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LANDMARK JUDGEMNTS – BNS/IPC

Mobarik Ali Ahmed Vs. The State of Bombay, AIR 1957 SC 857 S -1 (Applicability of the Sanhita to Foreigner)

Fact of the case :

The appellant, a Pakistani national, doing business in Karachi made false representations with dishonest intention to the complainant at Bombay through letters, telegrams and telephone talks that he had ready stock of rice, that he had reserved shipping space also and on the receipt of money he would be in a position to ship the rice forthwith. The complainant who was anxious to import rice urgently paid the amount to the appellant through his agent at Bombay on the belief of such representations.

Issue Involved

Whether a person who is not an Indian citizen would be subject to IPC/BNS?

Whether a person who committed an offence outside India would be held accountable?

It was contended by the appellant that the conviction was made on the grounds that he was a Pakistani national who, during the entire period of the commission of the offence, never stepped into India and was only at Karachi and that he could neither be tried by an Indian Court nor be punished under the Indian Penal Code (BNS, 2023).

The Court held that all the ingredients constituting the offence of cheating under section 420 of the Indian Penal Code (Section 318(4) of BNS, 2023) occurred in India as representations were made in India and payment has been made in India so the offence was committed here in India. So, he was convicted

of the offence of cheating under section 420 of the Indian Penal Code (Section 318(4) of BNS, 2023).

On the plain reading of section 2 of Indian Penal Code (Section 1(3) of BNS, 2023), the code does apply to anyone including foreigner who has committed an offence within India, notwithstanding that he was physically not in India.

HELD : *"The Court held that the appellant should be held liable whether he was an Indian citizen or not at the time of offence. Therefore, Mobarak Ali's physical absence from Indian Territory was deemed immaterial due to the territorial impact of the offence.*

Thus, ***any person*** *who commits an offence within the territories of India would be liable for the offence under IPC."*

Note: The phrase "every person" is that it includes all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour or creed.

Central Bank of India Vs Ram Narain, AIR 1955 SC 36 S-1(offences committed beyond the territories of India)

Fact of the case :

In 1946, Ram Narain a business man residing in Multan district **took a loan** of Rs. 3 Lakhs from the Central Bank of India. He has submitted 802 bales (large bundle of goods) of cotton as collateral (security for repayment) against the loan to the bank. The bank put those bales in a godown located nearby.

On 15 August 1957, the partition took place and the nation was divided into two separate nations namely India and Pakistan. Due to this incident the attendant of the godown where the cotton bales were kept left the place in the hands of the cashier. After sometimes the cashier also had to leave that place in October, 1947. Consequently no one was there to defend the godwon after October 1947.

In January 1948, an agent of the bank visited the godown and found that **stocks were missing from the godown**. On inquiry, he found that 802 cotton bales have been stolen by Ram Narain himself in November 1947 and was sold at a value of Rs. 1,98,702. During the partition, the amount due to the bank from Narain was around Rs. 1,40,000, exclusive of interest, while the value of goods was approximately Rs. 1,90,000.

When the notice of theft came to the bank, they demanded money from Ram Narain but no response was received. Ram Narain has already sent his family to India as during that time Hindu and Sikhs were becoming victim of violence. Later, Ram Narain also came to India and started business in Hodel, nearby place of Gurgaon. Central Bank of India filled a suit against him. State initiated the suit and was brought to the District Magistrate, Gurgaon where Narain told that **at the time to supposed occurrence, he was a national of Pakistan** and subsequently the East Punjab Government was not competent to grant sanction for his prosecution.

Issue Involved

To what extent, Indian jurisdiction apply?

Whether Ram Narain had Indian domicile at the time of the commission of the offence?

Even after hearing contention, the Magistrate initiated the suit against him. Then the case was brought to the session court, Gurgaon and there also judgement was delivered against Ram Narain. Narain filed an appeal in the High Court which was at that time Simla. High Court giving its decision in favour of Ram Narain stating that the said incident took place after the partition of 1947 and the godown was situated in the part of Pakistan and not in India. So, there is no jurisdiction of Indian courts over this case, as Ram Narain was not a citizen of India when the said incident of theft took place.

HELD : *Section 4 of IPC (Section 1(5) of BNS) is applicable to Indian and* ***since the offence occurred outside the boundary of India and also the***

appellant was not a citizen of India*, so no trial was initiated against him and at last the* ***appeal got dismissed****.*

Subed Ali and Ors. Vs. The State of Assam, AIR 2020 SC 4657 (S -3(5))
(Common intention - Active physical role is not necessary)

Fact of the case :

This case involved five accused, who were charged under Sections 302/34 of the IPC (S103/3(5) BNS) for causing the death of two persons. One of them died on the spot and the other passed away in the hospital. When these two deceased were returning from the market, they were assaulted by the five accused. Charges were framed against all five accused and the matter came before the Sessions Judge.

The court of Sessions **acquitted accused no. 3 and 5, giving them the benefit of the doubt.** However, the rest of the accused were found guilty under Sections 302/34, (S103/3(5) BNS) on the basis of evidence and various Prosecution Witnesses (PW) statements, and were sentenced to imprisonment for life. The judgement was also affirmed by the Gauhati High Court.

Hence, Subed Ali (accused no.1) approached the Supreme Court, praying that he was also liable for the benefit of the doubt because the facts of his case were similar to that of the acquitted persons.

The **counsel for the appellant contended** that the testimonies of the witnesses were inconsistent. Hence, the conviction was unjustified. He also pointed out that the incident took place after sunset, hence due to the darkness; the identification of the accused is questionable. He also submitted that there is no evidence to prove that accused was armed or that he assaulted the deceased.

The **counsel for the State argued that** the testimony of eyewitnesses is consistent with regard to the participation of the appellant. Also, common intention can be established based on the fact that the appellant was waiting

for the deceased to assault them. He also asserted that the witness already knew the appellant before the crime and hence had no difficulty identifying him.

Common intention consists of several persons acting in union to achieve a common purpose, though their roles may be different, the role may be active or passive is irrelevant, once common intention is established, there can hardly be any direct evidence of common intention.

It is a matter of inference to be drawn from facts and circumstances of the case. The foundation for conviction on the basis of common intention is based on the principle of vicarious liability by which a person is held responsible for the acts of others with whom he shared the common intention."

HELD : *The Supreme Court* ***upheld the acquittal of accused no.3 and 5.*** *After a careful perusal of Section 34 of the IPC, (S- 3(5) BNS) the court said that common intention consists of several persons acting in union to achieve a common purpose, though their roles may be different. Once the common intention is established, their role being active or passive is irrelevant. It also stated that a conviction for common intention is based on the principle of vicarious liability, under which a person is held answerable for the acts of others with whom he shared the common intention. Under such circumstances, the presence of mens rea (guilty mind) is sufficient for getting a conviction without having to prove the actual participation in the assault.*

Pandurang Vs. State of Hyderabad, AIR 1955 SC 216 (S -3(5)) [Common Intention on the Spot]

Fact of the case :

On 7-12-1950, about 3 o'clock in the afternoon Ramchander Shelke (the deceased) went to his field with his wife's sister Rasika Bai and his servant Subhana Rao. Rasika Bai started to pick chillies in the field while Ramchander

went to another field which is about a furlong away. Rasika Bai heard shouts from that direction, so she ran to the river bank with Subhana and they both say that they saw all -five accused attacking Ramchander with axes and sticks.

Rasika Bai shouted out to the assailants not to beat Ramchander but they threatened her and then ran away. Ramchander died on the spot almost immediately.

Rasika Bai and Subhana both give substantially the same version of what they saw of the assault. They heard Ramchander's cries from the direction of the river bank and rushed there. They say they saw all five accused striking him, the three appellants Pandurang, Tukia and Bhilia with axes, the other two, who have not appealed, with sticks. Both witnesses are agreed on the following points

Tukia struck Ramchander on his cheek; Rasika Bai adds that he also struck him on the head; Pandurang hit him on the head; After these blows Ramchander fell down and then Bhilia hit him on the neck. After this all the accused absconded. They were arrested on different dates and were committed to trial.

In the present case, **there is no evidence of any prior meeting**. We know nothing of what they said or did before the attack, not even immediately before. Pandurang is not even of the same caste as the others Bhilia, Tukia and Huila are Lambadas, Pandurang is a Hatkar and Tukaram a Maratha. It is true prior concert and arrangement can, and indeed often must, be determined from subsequent conduct as, for example, by a systematic plan of campaign unfolding itself during the course of the action which could only he referable to prior concert and pre-arrangement, or a running away together in a body or a meeting together subsequently. But, to quote the Privy Council again, “the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case”:

Supreme Court observed that it is well established that a common **intention S-34 (S- 3(5) of BNS) requires prior concert or a pre-arranged plan among the accused**. The Supreme Court did notice the fact that **prior concert need not be something always very much prior to the incident,** but could well be something that may develop on the spot (eo-instanti),(on the spur of the moment).

It further held that several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would be attracted under section 34 of IPC [section 3(5) of BNS, 2023] **because there was no prior meeting of minds to form a pre-arranged plan or common intention**. In a case like that **each would be individually liable for whatever injury** he caused but **none would be vicariously convicted for the act of others**. The incriminating facts must be incompatible with the innocence of the accused.

