(i) and 376(2)(m), IPC and for the offence under Section 5(i) and 5(m) read with Section 6 of POCSO Act, then the life imprisonment would mean imprisonment for the remainder of the petitioner's (original appellant's) natural life, and in that case, the very purpose of the court in not imposing the sentence of life imprisonment for the remainder of petitioner's life for the offence under Section 376(A) of IPC, would be frustrated. The Court had consciously imposed the sentence of twenty years for the offence under Section 376A for the reasons stated in the judgment. The Court therefore is inclined to accept the submissions of Mr. Marlapalle, and to modify the sentence imposed for the offence under Sections 376(2)(i) and 376(2)(m) of IPC and for the offence under Section 5(i) and 5(m) read with Section 6 of the POCSO Act, so as to commensurate the said sentences with the sentence imposed for the offence under Section 376(A) of IPC, and accordingly imposes sentence directing the appellant/petitioner to undergo imprisonment for a period of twenty years instead of life imprisonment for the said offences.(Para 6)

The upshot of this order would be that the appellant-petitioner shall undergo rigorous imprisonment for a period of 20 years for the offence under Sections 376(2)(i) and 376(2)(m) of IPC, and for a period of 20 years for the offence under Section 5(i) 5(m) read with Section 6 of the

POCSO Act. The judgment and order dated 19.04.2022 passed by this Court in Criminal Appeal No. 612 of 2019 stands corrected and modified to the aforesaid extent. The rest of the judgment shall remain unchanged. (Para 7).
See: Mohd. Firoz Vs. State of M.P., 2022 SCC OnLine SC 1474 (Three-Judge Bench)

34.4. Court is bound to impose not below the minimum sentence u/s 6 of POCSO Act, 2012: The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6 on its plain language, leaves no discretion to the court and there is no option but to impose the minimum sentence as done by the trail court. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. See: State of Uttar Pradesh Vs. Sonu Kushwaha, (2023) 7 SCC 475 (Paras 13 & 14)

34.5. Quashment of FIR and Charge-sheet by High Court for offences under POCSO Act held improper: The facts of the case noted below were that during the investigation, Superintendent of the hostel and four others, namely, Narendra Laxmanrao Virulkar, Sau Neeta alias Kalpana Mahadeo Thakare, Sau Lata Madhukar Kannake, Venkateswami Bondaiyaa Jangam were arrested and arraigned as accused in the crime. During the investigation, it was found that 17 minor girls were abused by the accused and on their medical examination rupture of hymen was found. The respondent herein is the Medical Practitioner appointed for treatment of girls admitted to the said Girls' hostel and the victim girls were taken to him. The investigation revealed that the respondent had knowledge about the incidents occurred, from the victims themselves as the victim girls revealed in their statements recorded under Section 161 of CrPC about their divulgation of sexual assault on them to the respondent. In fact, some of the victims had specifically revealed it in their statements recorded under Section 164 CrPC. The respondent who was under a legal obligation in terms of the provisions under Section 19(1) of the POCSO Act upon getting the knowledge about committing of an offence under the POCSO Act to provide such information either to the Special Juvenile Police Unit or the local police remained silent and did not provide such information to help the accused is the gist of the allegation against him. As already stated, after investigation, a charge sheet was also filed. The Respondent has been arraigned as accused No. 6 in the aforesaid crime. Apprehending arrest in connection with the said crime, the respondent herein filed an anticipatory bail application before the Ld. Sessions Judge on 10.06.2019 and the same was rejected on 25.06.2019. The said

order was challenged before the High Court and the High Court allowed the appeal and granted him protection from arrest. Thereafter, the respondent herein filed Criminal Application (APL) No. 841/2019 under Section 482 of the CrPC seeking quashment of the FIR dated 12.04.2019 and the charge-sheet dated 08.06.2019 to the extent they are against him. The High Court passed the impugned judgment and quashed the FIR as also the charge-sheet qua the respondent. Hence, this appeal. Exercise of power under Section 482 CrPC is an exception and not the rule and it is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. This position has been stated and reiterated by the Supreme Court time and again. The Supreme Court in the decision in *R.P. Kapur* v. *State of Punjab*, AIR 1960 SC 866 held that the HighCourt could not embark upon an enquiry as to whether the evidence is reliable or not while exercising the power under Section 482 CrPC. In *State of Haryana* v. *BhajanLal*, 1992 Supp (1) SCC 335 (Para102) it has been held that quashing may be appropriate where the allegations made in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety, do not prima facie constitute anyoffence or make out a case against the accused and where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. which are statements of some of the victims recorded under Section 161/164 CrPC recorded much prior to the impugned judgment dated 20.4.2021 viz., in the year 2019 itself. We do so solely to verify the verity of the finding of the High Court to the effect that such statements do not disclose anything suggesting knowledge of the respondent about the commission of the crime. In truth, those statements did mention about divulgation of sexual assault on them by victims to the respondent. We may hasten to add, at the risk of repetition, that such statements recorded under Section 161/164 CrPC are inadmissible in evidence as held in *M.L. Bhatt's case* (supra) and in *Rajeev Kourav's case* (supra). In the light of the circumstances available as above and in the light of Section 59 of the Evidence Act, the High Court was not justified in bringing abrupt termination of the proceedings qua the respondent. The position revealed from the discussion above constrains us to hold that there was *prima facie* case against the respondent for the offence referred above and hence, the appeal is liable to succeed. (Paras 7,8 & 26) See: State of Maharashtra and Another Vs. Dr. Maroti 2022 SCC OnLine SC 1503

34.6. Tying of Rakhi, apology of accused and rendering community service etc. not substitute to penalty for offences against women: Using tying Rakhi as a condition for bail transforms a molester into brother by a judicial mandate. This is wholly unacceptable and has the effect of diluting and eroding the offence of sexual

harassment. The act perpetrated on the survivor constitutes an offence in law and is not a minor transgression that can be remedied by way of an apology. Rendering community service, tying a Rakhi, presenting a gift to the survivor, or even promising to marry her, as the case may be. The law criminalizes outraging the modesty of a woman. Granting bail, subject to such conditions, renders the court susceptible to the charge of re-negotiating and mediating justice between confronting parties in a criminal offence and perpetuating gender stereotypes. The use of reasoning language which diminishes the offence and tends to trivialize the quakes is especially to be avoided under all circumstances. To say that the survivor had in the past consented to such or similar acts or that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the accused, that she behaved in a manner unbecoming of chaste or Indian women, or that she had called upon the situation by her behavior, etc. These instances are only illustrations of an attitude which should never enter judicial verdicts or orders or be considered relevant while making a judicial decision, they cannot be reasons for granting bail or other such relief.

Similarly imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non- compoundable offences, mandating as part of bail conditions, community service or requiring tendering of apology once or repeatedly, or in any manner regretting or being in touch with the survivor, is especially forbidden.

The law does not permit or countenance such conduct, where the survivor can potentially be traumatized many times over or be led into some kind of non-voluntary acceptance, or be compelled by the circumstances to accept and condone behavior what is a serious offence. On basis of foregoing discussion, directions issued that bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should soak to protect the complainant from any further harassment by the accused. Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made. In addition to a direction to the accused not to make any contact with the victim. In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days. Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the CrPC. In other words, discussion about the dress, behavior, or past conduct or morals of the press, should not enter the verdict granting bail. The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions towards compromises between the press and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction.

See: Aparna Bhat Vs. State of M.P., AIR 2021 Supreme Court 1492

34.7. Death penalty awarded by the Trial Court and High Court for offences u/s 302 IPC read with Section 6 of POCSO Act commuted to life

imprisonment by Supreme Court : In the case noted below, the appellant had approached the Supreme Court beingaggrieved by the judgment and order passed by the High Court of Chhattisgarh, Bilaspur dated 17th November 2017, thereby dismissing the appeal preferred by the appellant challenging the judgment and order dated 17th June 2016, passed by the Additional Sessions Judge, Fast Track Court, Raigarh (hereinafter referred to as the "trial judge") vide which the trial judge convicted the appellant for the offences punishable under **Sections 363, 366, 376(2)(i), 377, 201, 302 readwith Section 376A of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012** (hereinafter referred to as the "POCSO Act"). Vide the same judgment and order, the appellant was sentenced to death for the offence punishable under Section 302 of the IPC. For the otheroffences for which the appellant was found guilty, sentences of rigorous imprisonment of 3 years, 5 years, 7 years and life imprisonment had been awarded to the appellant. The trial judge had also made a reference being Criminal. Reference. No. 1 of 2016 to the High Court under Section 366 of the Criminal Procedure Code, 1973 for confirmation of death penalty. Vide the impugned judgment and order, the High Court while dismissing the appeal of the appellant, has confirmed the death penalty. The Supreme Court adopted the reasoning and followed the course as ruled in the case of *Sunil Clifford Daniel* v. *State of Punjab,* (2012) 11 SCC 205. The appeals were therefore partly allowed. The judgment and order of conviction for the offences punishable under Sections 363, 366, 376(2) (i), 377, 201, 302 read with Section 376A of the IPC and Section 6 ofthe POCSO Act was maintained. However, the death penalty imposed on the appellant under Section 302 IPC was commuted to life imprisonment. The sentences awarded for the rest of the offences by the trial court as affirmed by the High Court were maintained. See: Lochan Shrivas Vs. State of Chhattisgarh, 2021 SCC Online SC 1249

34.8. Death penalty for offence under POCSO Act upheld by Supreme Court: The conviction of the appellant of the offences under sections 5/6 of the Protection of Children from Sexual Offences Act, 2012 (herein after known as POCSO Act) was upheld, and the sentences awarded to him were confirmed except the death sentence for the offence under section 302 IPC. The death sentence awarded to the appellant for the offence under section 302 IPC was commuted into that of imprisonment for life, with the stipulation that the appellant shall not be entitled to premature release or remission before undergoing actual imprisonment for a period of 30(thirty) years. See: Pappu vs. State of Uttar Pradesh, (2022) 10 SCC 321.

34.9. **Death penalty for gang rape and murder of woman upheld by Supreme court:** The Trial court convicted the appellant-accused of the offence under section 302, 376(2)(g), 364 & 404 read with 120-B IPC and consequently awarded death sentence. It was further said that "it is true that any case of rape and murder would cause a shock to the society, but all such offences may not cause revulsion in society.

The heinous offence of gang rape of an innocent and helpless young woman by those in whom she had reposted trust, followed by a cold-blooded murder, and calculated attempt to cover-up is one such stance of a crime which shocks and repulses the collective conscience of the community and the court. Therefore, the court agrees in holding that the case falls within the category of "rarest of rare", which means death penalty and none else. Hence, the sentence of death awarded to the appellant-accused is confirmed. See Purushottam Dashrath Borate vs. State of Maharashtra, (2015) 6 SCC 652.

34.10. **No leniency in awarding sentence to a convict under POCSO Act should be shown:** The Supreme court while taking a very serious note of sexual abuse of children has observed that any act of sexual assault or sexual harassment of the children should be viewed very seriously and all such offences should be dealt in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. It further said that by awarding a suitable punishment commensurate with the act, a message must be conveyed to the society at large that, if anybody commits any offence of sexual abuse, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. These cases are the shameful instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure. See: Nawabuddin vs. State of Uttarakhand, (2022) 5 SCC 419.

34.11. International Covenant on Economic, Social and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985: Referring to the abovementioned covenant of 1996 of the UN, the Supreme Court of India has made following observations in the case noted below:

Rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with the gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence and proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy. See: Lillu alias Rajesh vs State of Haryana, AIR 2013 SC 1784 para 12.

34.12. Punishment for pornographic offences under POCSO Act: The Punishment for theses offences is directly proportionate to the severity of the offence. The court discussed the punishment provided for different kinds of sexual abuse of children to reflect on severity due to rising crimes against children. These offences include penetrative sexual assault (Section 3) that is punishable by imprisonment of not less than 10 years which may extend to imprisonment for life, in addition to payment of fine under section 4; aggravated penetrative sexual assault (Section 5) carries a rigorous imprisonment for a term of 20 years which may extend to natural life of the offender under section 6. Sexual assault (Section 7) carries imprisonment of not less than three years, and can be extended upto five years with fine under section 8;

aggravated sexual assault (Section 9) is punished by imprisonment of not less than five years and upto seven years with fine under section 10; and sexual harassment (Section 11) is punished by a term which may extend upto three years with fine under section 12. Punishment for using a child for pornographic purposes involves an imprisonment for a term of not less than five years and fine for a first-time offence, and upto seven years for a repeated offence. See: Attorney General of India vs. Satish, AIR 2022 SC 13

34.13 **Three years R.I. and Rs. 1 lakh as fine u/s 7 & 8 of POCSO Act held proper by Supreme Court**: Where the appellant was tried by the Fast Track Mahila Court, Dharmapuri for the offences punishable under section 7 read with section 8 POCSO Act. The victim at the relevant time was studying in class fifth and aged 13 years. Accused was convicted for the offence under section 7 of POCSO Act and was sentenced to undergo three years rigorous imprisonment, which is the minimum sentence provided under section 8 of the POCSO Act. The Trial court also passed an order to pay Rs. 1 lakh to the victim by way of compensation under rule 7(2) of the POCSO Rules, 2012. The Supreme Court held that after considering the object and purpose of POCSO Act as well as the evidence on record, the high court has rightly convicted the accused for the offence under section 7 of POCSO Act and has rightly sentenced the accused to undergo three years rigorous imprisonment which is the minimum sentence provided under section 8 of POCSO Act. See: Ganesan vs. State represented by its inspector of police, AIR 2020 SC 5019

35. **When same offence punishable under two penal laws or under special Act also...** When same offence is punishable under two penal laws or under special Act also, it has been held that bar of Sec. 26 of the General Clauses Act, 1897 to second prosecution and punishment for the same offence would arise only where the ingredients of both offenses are the same. Initial burden is upon the accused to take necessary plea of autrefois convict and establish the same. See... 2011 CrLJ 427 (SC)

36. **When the ingredients of the offence are different under two Acts**---Where in the matter of killing of an elephant, the police, after due investigation had filed a final report to the effect that no offence was made out u/s 429 IPC but the Range Forest Officer filed a complaint for the offences u/s 9(1) & 51 of the Wild Life Protection Act, 1972, it has been held by the Supreme Court that an offence u/s. 51, 56, 9(1), 2(16), of the 1972 Act and u/s 429 IPC is not the same or substantially the same, as the offence envisaged by Sec. 91 r/w Sec. 2(16), 51 of the Wild Life Protection Act, 1972 in its ingredients and content, is not the same or substantially the same as Sec. 429 of the IPC. The ingredients of an offence u/s 9(1) r/w Sec. 51 of the 1972 Act require for its establishment certain ingredients which are not part of the offence u/s 429 IPC & vice- versa. Therefore, in the case of killing of an elephant, the fact that the police after due investigation, had filed a final report that no offence was made out u/s 429 IPC, would not bar the initiation of fresh proceedings u/s 9(1) r/w Sec. 51 of the Wild Life Protection Act, 1972. See--- State of Bihar vs. Murad Ali Khan, AIR 1989 SC 1.

37. **Special Court of Gangster to try offences under NDPS Act along with offences under the UP Gangsters Act, 1986:** The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial in such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance, It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial. See: Dharmendra Kirthal Vs. State of Uttar Pradesh and Another (2013) 8 SCC 368 (Para 32) .

Note: Rule 22 of the UP Gangsters Rules, 2021 provides for including the offences under NDPS Act with the offences under the UP Gangsters Act, 1986 and empowers the Special Court of Gangster to try the NDPS offences along with the offence under the UP Gangsters Act, 1986.