Held: *This act falls under Section 326A (124 BNS – Voluntarily causing grievous hurt) blow on the head with an axe which penetrates half an inch into the head is, in our opinion, likely to endanger life.* ***We therefore set aside his conviction under Section 302 and convict him instead under Section 326****. We accordingly set aside the sentence of death and alter it ten years' rigorous imprisonment.*

Barendra Kumar Ghosh Vs. King Emperor AIR 1925 PC 1 (Post Master murder case/ Alipur Conspiracy case), (S -3(5)) **(Common intention)**

Fact of the case :

In August 1923, Barendra Kumar Ghose and his partner decided to go to the post office **to commit an offence,** where **Barendra Kumar Ghose stood outside the post office** and the remaining three partners went inside the post office to commit the offence. When all three partners entered the post office, the postmaster named Amrit Lal was counting money. At that time, they pointed a gun at the postmaster and demanded money.

Amrit Lal Rao denied giving them the money, but when he refused, **they shot him and tried to run away**. After this incident, Barendra Kumar Ghose also fired a gun and tried to escape from the place. At the same time, when Barendra Kumar Ghose was trying to flee, the **assistant of the post office caught him** and then sent him to the police station. When he arrived at the police station, charges were brought against him.

The Trial Court **held the accused guilty of offence Murder** under Section 302 of IPC (103(1) of BNS) read with Common Intention under Section 34 of IPC as they were satisfied that the deceased was killed in 'furtherance of the common intention of all'.

An appeal was filed before the High Court which adjudged the object of Section 34 and stated that the section does not create a new offence rather it uses the expression 'criminal act' and formulates a principle of liability. The High Court stated that when an act is done by several persons when all are principals in the doing of it, and it is immaterial whether they are principals in the first degree or principals in the second degree, no distinction between the two categories being recognized. The High Court **convicted the accused person under Section 302 of IPC** read with Section 34 of IPC (3(5) of BNS).

Issue Involved

Whether the appellant was guilty of murder in furtherance of his common intention

Held : There was an appeal before the privy council against conviction. Lord Sumner dismissed the appeal and held that even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes **they also serve who only stand and wait.**.. Section 34 of IPC [Section 3(5) of BNS] deals with doing of a separate, similar or diverse act by several persons, if all are done in furtherance of a common intention, **each person is liable for the result of all of them as if he had done that act** himself Lord Sumner while deciding the matter said, 'they also serve who stand and wait'.

Mahboob Shah Vs. Emperor (**Indus River case**), **AIR 1945 PC 118** (S -3(5))
(Same or Similar intention is not Common intention)

Fact of the case :

Allah Dad and few others were trying to collect reeds from the bank of **Indus river**. They were warned by Mahboob Shah against collecting reed from lands belonging to him. **Ignoring the warning the deceased collected reeds** but was stopped by Qasim Shah, nephew of Mahboob Shah while he was placing them on boat. Qasim Shah was hit by the victim by a bamboo pole.

On hearing Qasim Shah's cries for help, Mahboob Shah and his son Wali Shah came armed with their guns. **Wali Shah fired at the victim who died instantly** and Mahboob Shah fired at other persons causing him some injuries.

In the initial trial, the **Sessions Court convicted** Mahboob Shah and Ghulam Shah under Sections 302 (murder) and 34 (common intention) of the IPC. Mahboob Shah was sentenced to **7 years of** rigorous imprisonment. **Lahore High Court** sentenced **Mahboob Shah with murder** of victim under s. 302 (now Section 103 of BNS) read with s. 34(now Section 3(5) of BNS). **But on appeal Privy Council set aside the conviction for murder**.

Issue Involved

Whether Mahboob Shah and Wali Shah had a pre-planned murder of Allahabad and Hamidullah?

Whether the concept of 'same intention' and 'common intention' are equivalent under the law?

The court held that common intention implies a pre-arranged plan, prior meeting of minds or prior consultation between all persons constituting the group.

"The court laid down the following principles under Section 34 (3(5) of BNS):-

1. Essence of liability under Section 34 (now section 3(5) of BNS) is found in 'common intention'

2. To invoke Section 34 (now section 3(5) of BNS) it must be shown that act was done in furtherance of common intention;
3. Common intention implies pre-arranged plan and it must be proved that criminal act was done in concert pursuant to pre-arranged plan;
4. For intention to be common it must be known to all members and must also be shared by them".

Held : *It held that there was no evidence that Mahboob Shah and Wali Shah had any pre-planned agreement to murder Allahdad. According to the Privy Council, both may have had the same goal rescuing Ghulam Shah but they did not share a common intention to kill Allahdad. Since this key requirement under Section 34(now Section 3(5) of BNS). was missing, the section could not be applied. The* ***Privy Council acquitted Mahboob Shah of all charges****.*

Bachan Singh Vs. State of Punjab, AIR 1980 SC 898 & Machhi Singh Vs. State of Punjab, 1983 (3) SCC 470 S-4 (Guidelines for death sentence)

Fact of the case :

In this case, Bachan Singh was **accused of killing of his wife and children,** Desa Singh, Durga Bai, and Veeran Bai, and was found guilty and given the death penalty in accordance with Section 302 of the Indian Penal Code (IPC) (S.103(1) BNS).

His **death sentence was upheld by the High Court**. Bachan Singh and other inmates filed a special leave appeal with the Supreme Court where he questioned the constitutionality of the death sentence under section 302 of IPC (S 103(1) BNS) as well as the sentencing procedure described in Section 354(3) of the Code of Criminal Procedure, 1973, which requires judges to give special justifications for imposing the death penalty.

Issue Involved

Is the death penalty under Section 302 (S 103(1) BNS) of the IPC unconstitutional and in violation of Articles 14, 19, and 21 of the Constitution?

*In this case the **guidelines** have been issued by the Supreme Court as to **when the extreme sentence (death) should be awarded:***

*1. The **extreme penalty of death need not to be inflicted except** in gravest cases of extreme culpability*

*2. **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'.*

*3. **Life imprisonment is the rule and death sentence is an exception.***

*4. **A balance sheet of aggravating and mitigating circumstances has to be drawn** up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before such option is exercised.*

Held : The Supreme Court upheld the constitutionality of the death penalty under Section 302 of the IPC (S 103(1) BNS).

Gopal Vinayak (G.V) Godse Vs. State of Maharashtra, AIR 1961 SC 600 S-5 (Life imprisonment /Commutation of sentence)

Gopal Godse was the younger brother of Nathuram Godse. Both the siblings were convicted for the **murder of Mahatma Gandhi**. Nathuram Godse was hanged to death in 1949, Gopal Godse was sentenced to life imprisonment.

Held : *"The court held that, sentence of life imprisonment is a sentence for life and nothing else and therefore a prisoner sentenced to life imprisonment is bound to serve the remainder of his life in prison, until or unless his sentence was commuted or remitted by the appropriate government".*

Regina Vs. Dudley and Stephens (1884) - S-19 **(Doctrine of self-preservation)**

Fact of the case :

In 1884, four sailors—Thomas Dudley, Edward Stephens, Brooks, and Richard Parker—were stranded on a lifeboat in the South Atlantic Ocean following the **sinking of their ship**, the Mignonette. The men were left without sufficient food or water, drifting on the ocean for weeks. **After several days of desperation, they faced the choice between starving to death or making a grim decision to sacrifice one among them to save the others.**

The crew survived by managing to reach a lifeboat, but they were left without adequate provisions. The men had no fresh water, only a small amount of turnips, and no other food supplies. An attempt was even made to drink its blood, but because of seawater contamination, it was impossible. The crew failed to catch any rainwater and by 13 July, with no other viable source of liquid, they began to drink their urine. Parker being inexperienced, tried consuming the seawater and fell ill to a point where he was assumed to have been slipped into a coma.

Dudley came up with the idea of drawing lots to choose who amongst them should die for the others to survive on his blood and meat. **Finally, they killed Parker and fed on (to eat as food) his body for four days until** they were rescued by a German ship.

Issue Involved

Whether necessity can be claimed as a defence for murder and can it make the act permissible?

Held : *"The Doctrine of Necessity is attracted where a person does not have a choice and to prevent graver harm he causes lesser harm. This doctrine is thus applicable only in cases where the perpetrator had no option but to commit the crime for the sake of his private defines".*

Basdev Vs. State of Pepsu, AIR 1956 SC 488 S-23 & 24(Defence of intoxication)

Fact of the case :

Basdev, the appellant, is a retired military Jamadar from the village of Harigarh. He is accused of killing Maghar Singh, a young child who was between the ages of 15 and 16. They went to another village to attend a wedding, along with other residents of the same village.

On March 12, 1954, they all went to the bride's home for lunch. While some had taken a seat, others had not. The appellant requested that Maghar Singh, the young child, **take a small step to make room for him to take a comfortable seat**. However, Maghar Singh stayed still. With a quick draw of his pistol, the **appellant shot the boy in the abdomen**. The wound turned out to be lethal.

It appears that a large amount of alcohol was consumed by the group of people who had gathered at the bride's house to celebrate the marriage. Jamadar, the appellant, drank a lot of alcohol and got very inebriated.

The learned Sessions Judge stated that "he was nearly unconscious according to one witness Wazir Singh Lambardar's testimony" and that "he was excessively drunk." Taking into consideration these circumstances as well as the complete lack of any motive or premeditation to kill, the **Sessions Judge granted the appellant the lesser punishment of life in prison.**

Issue Involved

Whether offence under Section 302 (103 of BNS) or Section 304 of IPC was committed considering Section 86 of IPC (24 of BNS)?

The Supreme Court in the facts of the case applied the law and held that:

The evidence indicates that the appellant was intoxicated but still had control over his actions. While he staggered (move unsteadily) at times and spoke incoherently, he was also able to move independently and speak coherently.

After shooting the deceased, he attempted to escape but was caught a short distance away. Upon being secured, he realized what he had done and asked for forgiveness.

To ascertain whether or not the accused had the specific intent required to constitute the crime, the evidence of intoxication, which prevents the accused from forming that intent, should be taken into account along with other established facts.