38. **Sec. 409 IPC & P.C. Act**--- By virtue of Sec. 23 of the General Clauses Act, 1897, the accused can be convicted and punished for the offence u/s 5(2) of the Prevention of Corruption Act, 1988 despite acquittal for the offence u/s 409 IPC even if the accused was prosecuted in the same trial for the two offences named above. See--- State of M.P. vs. Veereshwar Rao Agnihotri, AIR 1957 SC 592

39. **When Central & State Legislation declare the same act as offence**---The question of punishment for an offence which is a penal offence both under the Central and the State Act would depend upon as to whether it constitutes a single subject matter and cannot be split up and on this principle rests the rule of construction relating to statutes that "when the punishment of penalty is altered in degree but not in kind, the later provision i.e. the Central Act would be considered as superseding the earlier one i.e. the State Act. On a question under Artcle 254(1) of the Constitution, where an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Art. 254(1) when the further legislation by Parliament is in respect of the same matter as that of the State law. See--- Zaverbhai vs. State of Bombay, AIR 1954 SC 752 (Five-Judge Bench)

40. **Punishment when the ingredients of the two offences are the same**--- Both in the case of Art. 20(2) of the Constitution as well as Sec. 26 of the General Clauses Act, 1897 to operate as a bar the second prosecution and the consequential punishment

thereunder must be for "the same offence" i.e. an offence whose ingredients are the same. The Vth amendment of the American Constitution which provides that no person shall be subject, for the same offence, to be twice put in jeopardy of life or limb, proceeds on the same principle. See--- Manipur Administration vs. Thokechom Bira Singh, AIR 1965 SC 87 (Five-Judge Bench)

41. **Effect of irregularity in taking cognizance of offences punishable under Special Act as well as IPC :** In the case noted below, a Single Judge of the High Court of Karnataka dismissed two petitions instituted by the appellants for quashing the criminal proceedings initiated against them in Special CC No.599/2015 (arising out of Crime No.21/2014) for offences punishable under the provisions of Sections 409 and 420 read with Section 120B IPC, Sections 21 and 23 read with Sections 4(1) and 4(1)(A) of the Mines and Mineral (Development and Regulation) Act 1957 and Rule 165 read with Rule 144 of the Karnataka Forest Rules 1969. Upholding the cognizance taking order passed by the Special Judge by setting aside the order of the High Court, the Hon'ble Supreme Court ruled as under:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;

(iii) The decision in Gangula Ashok (supra) was distinguished in Rattiram (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others;

(iv) In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;

(v) It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was

taken. The change in the form of the order would not alter its effect. Therefore, no ‗failure of justice' under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC;

(vi) The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not apply to proceedings under the MMDR Act;

(vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;

(ix) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and

(x) The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a *prima facie* case against A-1, which is sufficient to arraign him as an accused at this stage. See: Judgment dated 29.11.2021 of the Hon'ble Supreme Court delivered in Criminal Appeal No. 1288 of 2021, Pradeep S. Wodeyar Vs. The State of Karnataka.

42. **Implied repeal of inconsistent or repugnant subordinate legislation**--- Where a later enactment or a subordinate legislation is so inconsistent with or repugnant to an earlier enactment or subordinate legislation that the two cannot co-exist then the later one would effect repeal of the former by implication. See---Dharangadhra Chemical Works vs. Dharangadhra Municipality, (1985) 4 SCC 92

43. **PFA Act, 1954 & the EC Act, 1955 & penalty thereunder**---The object and purpose of the Prevention of Food Adulteration Act, 1954 is to eliminate the danger to human life and health from the sale of unwholesome articles of food. The Essential Commodities Act, 1955 on the other hand has for its object the control of the production, supply and distribution of, and trade and commerce in, essential commodities. In spite of this difference, the two provisions may have conterminous fields of operation. The provisions of the Adulteration Act and of the Food Order are supplementary and cumulative in their operation and they can stand together. If the

Adulteration Act or Rules impose some restrictions on the manufacturer, dealer and seller of vinegar then they have to comply with them irrespective of the fact that the Fruit Order imposes lesser number of restrictions in respect of these matters. The Parliament did not intend by enacting the Essential Commodities Act, 1955 and the Rules in respect of the vinegar. Both the statutes can function with full vigour side by side in their own parallel channels. Even if they happen to some extent to overlap, Sec. 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty. See--- Municipal Corporation of Delhi vs. Shiv Shanker, AIR 1971 SC 815 (Three-Judge Bench)

44.1 **Award of compensation 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 there to. 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 disclosed at 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 reassure 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 there 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.

44.2 **Default sentence can be awarded against non-payment of compensation u/s 357(3) CrPC**---Whether default sentence can be imposed for non-payment of compensation u/s 357(3) of the CrPC ? It has been held by the Hon'ble Supreme Court that Sec. 357(3) and 431 CrPC, when read with Sec. 64 IPC, empower the court, while making an order for payment of compensation not part of fine, to also include a default sentence in case of non-payment of the same. If recourse can only be had to Sec. 421 CrPC for enforcing the same, the very object of Sec. 357(3) CrPC would be frustrated and the relief contemplated therein would be rendered somewhat illusory. The provision for grant of compensation under Sec. 357(3) CrPC and the recovery thereof makes it necessary for the imposition of a default sentence. While awarding compensation u/s 357(3) CrPC, the court is within its jurisdiction to add a default sentence of imprisonment u/s 64 of the IPC. See:

(i) Vijayan vs. Sadanandan K., (2009) 3 SCC (Cri) 296

(ii) AIR 1988 SC 2127

(iii) K.A Abbas Vs. Sabu Joseph, (2010) 6 SCC 230.

Note: For contrary law on the subject, See: Ahammedkutty vs. Abdullakoya, (2009) 3 SCC (Cri) 302.

44.3 **Special provision for compensation to the victims belonging to SC/ST community: Section 357 CrPC as amended in Uttar Pradesh since 1992:** Section 357 CrPC as amended in Uttar Pradesh since 1992 provides for special provision for compensation to the victims of offences belonging to the SC/ST community.

45. **Fine imposed against accused convicted for rape or gang rape to be paid to the victim:** Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E as amended w.e.f. 21.04.2018 provide that any fine imposed by the Court against the convicts found guilty of rape or gang rape shall be paid to the victims of such offences.

46. **Life imprisonment is the rule and death penalty an exception:** In a case of conviction u/s 302/34, 201, 148, 452, 323 IPC, the Supreme Court had ruled that life imprisonment is the rule and death penalty an exception. Death penalty can be awarded only in rarest of the rare cases. Each case of murder is gruesome. Right of life of even an accused has to be respected. See : Bimla Devi Vs. Rajesh Singh, 2016 (92) ACC 902 (SC).

47.1 **Answers to two questions should be sought to satisfy the test of "rarest of rare" case for awarding death penalty :** Answers to two questions should be sought to satisfy the test of "rarest of rare" case for awarding death penalty. The two questions are to be asked and answered:

(i) Is there something uncommon about crimes which regard sentence of imprisonment for life inadequate ?

(ii) Whether there is no alternative punishment suitable except death sentence.

Where a crime is committed with extreme brutality and collective conscience of society is shocked, courts must award death penalty, irrespective of their personal opinion as regards desirability of death penalty. By not imposing death sentence in such cases, courts may do injustice to society at large. See : Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)

47.2. "**Rarest of rare" case for award of death sentence when to be presumed ? :** A brutal gang rape in Delhi on December 16, 2012 took place and in that incident the victim was not only raped in a running bus but quite serious inner injuries in her private part was caused by the accused persons with iron rod with the result the victim girl died during the course of medical treatment. Large scale public agitation all over the country and especially in Delhi took place against the said barbaric act. The incident continued to be reported and commented upon not only in Indian Media but also abroad. The said incident is known as "Nirbhaya Gang Rape & Murder". Taking into consideration the large scale public anger against the said ghastly rape and murder and the inadequacy of penalty provided therefore in the IPC, the Central Government on 23.12.2012 constituted a Three-Member Committee headed by Justice J.S. Verma, former Chief Justice of India, to make recommendations for amendments in Criminal Laws so as to provide for quicker trial and enhanced punishment for accused having committed sexual offences against women. The Committee submitted

its report to the Govt. of India on 23.01.2013. For the offence of rape or gang-rape with murder, the Committee made recommendation of awarding following penalty to the convict :

"On death penalty 16. Justice Stewart in Furman v. Georgia157, seminally noted that: "The penalty of death differs from all other forms of criminal punishment, not in degree, but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity". 17. These words have formed the broad foundation for the evolution of modern jurisprudence on 'death penalty' and have prompted us to deliberate at length on this issue. 18. The Indian law on punishment with death has been concretized in a few leading judgments which narrow down the award of death sentences to the 'rarest of the rare' cases. The criteria for determining whether a given case is so rare can be found in Bachhan Singh v. State of Punjab158, which was later cited with approval in Macchi Singh v. State, (1983) 3 SCC 470 160, and recently in Mulla v. State of U.P. (2010) 3 SCC 508. The said criteria are as follows (see Macchi Singh): "I. Manner of commission of murder 33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house;

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death; (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner; II. Motive for commission of murder 34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland. III. Anti-social or socially abhorrent nature of the crime 35. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance. (b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation. IV. Magnitude of crime 36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed. V. Personality of victim of murder 37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the

victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons. 38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] : (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

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

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. 39. In order to apply these guidelines inter alia the following questions may be asked and answered: (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence? (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender? 40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

48. **Death Penalty awarded for rape and murder of three-years old girl child converted into life imprisonment till death in jail for non-production of DNA report u/s 53-A & 164-A CrPC:** In the case noted below which related to rape and murder of three years old girl child, the DNA sample was taken from the bodies of the accused and the victim u/s 53-A and 164-A CrPC and was sent to the Forensic Sciences Laboratory for DNA test and DNA profiling but the same was not produced before the trial court and the accused was awarded death sentence. The Supreme Court converted the death sentence into life imprisonment by holding that non-production and non-explanation for not producing the DNA profiling report before the court was not justified. The convict was however directed to remain in jail for his entire normal life. See: Rajendra Prahladrao Wasnik Vs. State of Maharashtra, AIR 2019 SC 1 (Three-Judge Bench).

49. **No death penalty for rape and murder of girl child if mitigating circumstance exists:** Accused had dragged a girl of nine years into the sugarcane field, raped her and dumped her in a well. Manner of commission of crime of murder and rape was extremely brutal. The accused was of young age and there was possibility of reformation. Murder was not committed in a pre-planned manner. His case did not fall within the rarest of rare cases. The death penalty imposed by the trial court and affirmed by the High Court was held by the Supreme Court as not proper as the mitigating circumstance viz young age of the accused existed. The accused was sentenced to imprisonment for period of 30 years without remission. See: Raj Jagdish Paswan Vs. State of Maharashtra, AIR 2019 SC 897 (Three-Judge Bench).

50. **No death penalty if mitigating circumstances exist**--- There have to be very special reasons to record death penalty and if mitigating factors in the case are stronger then it is neither proper nor justified to award death sentence and it would be sufficient to place it out of "rarest of rare category." See--- Sushil Kumar vs. State of Punjab, 2009 (6) Supreme 228.

51. **Death penalty awarded for child rape and mother commuted to minimum 20 years in jail without remission etc. as there was possibility of reformation in the convict :** Death penalty should be imposed only when alternative of life imprisonment is totally inadequate and after balancing the aggravating and mitigating circumstances, the crime committed by the accused falls in "rarest of rare" category. In the present case, the appellant aged 22 years was seen following the victim aged 13 years on her way back from school day before the incident. He kidnapped her, took her to a secluded area, raped her, murdered her by strangulation and buried her dead body in the field. The Supreme Court held that though the crime committed was of abnormal nature but it was not so brutal, depraved, heinous or diabolical in nature as to fall into the category of "rarest of rare cases" and invite death penalty. Besides, the convict was not menace to the society, had no criminal antecedents and his conduct post-incarceration was good and hence, possibility of reform was not ruled out. Fact that he lacked remorse after committing the crime or at the time hearing was inconsequential and does not preclude reformation. Hence, the death penalty was commuted to life imprisonment out of which the appellant was directed to serve a mandatory minimum 20years without claiming remission which would be proportionate to the gravity of the offence committed and would also meet need to respond to the crimes against the women and children in stringent manner. See: Viran Gyanlal Rajput Vs State of Maharashtra (2019) 2 SCC 311 (Three- Judge Bench)

52. **Awarding death penalty is discretionary with the court:** It is within the discretion of the court to pass either of the two sentences prescribed in the provision; but whichever of the two sentences the court passes, the judge must give his reasons for imposing a particular sentence. The amendment in section 367(5) of the old code does not affect the law regulating punishment under IPC. This amendment relates to procedure and now courts are no longer required to elaborate the reasons for not awarding the death

penalty; but they cannot depart from sound judicial considerations preferring the lesser punishment. See: Bablu vs. State of Rajasthan, AIR 2007 SC 697.

53. **Triple-Test to be applied for awarding death penalty:** Supreme Court has emphasized on applying triple-test viz. balancing test, aggravating circumstances test and rarest of rare test in deciding the death penalty by courts. The triple-test seemingly attempts to prevent the "judge-centric' capital sentencing as it focusses on the societal response to the crime and the circumstances relating to the crime and the criminal. It expects the sentencing judges to substitute their presumptions; values and predilections, by that of the community and informed societal preferences. However, the triple-test raises a few doubts about its claim of ensuring "people centric" sentencing. See:
    (i) Shabnam vs. State of Uttar Pradesh, (2015) 6 SCC 632.
    (ii) Mofil Khan vs. State of Jharkhand, (2015) 1 SCC 67. (Three-Judge Bench)

54. **Three-tests to be applied for sentencing of crimes:** Sentencing for crimes has to be analyzed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal teat involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or anyone from the deceased group, adequately repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list). See: State of Maharashtra vs. Udham, (2019) 10 SCC 300.

55. **Period of imprisonment already undergone when to be reduced from the total sentence imposed?** The wording of Sec. 428 CrPC is clear and unambiguous. The heading of the Section 428 CrPC itself indicates that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. The Section makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is quite clear that the period to be set off relates only to pre conviction detention and not to imprisonment on conviction. See :
    (i) State of Punjab Vs. Bawa Singh, (2015) 3 SCC 441
    (ii) Atul Manubhai Parekh vs. CBI, 2009 (7) Supreme 659

56. **Sentence undergone when and how relevant in determining the quantum of sentence** : In a murder trial where the accused persons were convicted for the offences under Section 302 and 304 part II of the IPC and the accused persons were ordered to serve only the sentence which they had already undergone during the trial of the case, it has been held by the Hon'ble Supreme Court that in awarding punishment to the convicts, discretion conferred upon the courts is not absolute or whimsical discretion. The Supreme Court depricated the increasing tendency of courts at revisional and appellate stage regarding reducing the sentence to "Sentence undergone" wihtout even taking note as to what was the period of sentence already undergone. See...State of Rajasthan Vs. Dhool Sing, 2004 (48) ACC 595 (S.C.)

57. **Reduction of Sentence to period already undergone :** In reducing the sentence awarded by the lower court, it has been held by the Hon'ble Supreme Court that while reducing the sentence to period already undergone, courts should categorically notice and state the period actually undergone by the accused. See....Ajmer Singh Vs. State of Punjab, (2005) 6 SCC 633

Note : It was a case of police personnel as accused convicted u/s 458, 393 IPC where they were ordered by the High Court to serve the sentence already undergone by them in jail.