The court also opined that even when the appellant was under the influence of alcohol, his level of intoxication was not to the extent that he could not have the mental capacity to form an intention.

Thus, he should not be granted the defence of intoxication. The appellant has not been able to prove that the act he committed was done under heavy intoxication to the extent that he was incapable of forming any intention or comprehending the consequences of his actions. Hence, he was held liable, and the appeal was dismissed

Held : "*The Court thus, in the facts of the present case held that the* ***offence shall not be reduced from murder to culpable homicide amounting to murder*** *under second part of Section 304 of IPC (S. 105 BNS)*

Therefore, evidence to prove his incapacity to understand the nature of his action is mandatory to reduce the criminality of the accused".

Director of Public Prosecution Vs. Beard, (1920) AC 479 S-23 & 24 (Requirement of Specific intention- Defence of intoxication)

Fact of the case :

Accused raped a girl of 13 years of age, and in aid of the act of rape he placed his hand upon her mouth to stop her from screaming, at the same time pressing his thumb upon her throat with the result that she died of suffocation. The defence given that accused was so drunk that he was unable to understand the severity of his act. The accused was convicted for murder, for the act due to which she died of suffocation.

Issue involved:

Does voluntary drunkenness be treated as an excuse for criminal misconduct?

Held : *The court found him* ***guilty of murder*** *under Section 300 because the* ***act of suffocation was not separate from the act of rape a****nd demonstrated an* ***intent to kill the girl.***

Therefore, we can conclude that voluntary intoxication may be a mitigating factor in some cases. However, in most instances, it is considered an aggravating factor, as individuals may be encouraged to commit crimes and evade punishment by relying on the defence of voluntary intoxication in the Indian Penal Code.

Note:

The test of criminal responsibility in the case of drunkenness is not the same is in the case of insanity under Section 84 of IPC (Section 22 of BNS, 2023).

Puran Singh Vs. State of Punjab, AIR 1975 SC 1674 S-35(Trespasser can exercise the right of private defence of the property)

Fact of the case :

At about 9.00 p.m., **Puran Singh was in a drunken condition** in front of the house of the complainant Gurdial Singh. Gurjant Singh and Plant Singh, the two brothers, were standing outside their house, prevented Puran Singh to keep himself under control and not to make a noise, **Puran Singh grappled with Gurjant Singh and took away the turban** of aforesaid Gurjant Singh.

A little later, Gurjant Singh along with his two brothers Gurdial Singh and Bant Singh proceeded to the house of Puran Singh far making remonstrance and **for collecting his turban back**. Puran Singh came out of his house and **gave a lathi blow on the head of Gurjant Singh** and as a consequence of this injury, Gurjant Singh fell on the ground and became

unconscious. Gurdial Singh and Bant Singh witnesses raised an alarm 'Marta Marta' upon which, the **accused ran away and thereafter**, the (Gurdial Singh and Bart Singh) carried their brother Gurjant Singh to Civil Hospital, Joga where he was found unconscious by Dr. R. K. Garg (PW-5), who was the In-charge of the Primary Health Centre, Joga.

Puran Singh-accused was arrested on 8.2.1991 and as a consequence of his disclosure statement, the turban Exhibit P-1 of the deceased was recovered vide memo Exhibit PK and the lathi Exhibit P-2 was also recovered at his instance the same day vide memo Exhibit PL.

*"The court **laid down the following criteria as to the nature of possession which** may entitle a trespasser to **exercise the right of private defence of the property and person:-***

*1. The **trespasser must be in actual physical possession of the property** over a sufficiently long period.*

2. The possession must be in the knowledge, either express or implied, of the owner or without any concealment and which contains an element of animus possidendi.

*3. **The process of dispossession** of the true owner by the trespasser must be **complete and final.***

*4. One of the usual **tests to determine settled possession** of the true owner by the trespasser in the case of cultivable land, would be **whether any crop has been grown on the land. I**f the crop has been grown, even the true owner has no right to destroy the crop grown by the trespasser."*

Held : **Puran Singh**, son of Kartar Singh of village Joga, has been **convicted** under Section 302 of the IPC (103(1) of BNS) and sentenced to rigorous imprisonment for life and also required to pay a fine of Rs. 1,000.

Dayabhai Chhaganbhai Thakkar Vs. State of Gujarat, AIR 1964 SC 1563 S-36 (Plea of insanity)

Fact of the case :

Kalavati was married to the appellant (Dayabhai Chhaganbhai Thakkar) in the year 1958. **But the marital relationship between him and his wife was under strain** due to the indifference between them.

On the night of 9 April 1959, the appellant and his wife were sleeping in their bedroom and the doors leading to that room were locked from inside. Around 3 to 4 in the morning, suddenly Kalavati shouted that she was being killed.

Hearing this, the neighbors gathered in front of the said room and asked the accused to open the door. When the door was opened, they saw **Kalavati dead**, **with several wounds on her body.** The accused was sent for hearing in the session on the charge of murder.

To summarize this case in the conclusion the Court find that the accused did not like his wife, indeed though he was employed in Ahmedabad and stayed there for about 10 months, he did not take his wife with him, he wrote a letter to his father-in-law to the force that the accused did not like her and that he should take her away to his house, the father-in-law promised to come on Chaitra Sudhi 1, the accused expected him to come on April 9, 1959, and tolerated the presence of his wife in his house till then, as his father-in-law did not come on or before April 9, 1959, the accused in anger or frustration killed his wife.

Held : *"It **has not been proved that he was insane**, nor the evidence is satisfactory even to throw a reasonable doubt in our mind that the act might have been done when the accused was in a fit of insanity. The Court, therefore, though for different reasons, **agree with the conclusion arrived at by the High Court and dismiss the appeal.***

When a plea of insanity is set up, the court has to consider whether at the time of commission of the offence the accused by reason of unsoundness of mind, was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. ***The crucial point of time for ascertaining the state of mind*** *of the accused is the* ***time when the offence was committed."***

R. Vs. Daniel McNaughten, 1843. RR 59 (McNaughten Rule) S-36 **(Right and wrong test -** Plea of insanity**)**

Fact of the case :

In this case, **McNaughten was charged with the murder by shooting Edward** Drummond, who was the Private Secretary of the then Prime Minister of England Sir Robert Peel. The **accused McNaughten produced medical evidence to prove that, he was not**, at the time of committing the act, in a sound state of mind.

He claimed that he was suffering from an insane delusion that the Prime Minister was the only reason for all his problems. He also claimed that as a result of the insane delusion, he mistook Drummond as the Prime Minister and committed his murder by shooting

The plea of insanity was accepted and McNaughten was found not guilty on the ground of insanity (Not a defence in general & especially in India)

The statutory recognition to the defence of insanity as developed by the Common Law of England was rendered in the case of R. **Vs**. Daniel McNaughten, 1843 RR 59.:

- *Every person is* ***presumed to be sane*** *and to possess a sufficient degree of reasonableness to be responsible for his crimes, until the contrary is proved.*
- *In order to be exempt from the criminal liability of a conduct, it must be* ***proved that at the time of committing the act****, the person due to a defect of mind* ***was not aware*** *of nature and quality of the act he was doing,* ***or***

if he did know it, he did not know that what he was doing was wrong.

- *If a person was **conscious at the time of doing the act**, to the fact that his act was contrary to the law of the land, he is to be held criminally liable.*
- *When a person commits certain acts suffering from delusional insanity and thus not knowing the true nature of his acts, he will be held liable.*

Note: The Indian law of unsoundness of mind is based on the opinion of McNaughten case.

Mohd. Anwar Vs. State (NCT of Delhi), (2020) 7 SCC 391 S-36 (Defence of unsoundness of mind)

Fact of the case :

In this case, the statement recorded under Section 313 CrPC (351- BNSS Power to examine the accused) shows that the accused was above 18 years around the time of the incident. In appeal before the High Court, the accused raised new arguments of juvenility and insanity. **He claimed that he was merely 15 years at the time of occurrence and was undergoing treatment for a mental disorder** at a government hospital. This was supported through a copy of an OPD card and the testimony of the appellant's mother who stated that he sometimes had to be kept chained at home to prevent harm to himself and others. The High Court, while dismissing the appeal, took notice of the Section 313 Cr.P.C. statement and concluded that he was major.

Held : *The court also observed that the production of photocopy of an OPD card and statement of mother on affidavit have **little evidentiary value**. **Dismissing his appeal, the bench directed the state to take the accused to custody.***

"*In order to successfully establish the defence of unsoundness of mind under Section 84 IPC (now section 22 of BNS), accused must show a preponderance of probabilities that he or she suffered from a serious enough mental disease which would affect an individual's ability to distinguish right and wrong. It must also be established that the accused was afflicted by such disability particularly at*

the time of commission of crime and that but for such impairment, crime would not have been committed".

Durham (Durham Rule) **Vs. United States, 94 U.S. App. D.C. 228** S-36(Plea of Insanity – No responsible for the unlawful Act)

Fact of the case :

Monte Durham was **discharged** from the Navy at the age of 17 after being found **psychiatrically unfit for service.** In the following years, he was in and out of prison and mental institutions until he was arrested and put on trial for breaking and entering in 1951. At his trial, he attempted to enter a insanity plea, but the trial court refused to allow it. Durham was ultimately found guilty and appealed.

Held : On appeal, Court held that if a defendant's actions were the product of any "diseased or defective mental condition," the defendant should be found not guilty by reason of insanity because ***the defendant is not criminally responsible if his unlawful act was the product of a mental health disorder.*** The circuit court reversed the trial court, ordering that the newly announced rule be applied to Durham on remand.