58. **Set off u/s 428 CrPC of previous term in jail in the same case :** Section 428 CrPC provides following two pre-conditions for set off :

(i) During investigation, enquiry or traial of a particular case the prisoner should have been in jail for certain period.

(ii) He should have been sentenced to term of imprisonment in that case. See...Maliyakkal Abdul Azeez Vs. Asst. Collector, Kerala, (2003) 2 SCC 439

(iii) It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. See....State of Maharashtra Vs. Najakat alias Mubarak Ali, AIR 2001 SC 2255.

59. **'Sentence undergone' order reversed by the Supreme Court :** Where the trial court had awarded a sentence of 07 years R.I. to an accused for offence u/s 376 of the IPC and the High Court, in appeal, had maintained the conviction but had reduced the sentence from 07 years to sentence already undergone (nearly 03 years), it has been laid down by the Hon'ble Supreme Court that awarding sentence below the menimum prescribed sentence is illegal. See : Amar Singh Vs. Balwinder Singh (2003) 2 SCC 518.

60. **Period of sentence already undergone in any other case can also be reduced or set off in any other case**--- Period of imprisonment undergone by an accused as an under-trial during investigation, inquiry or trial of a particular case, irrespective of whether it was in connection with that very case or other cases, could be set-off against the sentence of imprisonment imposed on conviction in that particular case. The words “same case” used in Sec. 428 CrPC do not suggest that the set-off would be available only if the period undergone as an under-trial prisoner is in connection with the same case in which he was later convicted and sentenced to a term of imprisonment. The said expression merely denotes the pre-sentence period of detention undergone by an accused and nothing more. See—

(i) State of Punjab vs. Madan Lal, 2009 (5) SCC 238 (Three-Judge Bench)

(ii) State of Maharashtra vs. Najakat Alia Mubarak Ali, (2001) 6 SCC 311 (Three-Judge Bench)

61. **A penal statute when not to be applied retrospectively?** A penal statute (in this case Sec. 19B & 47A of the Registration Act, 1908), as is well known, unless expressly provided, cannot be given retrospective effect. See---

(i) C.J. Pal vs. District Collector, 2009 (6) Supreme 151
(ii) Ritesh Agarwal vs. SEBI, (2008) 8 SCC 205

62. **Proportion between crime & punishment**--- Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. See--- Sahdev vs. Jaibar, 2009 (67) ACC 483 (SC)

63. **Principle of Proportionality to be observed in determining the quantum of sentence :** Sentence must be appropriate and proportionate to the gravity of the crime. Where the accused was convicted for several offences, he cannot be sentenced to imprisonment for period longer that 14 years. Sentence of 20 years R.I. imposed on accused was set aside. when the court convicts an accused for more than one offence and directs the sentences to run consecutively and not concurrently, the aggregate sentence cannot exceed 14 years. **See...**

(i) Alister Anthony Pareira Vs. State of Maharashtra, 2012 (76) ACC 660 (SC)
(ii) Chatar Singh Vs. State of MP, AIR 2007 SC, 319
Note : In this case 20 years aggregate sentence was consecutively awarded by MP High Court which was set aside by Supreme Court.

64. **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 :

(i) Gagan Kumar Vs. State of Punjab, AIR 2019 SC 1009.
(ii) Nagaraja Rao Vs. CBI, (2015) 4 SCC 302.

65. **Court has power & discretion u/s 31 CrPC to direct for concurrent running of sentences :** Court has power & discretion u/s 31 CrPC to direct for concurrent running of sentences when the accused is convicted at one trial for two or more offences having regard to the nature of offences and attending aggravating or mitigating circumstances. See : O.M. Cherian Vs. State of Kerala, 2015 (89) ACC 62 (SC)(Three-Judge Bench)

66.1. All sentences for several offences to run only concurrently and not consecutively--Proviso to Section 31 (2) CrPC : As per Proviso to Section 31(2) CrPC, if the accused is convicted and sentenced for several offences and one of the sentences is life imprisonment, then all sentences would run concurrently and not consecutively. See : Duryodhan Rout Vs. State of Orissa, (2015) 2 SCC 783.

66.2. Discretion of court to direct subsequent sentence to run concurrently with the previous sentence has to be exercised judiciously depending upon the nature of offences committed by the accused. Court should not exercise its discretion u/s 427 CrPC in favour of the accused who is found to be indulged into illegal trafficking in narcotic drugs and psychotropic substances and should not direct running of sentences concurrently. See: Mohd Zahid Vs. State through NCB, LL 2021 SC 722

66.3 Inadequate sentence against the interest of Society : Punishment awardedby courts for crimes must not be irrelevant. It should conform to and be consistent with the atrocity and brutality with which crime was committed. It must respond to society's cry for justice and criminals. See... State of MP Vs. Kashiram, AIR 2009 SC 1642

66.4 Duration & meaning of "imprisonment for life"---There is no provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. Section 57 does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. Sentence of imprisonment for life is for indefinite period. Government alone can remit sentence. Remission earned by convict are of little help. See---

(i) Gopal Vinayak Godse vs. State of Maharashtra, AIR 1961 SC 600 (Five-Judge Bench) *(Known as Mahatma Gandhi murder case)*

ii) State of Haryana vs. Balvant Singh, AIR 1999 SC 3333

67. "Life imprisonment" does not mean 14 or 20 years--- Interpreting the provisions u/s 53, 53-A, 55, 57 of the IPC, the Supreme Court has held that the expression "life imprisonment" is not equivalent to imprisonment for 14 years or 20 years. "Life imprisonment" means imprisonment for the whole of the remaining period of the convicted persons natural life. There is no provision either in IPC or in CrPC whereby life imprisonment could be treated as 14 years or 20 years without their being a formal remission by the appropriate government. See--- Mohd. Munna vs. Union of India, (2005) 7 SCC 417

68. Sentence of Life imprisonment not to be reduced below 14 years--- If the accused has been awarded life imprisonment, he has to undergo imprisonment for atleast 14 years. Actual period of imprisonment may stand reduced on account of remissions

earned u/s 432, 433, 433-A CrPC. But in no case, sentence of life imprisonment can be reduced below 14 years except under Article 72 of the Constitution by the President of India and under Article 161 by the Governor. See--- Ramraj vs. State of Chhatisgarh, 2010 (68) ACC 326 (SC)

69. **Concurrent running of two or more sentences :** When two sentences are directed to run concurrently, they do merge into one sentence and they are to run togather. See....K. Ventaka Reddy Vs. I.G. Prisons, 1982 CrLJ 1844 (AP)

70. **Direction for consecutive or concurrent running of sentences discretionary with the court :** The direction by the court for the sentence to run concurrently or consecutively is in the discretion of the court and that does not affect the nature of the sentence. See...P. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688

71. **Accused not to be sentenced exceeding 14 years for different offences :** According to Section 31 CrPC, if an accuse is sentenced for several offences in the same case, he cannot be awarded a total sentence exceeding 14 years.

72. **No consecutive sentence with life imprisonment can be imposed due to the bar of proviso to Section 31(2) CrPC :** From the aforesaid decisions rendered by this Court, it is clear that a sentence of imprisonment for life means a sentence for entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Criminal Procedure Code. Sentence 31 of CrPC relates to sentence in cases of conviction of several of fences at one trial. Proviso to sub-section (2) to Section 31 lays down the embargo whether the aggregate punishment of prisoner is for a period of longer than 14 years. In view of the fact that life imprisonment means imprisonment for full and complete span of life, the question of consecutive sentences in case of conviction for several offences at one trial does not arise. Therefore, in case a person is sentenced of conviction of several offences, including one that of life imprisonment, the proviso to Section 31(2) shall come into play and no consecutive sentence can be imposed. See : Duryodhan Rout Vs. State of Orissa, AIR 2014 SC 3345.