Note:

It was held that this rule was broader than McNaughten rule. However, **this rule had created problems.** The ambiguity was with reference to these words because what constitute mental disease or mental defect was not made clear or defined. Next thing was that the Judges would have to rely on the psychiatrists to decide whether the act was product of mental defect or disease; it means giving blank cheque to medical evidence. The Durham Rule does not require a diagnosis of a mental illness or disorder.

For instance, someone who committed a crime related to a gambling addiction could successfully secure a conviction of not guilty by reason of insanity using

the Durham Rule.**The Indian law on insanity** contained in section 22 of the BNS is loosely based on the **McNaughten's principles.**

Deo Narain Vs. State of Uttar Pradesh AIR 1973 SC 473 S - 40(Right to private defence of body commencement)

Fact of the case :

On September 17th, 1965, at around noon, Chandan Rama, accompanied by another individual identified as the complainant, visited a plot of land **with the intention of preventing the accused individual from engaging in cultivation** and plowing activities. During this confrontation, a conflict emerged between the involved parties over the title and possession of the area in question. **Chandan Rama struck Deo Narayan on the head with a lathi,** provoking a retaliatory response from Deo Narayan, who used a s**pear to inflict a fatal injury on Chandan Rama's chest.**

The trial court initially acquitted Deo Narayan and his companions, concluding that they acted in self-defence, as the complainant's party had instigated the conflict. However, this acquittal was challenged by the State of Uttar Pradesh in the **High Court, which convicted Deo Narayan under Section 304 of the IPC, *(S. 105 BNS)*** ,sentencing him to five years of rigorous imprisonment.

The High Court's rationale was that Deo Narayan had exceeded his right to private defence by using a spear against Chandan Rama's lathi strike, **suggesting that he could only claim self-defence if he had suffered serious injury first.**

Issue involved:

Whether the petitioner exceeded the right of Private Defense?

Whether the petitioner is justified in using the right of private defense by spear for injury caused by lathi?

Held : *"The Supreme Court* ***reviewed the case and found that the High Court had erred in its conviction of Deo Narayan.*** *The Court reaffirmed that*

the right to private defence arises with a reasonable apprehension of danger, even if the offence has not yet been committed. It emphasized that the threat must create a present and imminent danger rather than a remote one.

According to Section 102 (now section 40 of BNS), the right to private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed. Such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to present and imminent danger and not remote danger".

Kehar Singh Vs. State, AIR 1988 SC 1883 S-61 (Indira Gandhi Assassination case - Rarest of rare case/Circumstantial evidence to prove conspiracy)

Fact of the case :

In June 1984, Mrs. Indira Gandhi (Prime Minister) has **conducted** an army operation named **'Operation Bluestar'** in which the armed forces had entered the Golden Temple complex wiped off all the militants hidden in the temple. During the operation Akal Takht in the Golden Temple Complex got damaged, which offended (insult) the religious sentiments of Sikhs. The aggrieved Sikhs openly showed their resentment (feeling of anger) towards Mrs. Indira Gandhi and protested against her. On 31st October, 1984, Mrs. Indira Gandhi left her house at 9:10 A.M along with her staff.

When Mrs. Indira Gandhi reached near TMC gate, the accused Beant Singh and **Satwant Singh fired several rounds, due to which she got injured.** She was rushed to AIIMS where she succumbed to her injuries. The accused/appellants, Kehar Singh, Balbir Singh and Satwant Singh were convicted under Section 302 (S 103(1) BNS) read with Section 120B of Indian Penal Code, (S 61(2) BNS) 1860 (IPC). The Satwant Singh was also charged under Section 27 of the Arms Act. All the three were sentenced to death under Section 302 (S 103(1) BNS) read with Section 120B (S 61(2) BNS). The

conviction and sentence of these appellants were confirmed by the High Court of Delhi. Hence, the present appeal.

Issue involved:

Whether the trial being held in Tihar Jail is violative of Article 21 of the Constitution as ame cannot be considered as open and public trial?

Whether the confession of accused Satwant Singh can be used as evidence against Accused?

*It was considered by the Supreme Court as one belonging to the "**rarest of rare**" **category.*** It was not simply a murder of a human being. It was the crime of **assassination of the duly elected Prime Minister of the country**. There was no personal motivation, but the consequence of the action (referring to Blue Star Operation) taken by the Government in the exercise of Constitutional powers and duties. The security guards who were duty-bound to protect the person of the Prime Minister themselves assumed the role of assassins (person who commit murder). It was a betrayal of the worst sort. It was a murder most foul and senseless. Those who executed the plot and those who conspired with them would, ***therefore, all fall in the "rarest of rare" category.***

Satwant Singh: There is no evidence at all on the basis of which his conviction could be justified. He is therefore entitled to be acquitted.

Kehar Singh: There are many circumstantial evidences to establish that Kehar Singh was a co-conspirator to assassinate Mrs. Indira Gandhi.

"*It has been held that the offence can only be proved largely from inferences drawn from acts or illegal omissions committed by the conspirators in pursuance of a common design. The offence of conspiracy can be proved by either direct or circumstantial evidence. It's not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy and about the persons who took part in the formation of the conspiracy".*

State of Tamil Nadu Vs. Nalini, AIR 1999 SC 2640 Rajiv Gandhi Assassination case S-61 (Agreement perse is offence of conspiracy)

Fact of the case :

Rajiv Gandhi, India's sixth Prime Minister, was killed on May 21, 1991, while campaigning in Sriperumbudur, Tamil Nadu. The assassination was carried out by a suicide bomber from the Tamil Tigers, a Sri Lankan rebel group. The incident claimed the lives of 16 people, including numerous police officers.

Numerous suspects were apprehended throughout the inquiry, including Nalini Sriharan, a member of the Tamil Tigers and the wife of Murugan, another suspect in the crime. Nalini was charged with numerous sections of the Indian Penal Code, including murder plots and violations of the Explosives Act.

The case's trial began in 1994 and lasted many years. The trial court condemned Nalini and three other defendants to death in 1998. In 1999, the Madras High Court affirmed the sentence. Nalini, on the other hand, filed an appeal with the Supreme Court of India, which remitted her death sentence to life imprisonment in 2000.

Issue involved:

Was the death penalty imposed on the accused persons justified?

Whether criminal conspiracy is complete even though there is no agreement (Agreement perse is offence of conspiracy)?

Arguments of the prosecution

The prosecution argued that there was no doubt Nalini (A-1) was not a member of the LTTE group at the beginning of the conspiracy, but **she still helped the existing members of the group by providing them with logistics** and a place to stay. It was only because of Nalini (A-1) that the other conspirators were able to gather information about the places. Moreover, Nalini (A-1) was also present at the place of the assassination to support Dhanu (DA). **This shows her active involvement in the whole conspiracy, and thus, as per Section 120-B of the Indian Penal Code (61(2) BNS),** being a part of the

conspiracy to commit a crime makes her equally liable for the crime as other accused persons.

Also, because Nalini (A-1) had knowingly facilitated the commission of this assassination, which is a disruptive activity, it was contended that she should also be punished under the provisions of the TADA Act.

Arguments of the defence

The defence put forth the argument that Nalini (A-1) was not fully aware of the final plan and its deadly consequences. She was only doing the peripheral activities, and that too at the request of Murugan (A-3) because she liked him. Thus, Nalini (A-1) lacked the mens rea, which is requisite to hold anyone guilty of a crime. Moreover, being present at the scene of the incident does not equate to her direct involvement in the assassination.

It was argued that the prosecution wrongly stated that the conspiracy was from a period of 1987 to 1992 because, in actual fact, no such signs were shown even before the day of the assassination, and thus, this case does not fall under the ambit of the rarest of the rare cases. It was pleaded that mitigating circumstances should be taken into consideration, and moreover, Nalini (A-1) and others have shown a potential for rehabilitation throughout the case, so a death sentence would be excessive. Also, there was no motive for the accused and other co-accused to overawe the Government or to create terror, as alleged by the prosecution. Section 3 of the TADA Act requires that the criminal act be done with the requisite intention or motive, and unfortunately, the prosecution fails to prove it. Thus, there is a lack of intention as to how the provisions of TADA are to be applied.

The Supreme Court conducted an extensive review of the case laws on the **law of conspiracy** and called out main principles governing the law of conspiracy

1.Under section 120A of IPC [section 61(1) of BNS], offence of criminal conspiracy is committed when two or more persons agree with the common object to do or cause to be done an illegal act or legal act by illegal means.

When it is legal act by illegal means, overt act is necessary. **Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime.** It is the intention to commit crime and joining hands with persons having the same intention. Not only the intention, there has to be agreement to carry out the object of the intention, which is an offence.

2. **It is rarely possible to establish a conspiracy by direct evidence**. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

3. There has to be two conspirators and there may be more than that to prove the charge of conspiracy, **it is not necessary that the intended crime was committed or not.**

4. **They may join with the other conspirators at any time** before the consummation of the intended objective, and all are equally responsible.

5. It is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. **Offence of criminal conspiracy is complete even though there is no agreement** as to the means by which the purpose is to be accomplished.

6. It is said that a criminal conspiracy is a partnership in crime and that each conspiracy consists of a joint and mutual agency for a prosecution of a common plan.