73. **Discretion of court to order sentences to run concurrently has to be exercised as per Section 31 CrPC :** Section 31, CrPC relates to the quantum of punishment which may be legally passed when there is (a) one trial and (b) the accused is convicted of "two or more offences". Section 31, CrPC says that subject to the provisions of Section 71, IPC Court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in the proviso (a) and (b) of sub-section (2) of Section 31, CrPC. In Section 31(1) CrPC since the word "may" is used, in our considered view, when a person is convicted for two or more offences at one trial, the Court may exercise its discretion in directing that the sentence for each offence may either run consecutively or concurrently subject to the provisions of Section 71, IPC. But the aggregate must not exceed the limit fixed in provisions (a) and (b) of sub-section (2) of Section 31, CrPC that is -(i) it cannot exceed twice the maximum imprisonment awardable by the

sentencing court for a single offfence. The words "unless the court directs that such punishments shall run concurrently" occuring in sub-section (1) of Section 31, make it clear that Section 31 CrPC vests a discretion in the Court to direct that the punishment shall run concurrently, when the accused is convicted at one trial for two or more offences. It is manifest from Section 31, CrPC that thr Court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31, CrPC authorizes the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced. See : O.M. Cherian alias Thankachan Vs. State of Kerala & Others, AIR 2015 SC 303 *(paras 10 & 11)*

74. **Meaning of Double or successive punishments for life imprisonment :** If an accused is punished with second time or successive punishments for imprisonment for life, then according to Section 427 CrPC the subsequent conviction and sentence for imprisonment for life means that the previous imprisonment for life can only be superimposed by the subsequent one and certainly added to it since extending life span of the offender or for that matter of any one is beyond human might. See.... Ranjit Singh Vs. Union territory of Chandigarh, AIR 1991 SC 2296

75. **Awarding of fine mandatory where penal Section contains words "*shall also be liable to fine*" :** Import of words "*shall also be liable to fine*" with a specified fine amount is that levy of fine is mandatory. Judicial discretion thereunder only empowers the court to reduce sentence of imprisonment for any term lesser than six months. Court is not empowered to levy no fine or a fine of less than what is specified in the Statute. See : Employees' State Insurance Corporation Vs. A.K. Abdul Samad & Another, (2016) 4 SCC 785.

76. **Awarding fine u/s 302 IPC not mandatory but only discretionary** ....The words “shall also be liable to fine” u/s 302 IPC merely empowers the court to impose fine and does not mandate it. To impose or not to impose fine is in the discretion of the court. See...Santosh Kumar Baranwal Vs. State of U.P., 2010(4) ALJ(NOC) 530 (Allahabad High Court)(DB)

77. **Extent of powers of President/Governor under Articles 72/161 for remission of sentence**....There is no dispute to the settled legal proposition that the power exercised by the President and the Governor under Articles 72/161 respectively could be the subject matter of limited judicial review. In Epuru Sudhakar's case, AIR 2006 SC 3385, the Hon'ble Supreme Court has held that the orders under Art. 72/161 could be challenged on the following grounds:

(a) That the order has been passed without application of mind
(b) That the order is mala fide
(c) That the order has been passed on extraneous or wholly irrelevant considerations

(d) That relevant materials have been kept out of consideration
(e) That the order suffers from arbitrariness. See.... State of Haryana Vs. Jagdish, AIR 2010 SC 1690.

78. Order of President and Governor under Articles 72/161 may be questioned on certain considerations : There is no dispute to the settled legal proposition that the power exercised by the President and the Governor under Articles 72/161 respectively could be the subject matter of limited judicial review. In Epuru Sudhakar's case, AIR 2006 SC 3385, the Hon'ble Supreme Court has held that the orders under Art. 72/161 could be challenged on the following grounds:

(a) That the order has been passed without application of mind
(b) That the order is mala fide
(c) That the order has been passed on extraneous or wholly irrelevant considerations
(d) That relevant materials have been kept out of consideration
(e) That the order suffers from arbitrariness. See : State of Haryana Vs. Jagdish, AIR 2010 SC 1690.

79. Probation of offenders : Probation is a part of reformative process of the offenders. Many offenders are not criminals but circumstances make them criminals and through misfortunes are brought within the operation of judicial system. By extendeing the benefit of probation as per Section 360 CrPC, courts encourage there own sense of responsibility for future of the accused and save him from the stigma and possible development of criminal propensities. Probation is thus in tune with the reformative trend of modern criminal justice to rehabilitate the young offenders as useful citizens. See....Panchu Vs. State of Orissa, 1993 CRLJ 953(Orissa).

80. Reasons must be recorded for not releasing the convict on probation : 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).

81. Probation not to be awarded where court has no discretion to lower the minimum mandatory sentence: Probation cannot be awarded by the Court where the court has no discretion to lower the minimum prescribed sentence. See: Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.

82. Probation where minimum sentence has been provided with discretion to court to lower it: Minimum sentence means a sentence which must be imposed without leaving any discretion to court i.e. a quantum of sentence which cannot be reduced below the period fixed. A provision that gives discretion to court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence without any discretion, and consequently, it has different implications with

respect to the applicability of the Probations of Offenders Act, 1958. In cases involving offence u/s 4 of the Dowry Prohibition Act, 1961, there being no minimum sentence, the provision of the PO Act, 1958 would apply. See: Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.

83. Suggestions received by Supreme Court from various Amicus Curiae and NALSA, SALSA etc. for grant of bail, probation, remission and commutation of sentences and jail reforms: The suggestions made are as under:—

"7.1 There are convicts in jails who are undergoing fixed term sentences. In such cases where the convict has been sentenced upto 10 years' imprisonment and is a first time offender and has undergone half the sentence, the State Government can consider whether the remaining sentence can be commuted under Section 432 CrPC. as a onetime measure. The State Government can obviously provide certain exceptions where this benefit would not be available to the convicts (especially heinous crimes rape, dowry death, kidnapping, PC Act, POCSO, NDPS, etc.). The State Government can impose conditions of good conduct upon the convict. In this regard, the provisions of Model Prison Manual, 2016, especially the Chapter XX dealing with "premature release' can be considere d by the State Government, which lays down broad parameters for dealing with such cases. The Model Prison Manual was drafted by a very high Committee, including the officers of the Central Government, State Government, NALSA, NHRC and also the Civil Society and is a fairly progressive document, aimed at standardising prison administration throughout the country. Chapter XX of Model Prison Manual is enclosed as Annexure A2.

In this behalf the following suggestions have been made:—

"6.1 The following mechanism can be adopted as one-time measure to convicts who have been convicted for sentence of imprisonment for 10 years' or less and have no other criminal antecedent.

6.2 The High Court along with the High Court Legal Services Authority can make a list of cases with the following details:

i) Offences for which a convict has been sentenced and sentence imposed;

ii) Sentence undergone by the convict;

6.3 If the convict is in jail and has undergone 40% of the sentence, his case can be taken up by the District Legal Services Authority. The District Legal Services Authority, through a lawyer of sufficient seniority, can counsel the accused that if he is willing to accept his guilt, request can be made to the High Court to reduce the sentence or for releasing the convict on probation of good conduct for the remainder of the sentence. It should be clearly disclosed that the said acceptance of guilt is only for the purposes of closing the matter and in case the High Court is not inclined to accept the plea, then the matter would be considered by the High Court of its own merits and his plea would not come in the way of hearing of the appeal on merits.

6.4 The District Legal Services Authority would also facilitate the interaction of the convict with his lawyer so that an informed decision is taken by the convict.

6.5 If the accused is willing to accept the plea and make an application to the High Court, then the list of such accused should be forwarded to the Director General of Police to ascertain the criminal antecedent of the convict.