7. **A man may join a conspiracy by word or deed**. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy One who commits an overt act with knowledge of the conspiracy is guilty and who one tacitly consents to the objects of the conspiracy and goes along with other conspirators, actually standing while the others put the conspiracy into effect, **is guilty though he intends to take no active part in the crime.**

Held: *The Court observed that they didn't find any strict proof for bringing any offence under Section 3 or 4 of the TADA Act. According to them, neither any terrorist act nor any other disruptive activity has occurred under Sections 3 and 4 of the TADA. Thus, charges under this Act fail against all the accused.*

The Court pronounced the sentence of the ***death penalty to the four main accused of the incident,*** *namely, Nalini (A-1), Santhan (A-2), Murugan (A-3), and Arivu (A-18), for their grievous acts under various provisions of law, including Section 109, 120-B, 302, 324, 326, along with Section 34 of the Indian Penal Code.*

Four other accused, Dhanasekaran (A-23), N. Rajasuriya (A-24), Vicky (A-25), and Ranganath (A-26), were given rigorous imprisonment for a term of two years for the offences under Section 212 of the Indian Penal Code. Ranganath (A-26) was also sentenced to rigorous imprisonment for two years under Section 216 of the Indian Penal Code.

State of Maharashtra Vs. Mohd. Yakub, AIR 1980 SC 1111 S-62 (Narrow interpretation of word 'Attempt' would defeat the purpose)

Fact of the case :

In this case the customs department received secret information that silver would be transported in a jeep and a truck. A team led by Superintendent Wagh and Inspector spotting the suspect vehicles heading toward Bassein. The vehicles diverted toward Kaman village, stopped at a bridge, and began unloading bundles. The customs officers then surrounded the vehicles and thereafter they heard the sound of a mechanized sea craft from the side of the creek. Many silver ingots were recovered from under the sawdust bags in the truck.

While the **trial court convicted the accused for attempting to smuggle** silver out of India, the Court of Session **acquitted** them as proof of the charge fell short and the **High Court confirmed the order.**

Issue Involved

Whether the actions of the accused amounted to an attempt to unlawfully export silver in contravention of Indian law?

Held: Agreeing with the trial court's decision, the Supreme Court has held that the **charge against the accused** that silver was being exported in violation of the law out of India **was proved**.

Analysis of the circumstances revealed ***a clear intention by the accused to unlawfully export silver from India*** *by sea. The Court said that the accused, under cover of darkness, concealed silver ingots in vehicles and approached the seashore. They began unloading the silver near a creek, accompanied by the sound of a sea-craft engine nearby, indicating the proximity to completion of the unlawful export.*

"It was observed by the court that the main purpose of the law was to prevent the evil of smuggling precious metal out of India and a narrow interpretation of the word 'attempt' would defeat that purpose. Thus, moving, the contraband goods deliberately to the place of embarkation (boarding) ***is an act proximate to the completion of the unlawful export.***

It is to be noted that some act must be done towards the commission of offence and such act must be 'proximate' to the intended result. ***Proximity need not be in relation to time and action but in relation to intention".***

Abhayanand Mishra Vs. State of Bihar, AIR 1961 SC 1698 S-62 (No Penultimate Act required for Attempt)

Fact of the case :

The appellant applied in University of Patna for permission to appear in the M.A. Examination (English) as a private candidate. He showed that he had a B.A. degree, and he was a teacher in a school. For the application he was asked to attach certain certificates. He attached the certificates purporting to be from the Headmaster of the School, and the Inspector of Schools. The

authorities of the University accepted the application and allowed him for the examination.

The admission card was sent to the Headmaster of the School. When the information received by the University that the appellant was neither graduate nor a teacher. It was also found that the certificate furnished for the admission were forged and even he had been de-barred from taking admission in any University examination. The reason was he committed corrupt practices in university examination.

The case was reported to the police and investigation started. He was convicted for the offence of attempting to cheat by false representations and deceived the University. He was prosecuted and convicted under Section 420 (**318(4) BNS**) read with Section 511 of IPC (**S 62 BNS**).He filed an appeal before the Patna High Court and the court dismissed the appeal. Then he filed appeal by special leave before the Supreme Court against the judgment of Patna High Court.

First contention of the appellant was that the admission card has no pecuniary value, and it is not a property under, Section 415 of IPC (318(1) BNS) and second contention was the steps taken by him did not go beyond the stage of preparation and therefore the offence of cheating was not committed.

Issues Involved

Whether the conviction of the appellant under Sections 420 (S 318(4) BNS and 511 (S 62 BNS) of IPC is maintainable?

Held : *Supreme Court held that a person commits the offence of attempt when-*

1. He intends to commit that offence;

2. Having made preparations and with the intention to commit the offence does an act towards its commission;

3. ***Such an act need not be a penultimate*** **(next to last)** ***act towards the commission of offence*** *but must be an act during the course of committing the offence.*

The Supreme Court observed that the preparation was complete when he had prepared the application for the purpose of submission to the University. The moment he dispatched it, he entered the realm (domain) of attempting to commit the offence of 'cheating'. The SC held that the admission card is 'Property'. The appellant would therefore have committed the offence of 'cheating'.

Sudhir Kumar Mukherjee Vs. State of West Bengal, AIR 1973 SC 2655 S-62(Distinction between preparation and attempt)

Fact of the case :

In this case Appellant Sudhir Kumar Mukherjee was an employee in charge of the soda lime department of a company and appellant Sham Lal Shaw was the supplier of the limestone to the said firm. **Four bags of limestone were needed every day.** The procedure in respect of supply was that Sham Lal Shaw used to bring the bags to Sudhir Kumar Mukherjee and present a challan to him, **there upon he would send the challan to Ardendu Sekhar Goswami** (PW) who used to sign it and send it back to Sudhir Kumar Mukherjee.

One day Sudhir Kumar Mukherjee sent the challan to Ardendu Sekhar Goswami for his signature who signed it and went down to verify the stock. As the four bags were not there he asked Sudhir Kumar Mukherjee who first stated that the quantity received had been consumed but on further questioning, **he modified his statement and said that he might have signed the challan by mistake.** Sudhir Kumar Mukherjee and Sham Lal Shaw were prosecuted under Section 120B of IPC [Section 61(2) of BNS, 2023] read with Sections 420 and 511 IPC (Sections 318(4) and 62 of BNS, 2023).

Held : *obtaining sign of Ardendu Sekhar Goswami was most important and crucial step towards cheating. Thereafter, it only remained for Sudhir Kumar Mukherjee to affix the stamp and put his signature. Sham Lal Shaw could then*

have presented it to the company's office and received payment. ***The acts of the accused had reached the stage of attempt."***

Malkiat Singh Vs. State of Punjab, AIR 1970 SC 713 S-62(Distinction between preparation and attempt)

Fact of the case :

The case of the prosecution is that on October 19, 1961, Sub-Inspector Banarasi Lal of Food and Supplies Department was present at Samalkha Barrier along with Head Constable Badan Singh and others. The appellant Malkiat Singh then came driving truck No. P. N. U. 967. Babu Singh was the cleaner of that truck. The truck carried 75 bags of paddy weighing about 140 maunds. **As the export of paddy was contrary to law, the Sub-Inspector took into possession the truck and also the bags of paddy.**

It is alleged that the consignment of paddy was booked from Lakerkotia on October 18, 1961, by Qimat Rai on behalf of Messrs. Sawan Ram Chiranji Lal. The consignee of the paddy was Messrs Devi Dayal Brij Lal of Delhi. It is alleged that Qimat Rao also gave a letter, Ex. P-3, addressed to the consignee Sawn Ram and Chiranji Lal were partners of Messrs. Sawan Ram Chiranji Lal and they were also prosecuted. In the trial court Malkiat Singh admitted that he was driving the truck which was loaded with 75 bags of paddy and the truck was intercepted at Samalkha Barrier. According to Malkiat Singh, he was given the paddy by the Transport Company at Malerkhotla for being transported to Delhi. The Transport Company also gave him a letter assuring him that it was an authority for transporting the paddy. **But is later revealed that it was a personal letter from Qimat Rai to the Commission agents at Delhi and it was not a letter of authority.** Babu Singh admitted that he was sitting in the truck as a cleaner. **The trial court convicted all the accused persons**, but on appeal the Additional Sessions Judge **set aside the conviction** of Sawan Ram and Chiranji Lal.

Held: *"The Supreme Court held that a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence.* ***On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made****. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly, to have done an act which constitutes the actus reus of a criminal attempt.*

We allow this appeal and ignore the convictions of the appellants under s. 7 of the Essential Goods Act and fines apply to each of them. We also annulled Qimat Rai's sentence."

Independent Thought Vs. Union of India (UOI) and Ors., AIR 2017 SC 4904

S-63 (Age of marital rape)

Fact of the case :

In 2013, a child rights organization, Independent Thought, filed a writ petition in public interest before the Supreme Court. **This petition challenged** the constitutionality of Exception 2 to Section 375 *(S. 63 BNS)* of the IPC which **decriminalised sexual intercouse by a husband with his wife between the ages of 15 and 18 years.** The Petitioners alleged this provision violated the rights of a married girl child between the ages of 15-18 years, since in all other instances under the IPC the age of consent for sexual intercourse was 18 years. The petition sought clarification and harmonization of Exception 2 with existing laws on child marriage and children's rights.

Issue involved

Whether Exception 2 to Section 375 of the Indian Penal Code *(S. 63 BNS)*, 1860 insofar it related to girls aged 15 to 18 years, would be void for violating Article 14, Article 15 and Article 21 of the Constitution of India.

Held: The Court stated that Exception 2 to Section 375 Indian Penal Code [Section 63 of the BNS] in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds

1. *It is arbitrary capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and therefore, violative of Article 14,15 and 21 of the Constitution of India;*
2. *It is discriminatory and violative of Article 14 of the Constitution of India and;*
3. *It is inconsistent with the provisions of POCSO, which must prevail.*

Therefore, Exception 2 to Section 375 Indian Penal Code [Section 63 of the BNS] is read down as follows : "*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years is not rape*". (Now it is prescribed as such in new BNS, 2023)

In **Tukaram Vs. State of Maharashtra,(Mathura Case) AIR 1991 SC 185** S-63 **(Sexual intercourse/Passive submission not amount to rape)**

Fact of the case :

Mathura was living with her brother Gama. She used to visit the house of Nushi for work and there she came into contact with Ashok (relative of Nushi). Their contact developed into an intimacy and both of them **decided to marry each other.**

On 26th of March 1972, Gama lodged report at police station Desai Gunj alleging that **Mathura had been kidnapped by Nushi**, her husband Laxman and the said Ashok. The report was recorded by Head Constable Baburao at whose instance all the three persons complained against as well as Mathura were brought to the police station at about 9 p.m. and who recorded the statements of the two lovers. By then it was about 10.30 p.m. and Baburao told them to go after giving them a direction that Gama shall bring a copy of the entry regarding the birth of Mathura recorded in the relevant register and

himself left for his house as he had yet to take his evening meal. At that time the two appellants were present at the police station.

After Baburao had gone away, Mathura, Nushi, Gama and Ashok started leaving the police station. **The appellants, however, asked Mathura to wait at the police station and told her companions to move out.** The direction was complied with. Immediately thereafter Ganpat, Police constable, appellant took Mathura into a latrine situated at the rear of the main building, loosened here underwear, lit a torch and started at her private parts. He then dragged her to a chhapri (veranda) which serves the main building as its back verandah. In the chhapri he pushed her on the ground and raped her in spite of protests and stiff resistance on her part. He departed after satisfying his lust and then Tukaram, Police constable, appellant, who was seated on a cot nearby, came to the place where Mathura's private parts were fondled(touched in a sexual way). He also wanted to rape her but was unable to do so for the reason that he was in a highly intoxicated condition.

Issue involved:

Whether the sexual intercourse in question amounts to rape within the meaning of thirdly of section 375 of IPC(S 63 BNS)?

Contentions on behalf of the Appellant

The appellants, Tukaram and Ganpat, argued that Mathura had consented to the sexual intercourse and that no unlawful force was employed during the event. The absence of any physical injury or evident signs of defiance (bold resistance to authority) was cited as evidence that Mathura had not been opposing the act in question, and that was interpreted as assent. The argument was cited as evidence that Mathura was not in opposition to the act. They contended that Mathura's conduct after the incident did not indicate any indications of trauma or objection, which bolstered their claim that the sexual interaction was entirely by choice.

Held : *The Supreme Court ruled that the defendants were not guilty concluding that Mathura did not demonstrate opposition to the physical advances that were made to her and that her conduct indicated that she agreed to the sexual interactions. Therefore, the sexual intercourse in question is not proved to amount to rape and no offence is bought home to Ganpat as well as to Tukaram.*

Note:

Mathura rape case brings about changes in Indian law. The widespread protests led to legal reforms. In 1983, the Indian Penal Code (IPC) was amended.

Anurag Soni Vs. State of Chhattisgarh, AIR 2019 SC 1857 S-69 (Consent on false pretext of marriage)

Fact of the case :

The accused, Anurag Soni, was arrested after a written report was submitted by the prosecutrix with respect to rape committed by the accused person, upon her, **on the pretext of marriage and that she was deceived by the accused.** Subsequently, an FIR under Section 376 of IPC(S 69 BNS) was filed and registered and medical and other evidence was collected before the arrest was made.

Upon completion of the investigation, a charge sheet was filed against the accused for the abovementioned offence under Section 376 of the Penal Code **(S 69 BNS)**. The learned Sessions Court held that the accused was, under the Section, guilty of rape by misrepresentation of fact and the promise of marriage to the prosecutrix and therefore consent said to be given by the prosecutrix is not, in fact, consent. Thereupon, the accused was sentenced to 10 years of rigorous imprisonment. The accused appealed to the High Court where the appeal was dismissed and confirmed the order passed by the learned Sessions Court which convicted to the accused.

Issue involved:

Whether the Courts below committed any error in holding the accused guilty for the offence under Section 376 of the IPC?

Held : *The* ***accused was held guilty of the offence of rape under Section 376 of the Indian Penal Code, 1860 (S-65 of BNS).*** *However, his punishment was reduced to seven years from ten years on the request of his learned counsel. Consent of the prosecutrix was taken on the misconception of the fact that the accused shall marry her.*

The intention of the accused was not bonafide from the beginning. She became the victim of his lust. He promised and persuaded the prosecutrix to believe that he shall marry her. He obtained her consent on total misconception. If he didn't say that he will marry her, she wouldn't have given her consent for consensual sex. This consent is not consent. Hence, it is a clear case of cheating and deception.

The Supreme Court reiterated that the consent for sexual intercourse obtained by a person by giving false promise of marriage would not excuse him from rape charges".

Mrs. Rupan Deol Bajaj Vs Kanwar Pal Singh Gill & Anr , 1996 AIR S.C 309

S -79 (**Butt slapping case – Insult the modesty of woman**)

Fact of the case :

Mrs. Rupan Deol Bajaj, was invited to a dinner party organized by S.L. Kapoor, the Punjab Financial Commissioner. Mrs. Bajaj went to the party together with her husband Mr. B.R. Bajaj, a senior I.A.S. officer. Several invitees were at the party, including Mr. Gill.

When Mrs. Bajaj was busy talking to other ladies, Mr. Gill called out to her saying he wanted to speak to her. She excused herself and went to talk to him. It was at this moment, **Mr. Gill misbehaved by pulling her chair closer to his, not once but twice.** Mrs. Bajaj felt this inappropriate and made her way back to the ladies. After a few minutes, Mr. Gill came closer to her and blocked

her way. This made her frightened. She stood up to leave where upon, **Mr. Gill slapped her on the posterior.**

Mrs. Rupan Deol Bajaj's complaint was treated as the First Information Report (FIR) and a case was registered by the Central Police Station, Sector 17, Chandigarh. **Her husband, Mr. B.R. Bajaj, also a senior IAS officer, later lodged a complaint in the Court** of the Chief Judicial Magistrate for the same offences, alleging that the Chandigarh Police, due to Mr. Gill's high rank, had not conducted a fair investigation. He feared the police would close the case as untraced.

Held: *Regarding the High Court's decision to quash the FIR and complaint, the Supreme Court held that* ***it was improper for the High Court to*** *assess the probability, reliability or genuineness of the allegations at that stage. The Supreme Court emphasized that an FIR or complaint should* ***only be quashed if the allegations are absurd (unreasonable) and inherently improbable****, which was not the case here.*

"The Apex Court further directed that the Chief Judicial Magistrate should proceed with the case in respect of offences under Sections 354 (S 74 BNS) and 509 and make a decision on the basis of evidence produced before it." As per the direction given by the Supreme Court, the Chief Judicial Magistrate conducted a trial. The accused was held guilty under section 354 *(S 74 BNS)* and 509*(S 79 BNS)* IPC. **He was sentenced to 3 months of imprisonment and fine of Rs. 500 in respect of offence** under section 354 *(S 74 BNS)* and 2 months of imprisonment with fine of Rs. 200 in respect of section 509(Now section 79 of BNS).

Reg Vs. Govinda, (1877) ILR 1 Born 342 S-100&101(Distinction between Culpable Homicide and Murder)

Fact of the case :

The accused Govinda was a young man of 18 years. He **kicked his young wife** of twelve or thirteen years of age and struck her several times by his fists (fingers bent tightly) on the back. The injuries on the back were not that serious. However, after she fell on the ground, the **accused put one knee on her breast and struck her two or three times on the face.** One or two of these blows, the medical evidence showed to be violent and had effect on the left eye of the wife, producing confusion and dislocation. Although the skull was not fractured, the blow caused by extravagance of blood on the brain and the girl died in a short span of time afterwards.

Issue involved:

Whether the accused had the required intent to commit the offence of murder specified under section 300 of the Indian Penal Code?

Held: *"The court had stated that there was absence of intention. In both, Section 299 (S 100 BNS) and 300 (S 101 BNS), the key element is that there should be an intention of causing the death.* ***The accused was liable for culpable homicide*** *not amounting to murder".*

In **K.M. Nanavati Vs. State of Maharashtra, AIR 1962 SC 605** – S 101 (Test of Sudden and grave provocation - Murder exception)

Fact of the case :

The fact of the case was, the accused, a naval officer was charged with the murder of Prem Ahuja, a businessman of Bombay, for having illicit intimacy with his wife, Sylvia. On coming to know from his wife about the illicit relationship with the deceased, he went to the ship, took from the stores a semi-automatic revolver and six cartridges on a false pretext, loaded the same, went to the flat of Ahuja to his bedroom and shot him dead after a heated exchange of words.

Issue involved:

Whether the appellant was deprived of power of self-control by sudden and grave provocation, thus covering the offence under Exception I to section 300, I.P.C.(S 101 BNS) ?

The Court observed the Test of grave and sudden provocation

(i) The test of 'grave and sudden provocation' is whether a reasonable man, belonging to the **same class of society as the accused**, **placed in the situation** in which the accused was placed, would be so provoked as to lose his self control.

(ii) In India, words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first exception to section 300 of I.P.C. (S 101 BNS)

(iii) The **mental background created by the previous act of the victim may be taken into consideration** in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence; and

(iv) The fatal blow should be **clearly traced to the influence of passion(strong emotion) arising from the provocation** and not after the passion has cooled down by lapse of time, or otherwise giving the accused room and scope for premeditation and calculation.