6.6 Such plea bargaining at post-conviction level would not be available to such offences which are notified by the Central Government/State Government. The said plea bargaining will not be available where the law provides for a minimum sentence to be undergone by the accused, for example under the NDPS Act or UAPA Act similar such Acts (State Law/Central Law). See: Interim order dated 14.09.2022 of the Supreme Court passed in Suo Moto Writ Petition (Crl) No. 4/2021 In Re : Policy Strategy for Grant of Bail With MA 764/2022 in Criminal A. No. 491/2022 (II)

84. **Meaning of 'minimum sentence':** Where legislation prescribes minimum sentence without any discretion to the court, such sentence cannot be reduced by the court. Imposition of minimum sentence in such cases, be it imprisonment or fine, is mandatory. However, there may be cases where legislation prescribes a minimum sentence but grants discretion to the court to award a lower sentence or not to award a sentence of imprisonment, which discretion includes discretion not to send the accused to prison. In such latter cases, the minimum prescribed sentence cannot be construed as a minimum sentence. See: Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.

85. **Law of Probation :** The law relating to probation of offenders is as under :

(i) Sec. 360 & 361 CrPC
(ii) Probation of offenders Act, 1958
(iii) U.P. First Offenders' Probation Act, 1938
(iv) U.P. First Offenders' Probation Rules, 1939

86. **Relevant considerations for release of convict on Probation:** Following are the relevant factors to be considered by the courts while releasing a convict on probation:

(i) Conduct of the accused
(ii) Criminal antecedents
(iii) Effect on the family members of the victim
(iv) Propensity of the accused to commit more offences
(v) Manner of commission of crime (brutality)
(vi) Other relevant facts and circumstances of the case. See: Arvind Yadav Vs. Ramesh Kumar, (2003) 6 SCC 144

87. **Hearing of accused before awarding sentence mandatory: Section 235(2) CrPC:** Providing opportunity of hearing to the accused u/s 235 (2) CrPC after conviction and before awarding sentence is mandatory. Merely because the accused or his counsel remained silent on question of sentence and did not make submissions before the trial court or the appellate court, it does not debar the accused from agitating the existence of mitigating circumstances before the Supreme Court. Principles of constructive res

judicata do not apply to the matters relating to life and death. See: Md. Mannan Vs. State of Bihar, AIR 2019 SC 2934 (Three-Judge Bench) (Para 83).

88. **Recording of reasons for awarding sentence mandatory: (Section 354 CrPC):** Sub-sections (3) and (4) of the CrPC provide as under:

(3) When conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of **less than three months,** it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court (TRC) or unless the case was tried summarily under the provisions of this code.

89. **Adjourning the case and providing opportunity to both prosecution & defence to place material before the court and providing opportunity of hearing u/s 235(2) CrPC on the point of sentence is mandatory :** Even a casual glance at the provisions of the Indian Penal Code will show that the punishments have been carefully graded corresponding with the gravity of offences; in grave wrongs the punishments prescribed are strict whereas for minor offences leniency is shown. Here again there is considerable room for maneuver because the choice of the punishment is left to the discretion of the Judge with only the outer limits stated. There are only a few cases where a minimum punishment is prescribed. The question then is what procedure does the Judge follow for determining the punishment to be imposed in each case to fit the crime? The choice has to be made after following the procedure set out in sub-section (2) of Section 235 CrPC. The requirement of hearing the accused in the sub-section (2) is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235 CrPC. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. In a case of life or death as in the case of punishment for murder, the presiding officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the

choice of sentence. If the choice is made without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the Court, the Court's decision on the sentence would be vulnerable. It need hardly be mentioned that in many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of sub-section (2) of Section 235 CrPC in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing Court must approach the question seriously and must endeavor to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. **As a general rule the Trial Courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender.** Where the trial Court treated the requirement for giving of opportunity to accused as a mere formality in that after recording finding of guilty on charge of murder, on the same day before the accused could absorb and overcome the shock of conviction were asked if they had anything to say on the question of sentence and immediately thereafter pronounced the decision imposing the death penalty the trial Judge must be deemed not to have attached sufficient importance to the mandatory requirement of sub-section (2) of Section 235 CrPC. See :

1. Chhannu Lal Verma Vs. State of Chhattisgarh, AIR 2019 SC 243 (Three-Judge Bench).
2. Allauddin Mian Vs. State of Bihar, AIR 1989 SC 1456 *(Para 10)*

90. **Court competent to adjourn hearing on sentence after pronouncing judgement of conviction** : Where the judgement of conviction and the sentence both was pronounced by the trial court on the same day, it has been laid down by the Hon'ble Supreme Court that there was no illegality in doing so. Court may adjourn the case u/s 309 CrPC for hearing on sentencing. Interpreting Section 53 CrPC, it has been held by the Supreme Court that bifurcated hearing for conviction and sentence is a necessary condition before awarding death sentence for offence of murder u/s 302 IPC. See....

1. Chhannu Lal Verma Vs. State of Chhattisgarh, AIR 2019 SC 243 (Three-Judge Bench).
2. Ram Deo Chauhan Vs. State ofAssam, AIR 2001 SC 2231
3. Motilal Vs. State of M.P., 2004 (48) ACC 504 (S.C.)

91. **Hearing of both the accused and his counsel must u/s 248 CrPC on quantum of sentence** : Where the Magistrate (during traial) and the Sessions Judge (in appeal) had given opportunity of hearing to accused on question of sentence only to the counsel of

the accused and no such opportunity of hearing was given to the accused himself, it has been held by the Hon'ble Allahabad High Court that the procedure adopted by the Magistrate as well as the Sessions Judge was wholly agaisnt the spirit and the object of the provisions of section 248 CrPC and non-hearing of the accused on sentence after his conviction had caused prejudice to him. See. Bhirug Vs. State of UP, 2001 ALJ 2337 (Allahabad High Court).

92. **Special provisions for commitment of case and imposition of sentence u/s 323, 324, 325 CrPC:** Sections 323, 324, 325 CrPC, in brief, provide as under:
Section 323 CrPC: After commencement of enquiry or trial by Magistrate, Commitment of case by Magistrate to the court of sessions for trial.
Section 324 CrPC: Commitment of case by Magistrate involving offences against coinage, stamp law or property to CJM or Sessions Court for trial and adequate sentence.
Section 325 CrPC: Power of Judicial Magistrate to refer the case after recording conviction to the CJM for awarding more sentence than the one which the Judicial Magistrate is empowered to award.

93. **Penalty not awardable against juvenile :** According to Sec. 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, no sentence of death or imprisonment of any term can be passed against a juvenile. A juvenile cannot be sent to jail for his default of payment of fine or furnishing security.

94. **Penalty awardable against Juvenile :** Sec. 15 provides for different orders which may be passed by the JJ Board regarding a juvenile on recording findings that the juvenile had committed an offence. A juvenile may be required to render community service as enumerated under Rule 2(e) of the Juvenile Justice (Care & Protection of Children) Rules, 2007.

95. **Rulings on sentencing of juvenile---**The Hon'ble Supreme Court has eleborately considered the penalties awardable to juveniles. See....Dharambir Vs. State (NCT of Delhi), (2010) 5 SCC 344 *(paras 17 &18)*

96. **Place of detention of juvenile becoming major during pendency of case** Where the accused had gone into juvenile home when he was juvenile but during the pendency of case (appeal) he had attained the age of majority (nearly 35 years), interpreting the provisions of Sec.2(k), 2*(l)*, 7-A, 20, 49 of the JJ Act of 2000 r/w rules 12 and 98 of the Rules, 2007, it has been held by the Supreme Court that it may not be conducive in the environment in the special home and to the interest of other juveniles housed in the special home to refer him to the board for passing orders for sending him (accused) to a special home or for keeping him at some other place of safety. See---Dharambir Vs. State (NCT of Delhi), (2010) 5 SCC 344.

97.1 **Death penalty when can be awarded ?:** In the cases noted below, awarding death penalty u/s 53 CrPC for the offence of murder u/s 302 IPC has been held to be

constitutionally valid. Death punishment can be awarded for murder in rearest of the rare cases. See...