Held : *It was held that, between 1.30 P.M. when he left his house, and 4.20 P.M. when the murder took place, three hours had escaped,* ***and therefore there was sufficient time for him to regain his self-control****, even if he had not regained it earlier. "His conduct clearly showed that the murder was deliberate and calculated one,* ***death was not accidental and rather it was a pre-planned murder.***

Conviction of the accused under section 302, I.P.C. and sentence of imprisonment for the life was upheld. Hence, ***the case did not fall within Exception 1 of Section 300 IPC (S 101 BNS)*** *and the conviction of accused by the High Court was upheld."*

Rawalpenta Venkalu Vs. State of Hyderabad, AIR 1956 SC 171 S-103(Intention can be read from conduct)

Fact of the case :

On the night between the 18th and 19th February 1953, the two appellants along with the three others (acquitted by the learned trial Judge) in pursuance of a conspiracy to commit the murder of Md. Moinuddin had **set fire to the single room hut in which he was sleeping**, after locking the door of the room from outside.

In addition, the culprits assaulted the employees of the deceased, who came forward to help him and among the employees, one of the servant named Kasim Khan was beaten severely. Later, the appellants set fire the superior force of the accused and their associates kept at bay to the cottage and the employees of the deceased. The appellants threw dust and freely used their sticks upon the villagers in order to prevent them from rescuing the deceased.

On 23rd of February the Munsif Magistrate recorded the confessional statements given by the appellants, whereby it was stated that whatever was done was done in pursuance of the common intention of both of them.

The courts have also found it that there was a longstanding dispute between the deceased and the family of the second appellant over land which belonged to the deceased but which was in cultivating possession of the second appellant's family. This dispute has been testified to not only by some of the prosecution witnesses but was also proved by the documentary evidences.

Issues Involved

Whether the doctrine of mens rea was present in this case?

Whether the appellants had committed the murder of deceased deliberately?

HELD : *In view of the above circumstances disclosed in the evidence, the conclusion that* ***is to be drawn was that the offence was committed after a***

preconcerted plan to set fire to the cottage after the man had, as usual, occupied the room *and had gone to sleep. There is no doubt on the evidence led by the prosecution in this case that they have brought home the charge of murder against both the appellants and they deserve the extreme penalty of the law.*

"These acts of the accused were held to be clear enough to show that the intention of the accused was to murder the deceased. Hence, ***he was held guilty of committing murder".***

Virsa Singh Vs. The State of Punjab, AIR 1958 SC 465 (S 103(1)) [Injury inflicted by Appellant satisfied the requirement of murder punishment

Fact of the case :

The incident in question in this case occurred at about 8pm on 13th July 1955 as a result of which Khem Singh died. The death was caused as a result of a spear thrust which was caused by the appellant and the doctor who examined the deceased said that three coils of intestines were coming out of the wound. The doctor said that the injury was sufficient to cause death in the ordinary course of nature.

The appellant Virsa Singh has been sentenced to imprisonment for life under Section 302 of the Indian Penal Code (IPC) (Section 103(1) of BNS) for the murder of Khem Singh. **The appellant was tried with five others under Sections** 302/149, 324/149 and 323/149 of IPC (103(1),118(1),115(2)/190 BNS) and he was also charged individually under Section 302 of IPC (Section 103(1) of BNS) on ground that although only one injury has been caused by him on victim but the same was sufficient to cause death in the ordinary course of nature.

The Sessions Judge observed that **although the common intention was to injure the deceased and not to cause death, but death was caused because of rash and silly actions and forceful blow given by Appellant** (stabbing of Khem Singh with a spear). Therefore, Section 300(Section 101 of BNS), 3rdly

(3) of IPC applied and Appellant is liable to be convicted under Section 302 of IPC. He was sentenced to life imprisonment. The other accused were charged under Sections 323/149, 324/149 and 36 of IPC (115(2)/190, 118(1)/190 and 3(7) BNS) but acquitted from the charges under Section 302 of IPC. On appeal, the **High Court has upheld the Appellant's conviction**. Hence, the matter reached before the present court.

Singh lodged an appeal, contending that **he lacked the requisite intention to cause death.** Inquiry conducted pertained to whether intention to cause death was a sine qua non for the characterization of an act as murder under Section 300(3) of the Indian Penal Code. (Now Section 101(3) of BNS, 2023).

Issues Involved

Whether the accused can be held liable for murder under Section 300 of IPC *(Section 101(3) of BNS)* ?

Held : *The Supreme Court observed that to bring a case under Section 300(3) of 1PC (Section 101(3) of BNS) the prosecution must prove:*

1. That a bodily injury is present,

2. Nature of injury must be proved (objective investigation).

3. That there was an intention to inflict that particular bodily injury

4. That intended injury is sufficient to cause death in the ordinary course of nature. This part is purely objective and inferential and has nothing to do with the intention of the offender.

The Court observed that in the present facts there is no evidence or reasonable explanation about why the appellant thrust the spear with such force that it penetrated the bowels, and three coils of intestine came out of the wound.There is nothing to show that his act was regrettable or as a result of an accident.

Thus, the Court in this case ***convicted the appellant and dismissed the appeal.***

Stalin Vs. State represented by the SI (Tamilnadu), AIR 2020 SC 4195 (S-103) (Even single injury, Section 302 IPC would be attracted)

Fact of the case :

The beer was being served at the place of incident and the persons who participated in that beer party were friends. Hence, there was the absence of premeditation i.e. the **fight took place by chance and the fight happened in a heat of passion** i.e. there was no time for this fight to cool down and the parties i.e., the accused and deceased had worked themselves into a fury (violent anger) on account of the verbal altercation in the beginning.

Also, the accused had not taken any undue or unfair advantage from the fight because all the matter had been started from the party itself, therefore, Section 302 IPC (**103(1) BNS**) shall not be attracted.

Held : It was also observed by the court that it is **a well-settled principle that motive is not an explicit requirement under IPC,** it can though only help prove the case of circumstantial evidence.

It has been held that there is **no hard and fast rule that in case of single injury,** Section 302 of IPC (Section 103(1) of BNS) would not be attracted. It depends upon the facts and circumstances of the case. The nature of injury, the part of body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death with the intention of causing death or not.

It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC (103(1) of BNS – Punishment for murder) is ruled out. *It also observed that accused inflicted the blow with a weapon like knife and he inflicted the injury on the deceased on the vital part of the body, it is presumed that causing such bodily injury was likely to cause death.*

"*Therefore, the case would fall under Section 304 Part I of IPC (Section 105 – Punishment for culpable homicide of BNS, 2023).*"

Mithu Singh Vs. State of Punjab, AIR 1983 SC 473 S -104 (S-303(Punishment for murder by life- convict) of IPC held unconstitutional)

Fact of the case :

Mithu Singh, serving a life sentence for a previous crime, committed murder while under the sentence of life imprisonment. Under Section 303 (S 104 BNS) of the Indian Penal Code (IPC), individuals serving a life sentence who commit murder are automatically sentenced to death.

Learned counsel for the petitioner stated that the provision contained in Section 303 of the IPC (S 104 BNS) is wholly unreasonable and arbitrary and thereby, it violates Article 21 of the constitution which affords the guarantee that "no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law". Learned counsel for the petitioner also **expressed that Section 303 of the IPC (S 104 BNS) is unlawful.**

Issue involved:

Whether Section 303 of the IPC (S 104 BNS), prescribing a mandatory death sentence for life convicts committing murder, violates Article 14 & Article 21 (Equality) of the Indian Constitution.

Held: *In this case, the constitutional bench of the Supreme Court unanimously* ***struck down Section 303 of IPC*** *(Section 104 of BNS, 2023) on the ground that it violates the guarantee of equality contained in Article 14 as also the right conferred in Article 21 of the Constitution that no person shall be deprived of his life or personal liberty except according to procedure established by law. The assumption that* ***life convicts are a dangerous breed of humanity*** *as a class is* ***not supported by any scientific data*** *and so cannot stand outside Article 14 of the Constitution.*

Note In India, capital punishment used to be **mandatory under Section 104 of BNS, 2023 for murder committed by a convict** serving a sentence of life imprisonment.

Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1 S-106 (Rash or Negligent act in Medical Treatment)

Fact of the case :

On February 15, 1995, the informant's father, was admitted as a patient in the private ward of a hospital. On February 22, 1995 at about 11 p.m., the patient felt difficulty in breathing. The complainant's elder brother, who was present in the room contacted the duty nurse, who in turn called a doctor to attend to the patient. No doctor turned up for 20-25 minutes. Then doctors came to the room of the patient. An oxygen cylinder was brought and connected to the mouth of the patient, but the breathing problem increased further. The patient tried to get up, but the medical staff asked him to remain in the bed. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Son of the patient went to the adjoining room and brought a gas cylinder. However, there was no arrangement to make the gas cylinder functional and meanwhile, 5-7 minutes were wasted. By this time, another doctor came and declared that the patient was dead.

The word 'gross' has not been used in Section 304A, (now section 106 of BNS) but it is settled that in criminal law, negligence or recklessness must be of such a high degree as to be 'gross'.

Issue involved:

Whether Dr. Mathew could be held liable for medical negligence in the treatment of the patient.

Held : The Supreme Court of India noted that the complaint did not allege that Dr. Mathew was not a qualified doctor to treat the patient. Additionally, there were allegations of the non-availability of an oxygen cylinder, which was

attributed to the hospital management. The court opined that the hospital may be liable under civil law for such lapses. However, the court held that **Dr. Mathew could not be held guilty under Section 304A of the Indian Penal Code (IPC**)(106 of BNS), which deals with causing death by negligence, as there was no evidence to establish a direct link between his actions and the patient's death.

The Supreme Court of India stipulates the guidelines to be followed before launching a prosecution against a doctor for negligence:

1. Negligence is the breach of a duty caused by omission to do, something which a reasonable person — guided by those considerations which ordinarily regulate the conduct of human affairs would do which 'a prudent and reasonable man would not do.