1. Chhannu Lal Verma Vs. State of Chhattisgarh, AIR 2019 SC 243 (Three-Judge Bench).
2. Bachan Singh Vs. State of Punjab, AIR 1980 SC 898 (Five-Judge Bench).

97.2 Certain important decisions of the Hon'ble Supreme Court on 'death penalty' are as under**:**

(i). Jagmohan Singh Vs. State of UP, AIR 1973 SC 947
(ii). Bachan Singh Vs. State of Punjab Vs. State of Punjab, AIR 1980 SC 898
(iii) Machhi Singh Vs. State of Punjab (1983) 3 SCR 413
(iv) Gopal Vinayak Godse Vs. State of Maharashtra, (1961) 3 SCR 440
(v) State of MP Vs. Ratan Singh, (1976) 3 SCC 470
(vi) Dalbir Singh Vs. State of Punjab, (1979) 3 SCC 745
(vii) Maru Ram Vs. Union of India, (1981) 1 SCC 107
(viii) Naib Singh Vs. State of Punjab, (1983) 2 SCC 454
(ix) Bhagirath Vs. Delhi Administration, (1985) 2 SCC 580
(x) Ashok Kumar Vs. Union of India, (1991) 3 SCC 498
(xi) State of Punjab Vs. Kesar Singh, (1996) 5 SCC 495
(xii) Laxman Naskar Vs. State of W.B., (2000) 7 SCC 726
(xiii) Zahid Hussein Vs. State of W.B., (2001) 3 SCC 750
(Xiv) Subhash Chander Vs. Krisha Lal, (2001) 4 SCC 458
(xv) Shri Bhagwan Vs. State of Rajasthan, (2001) 6 SCC 296
(xvi) Ram Anup Singh Vs. State of Bihar, (2002) 6 SCC 686
(xvii) Delhi Administration Vs. Manohar Lal (2002) 7 SCC 222
(xviii) Nazir Khan Vs. State of Delhi, (2003) 8 SCC 461
(xix) Mohd. Munna Vs. Union of India, (2005) 7 SCC 417
(xx) Aloke Nath Dutta Vs. State of W.B., 2006 (13) SCALE 467
(xxi) C.A. Pious Vs. State of Kerala, (2007) 8 SCC 213

98.1 **TRC:** Awarding sentence of TRC (till rising of court) has been depricated by the courts by observing that the punishment by imprisonment under IPC means that the offender shall go to jail and TRC would be illegal and *ultra vires* the jurisdiction of the court, such a sentence violates distinct provisions contained in CRPC, IPC and the Prisons Act and also the rules made in jail manuals under the provisions of the Prisons Act. See: Assam Musa Lierakeh Kunhi Bava In re AIR 1929 Mad. 226. A contrary view has been taken in Muthu Nadar In re, AIR 1945 Mad. 313 (DB)

98.2. **TRC upheld by Allahabad High Court**: In the case noted below, award of TRC has been held by the Allahabad High Court as adequate sentence of imprisonment. See:

(i) State of UP vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB) (*case u/s 409 IPC)*

(ii) Baba Natarajan Prasad Vs M. ,Revathi, (2024) 7 SCC 531 (Para 21)

98.3. **TRC when not justified?:** The punishment till the rising of the court (TRC) for the offence of grievous hurt and the related offences committed conjointly by an accused person which had resulted in the hospitalization of the victim for four weeks has been held by the Kerala High Court not to be in conformity with the rational legal theory or behavior, much less the reformatory theory of punishment. See:
(i) Baba Natarajan Prasad Vs M. ,Revathi, (2024) 7 SCC 531 (Para 21)
(ii)Raman Vs. Francis, (1988) CRLJ 1359 (Kerala).

98.4 **Recording of reasons for awarding sentence mandatory:** Section 354 (4) CrPC reads as under:
"When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of **less than three months,** it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court **(TRC)** or unless the case was **tried summarily** under the provisions of this code."

99. **Admonition:** The Supreme Court, in the case noted below relating to District Unnao of Uttar Pradesh, while referring to Section 3 of the Probation of Offenders Act, 1958, has clarified that the court has power to admonish the accused after his conviction. Section 3 of the Probation of Offenders Act, 1958 reads as under:
"Section 3: Power of court to release certain offenders after admonition.- When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition." See: Mohd. Hashim Vs. State of Uttar Pradesh, (2017) 2 SCC 198

100.1 **Sentencing under Section 304-A** IPC: Where the accused had caused death of five persons by rash and negligent driving and his sentence was reduced to 15 days custody already undergone by the accused by enhancing fine to Rs. 25,000/- each by the High Court of Punjab and Haryana, it has been held by the Hon'ble Supreme Court that in the cases of death by rash and negligent driving, deterrence should be prime consideration in determining the quantum of sentence. Holding the order of the High Court as improper, the Hon'ble Supreme Court modified the same to a sentence of RI of 6 months with a fine of Rs. 5,000/- each. See : State of Punjab Vs. Balwinder Singh & others, AIR 2012 SC 861.

100.2 **Sentencing under Section 304-A** IPC : In a case where death was caused by rash and negligence driving, the High Court of MP while maintaining conviction had reduced

the sentence of two years RI with a fine of Rs. 2500/- had reduced to the period already undergone in jail and granted further compensation of Rs. 2000/- payable to the widow/mother of the deceased, the Hon'ble Supreme Court set aside the said order of the High Court by restoring the penalty of two years RI and Rs. 2500/- as fine as awarded by the trial court. The Hon'ble Supreme Court further observed that the High Court had shown undue sympathy by modifying the sentence awarded by the trial court. See : State of MP Vs. Surendra Singh, (2015) 1 SCC 222.

100.3 Other cases on sentencing u/s 304-A IPC are :

(i) B. Nagabhushanam Vs. State of Karnataka, AIR 2008 SC 2557
(ii) Prabhakaran Vs. State of Kerala, AIR 2007 SC 2376
(iii) State of Karnataka Vs. Sharanappa Basnagouda, 2002 (45) ACC 39 (SC)
(iv) Satnam Singh Vs. State of Rajasthan (2000) 1 SCC 662
(v) Dalbir Singh Vs. State of Haryana, AIR 2000 SC 1677
(vi) Rattan Singh Vs. State of Punjab, 1979 ACrR 485 (SC)

101. Sentencing under Special Act : If any special Act provides for any specific punishment for the offences enumerated thereunder, the offender can be punished only in accordance with the penalty provided under that Special Act and not under various penal sections of the general criminal law i.e. the IPC.

102. Lok Adalat not to decide a case involving non-compoundable offences--- Where a Chief Judicial Magistrate in U.P. had decided a criminal case as Lok Adalat involving non-compoundable offences u/s. 205, 419, 468, 471 of the IPC by awarding TRC (Till Rising of Court) to the accused on the basis of confession made by him, it has been held by the Allahabad High Court that in view of the provisions u/s. 19(5) of the Legal Services Authority Act, 1987, the CJM as Lok Adalat had no jurisdiction to decide the case involving offences which are non-compoundable under Cr.P.C. or under any other law. See: Sukhlal vs. State of U.P., 2002 (44) ACC 185 (All)

103. Cases involving non-compoundable offences not to be placed before Lok Adalats: The Allahabad High Court vide its C.L. No. 10/Admin.'G-II' dated: Allahabad 14.03.2018 has directed all the Judicial Officers of the State of Uttar Pradesh not to place before the Lok Adalats cases involving non-compoundable offences for disposal.

104. Quantity of narcotic substance recovered is a relevant factor for imposing higher than the minimum punishment under the NDPS Act, 1985. Court has a wide discretion to impose the sentence of imprisonment ranging between 10 to 20 years and while imposing such sentence may also take into consideration the factors as it may deem fit other than the factors enumerated in Section 32-B(a) to (f) of the NDPS Act, 1985. See: Gurdev Singh Vs. State of Punjab, LL 2021 SC 196

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