2. Negligence is an essential ingredient of the offence. Negligence must be culpable or gross and not merely upon an error of judgement.

3. The medical professional is expected to bring a reasonable degree of shill and knowledge and must exercise a reasonable degree of care. It must neither be very high nor a very low degree of care.

4. A medical practitioner would be liable only where his conduct fell below that of standards of a reasonable practitioner in his field.

5. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

SK Khaja Vs. State of Maharastra 2023 (4) Criminal CC121 S-109 (Simple injury can lead to attempt to murder)

Fact of the case :

A complaint was made against the accused S.K. Khaja to Police Station, for alleging that the appellant/accused was demanding ransom and threatening the public at large. The Police station in charge ordered to get the custody of the accused. A team from the police station left along with complainant as the team member.

In an attempt to nab the accused the constable tried to get hold of him and in an **attempt to escape the accused had allegedly tried to assault a police constable on his head** with a Gupti. However, the constable while avoiding the blow on his head got injured on his right shoulder. This case was presented before the Hon'ble Supreme Court as an appeal preferred by the appellant (accused) against the impugned judgment of the Bombay High Court. The high Court had concurrently convicted the accused under Section 307 & 332 of the Indian Penal Code (S 109 &103(1) BNS) sentencing the accused to undergo rigorous imprisonment for 5 years and 2 years respectively.

Issue involved:

Whether the nature of injuries suffered by the complainant were simple in nature to fall under the ambit of Section 307 (S 109 BNS) ?

Held : *"The Supreme Court held that merely because the injuries sustained by the complainant were very simple in nature, that* ***would not absolve the appellant/accused from being convicted for the offence*** *under Section 307 of IPC (Section 109 of BNS). What is important is an intention coupled with the overt act committed by the appellant/accused".*

Om Prakash Vs. State of Punjab, AIR 1961 SC 1782 S-109(Act includes series of act & proximate act- Attempt to murder)

Fact of the case :

Bimla Devi got married to appellant but after some time their relation got strained as she was ill-treated and her health deteriorated because of maltreatment and malnourishment. Hence, she left her husband's house.

Her husband's maternal uncle convinced her to come back home with the assurance that she'll not be again maltreated. After coming back to her husband's home, she was again maltreated and was locked in a room, but somehow she tried to escape from there and reached a civil hospital in Ludhiana. Before Dying she made a statement which is known as a dying declaration in front of the magistrate. On that behalf case was registered against the appellant.

High court concluded that the statement made by the victim was correct and her condition was all because of the maltreatment.

Issue involved

Whether the act committed by the accused fall under Section 307 (Now section 109 of BNS) Attempt to murder or not?

In this case the court has said that the act towards commission of the murder need not be a single act. The word 'act' does not mean only any particular specific instantaneous act of a person, but denotes according to Section 33 of IPC [Section 2(25) of BNS], a series of actions as well, When an accused deliberately starved his wife and denied food to her for days together and did not allow her to leave his house,

Inability to look after herself

Held : *The Appellant contended that the accused had no duty to feed Bimla Devi. They argued that his duty was limited to providing funds for food, which he had done. The Supreme Court relied on the findings of the lower court, which explained how Bimla Devi was intentionally confined and starved to quickly meet her end, to highlight the role played by the appellant in this scheme. The court further concluded that these findings contradict the argument of the counsel that the appellant provided funds and food for his wife.*

An appeal, by special leave, was brought before the Supreme Court, against the order of the Punjab ***High Court dismissing the appellant's appeal against his conviction under Section 307 of the IPC (109 of BNS)****. The Hon`ble* ***Supreme Court upheld the High Court judgment****. The court gave a verdict in favour of the respondents and convicted the accused under Section 307 i.e., attempt to murder. The court noted that all elements of Section 307 were fulfilled in this case and, while doing so, the court also analysed the cases cited by the appellants.*

Varadarajan Vs. State of Madras, AIR 1962 SC 942 S-137 (Kidnapping minor – taking or allowing)

Fact of the case :

In 1960, there was a man named S. Natarajan living in Nungumbakkam with his wife and two daughters, Rama and Savitri. Savitri became friends with a guy named Varadarajan (appellant) a few months before 30th September 1960, who lived in the house next door to theirs. Savitri and Varadarajan used to talk to each other from their houses. On 30th September 1960, Rama saw them talking to each other like this at around 9:00 A.M. She saw them talking on previous occasions too. So, she asked Savitri why she was talking to Varadarajan. Savitri told her that she wanted to marry Varadarajan.

Rama told her father about Savitri's intention, but he strongly disagreed with their relationship. On the same day, Natarajan took Savitri to Kodambakkam and left her at a relative's house to keep her away from Varadarajan as much as possible. The next day, Savitri left her relative's house around 10:00 A.M. and called Varadarajan, asking him to meet her on a certain road in the area. She went to that road herself. When she arrived, Varadarajan was already there in his car. She got into the car, and they went to a friend's house with the plan of taking that friend with them to the Registrar's office to witness their marriage.

However, they could not register their marriage. Though, they started living together as if they were husband and wife. They travelled to Coimbatore and then to Tanjavore. In Tanjavore, the police found them while investigating a complaint made by Savitri's father, who accused Varadarajan of kidnapping her.

Issues Involved

Whether the acts done by the appellant (Varadarajan) fall within the ambit of the word "taking" used in section 361 of IPC (137 1(b) BNS)?

Held : *The* ***accused in the given case was acquitted*** *by the Supreme Court as the Court observed that the* ***acts of the accused would not fall within the ambit of the word "taking"*** *as has been used in Section 361 of the Indian Penal Code as the accused merely allowed the minor to accompany him*

The Supreme Court said that there was a distinction between the 'taking' and 'allowing a minor to accompany any person'. ***Something more has to be shown,*** *some kind of inducement or active participation of the accused in 'taking' the person."*

Distinction between "taking" and "allowing a minor to accompany"

The Apex Court emphasised the crucial distinction between the act of "taking" a minor out of the guardian's keeping and merely "allowing" a minor to accompany someone. These two expressions are not synonymous, and the Court cautioned against equating them with the same meaning for the purposes of Section 361 of the IPC. The Court acknowledged that there could be exceptional circumstances where the two concepts might overlap, but in general, they should be treated as distinct. ***In the given case, the Court observed that the child was net taken by the accused; rather, it was the child who voluntarily accompanied the accused*** *and the accused merely allowed the child to do so.*

The Court held that for the offence of kidnapping to be established, the prosecution must prove that the accused actively "took" or enticed the minor out of the guardian's "keeping."

Kedar Nath Singh Vs. State of Bihar, AIR 1962 SC 955 S -152 (Constitutionality of sedition)

Fact of the case :

Kedarnath Singh, a leader of the Forward Communist Party in Bihar, made a public speech that was critical of the Government, specifically targeting the Congress Party's capitalist policies. **In his speech, he used strong language to criticize the ruling party** and its policies. He referred to the Congress Party in derogatory terms and suggested that there was a need for a revolution to overthrow the government. The authorities, **seeing his speech as a threat to public order and peace**, filed charges against him under Section 124A (sedition) and Section 505 (inciting public mischief) of the IPC (S 353 BNS). Singh was convicted by the trial court and sentenced to one year of rigorous imprisonment.

Issues Involved

Whether Sections 124A and 505 (353 of BNS) of the Indian Penal Code are ultra vires in view of Article 19(1)(a) read with Article 19(2) of the Constitution?

Dissatisfied with the decision, Singh appealed to the High Court of Patna. The High Court upheld his conviction, dismissing his appeal. Singh then appealed to the Supreme Court, challenging the constitutional validity of Section 124A of the IPC and arguing that it infringed upon his fundamental right to freedom of speech under Article 19(1)(a) of the Constitution.

HELD : *The Constitution bench* ***upheld the validity of Section 124A*** *and Section 124-A does not violate Article 19 (1) (a) of the Constitution as it is a reasonable restriction. The Court also added that the protection of freedom of speech should be safeguarded to its full extent, but reasonable restrictions are necessary for the safety and integrity of the State.*

Note: The offence of sedition under section 124-A of IPC has though been done away in the BNS, but a new provision in section 152 , somewhat similarly worded, has been brought in by the law makers in Parliament. It criminalizes acts or attempts that incite secession, armed rebellion, or subversive activities, or encourage separatist sentiments that threaten the country's stability.

Nanak Chand Vs. State of Punjab, AIR 1955 SC 274 S-3(5) & S190 (Common Intention **Vs** Common Object)

Fact of the case :

Sadhu Ram was murdered on November 5, 1953, at around 6:45 p.m. inside Vas Dev P. W. 2's store. The appellant and several people are accused of attacking Sadhu Ram. The appellant had a takwa as a weapon. Sadhu Ram's body was found to have numerous wounds. The doctor doing the postmortem examination determined that injuries 1, 3, and 4 were caused by a heavy, sharp-edged instrument and may have been a takwa. The prosecution refuted claims that another person used a takwa to attack the deceased.

According to the medical evidence presented before the Court, the Appellant along with others, was **only charged with Sections 148- Rioting** (S 191(3) BNS) **and 302** (S 103(1) BNS), **read** with Section 149 of the Indian Penal Code, 1850 (IPC).

However, the Additional Sessions Judge, while dealing with the case, observed that there was **no evidence to prove the allegations of rioting under Section 149** but the Appellant and others are guilty under Section **302 read with Section 34** of the IPC for murder. He also acquitted three of the accused.

Subsequently, there was an appeal against the order of the Additional Session Judge before the High Court. The High Court found the **Appellant guilty of Section 302 of the IPC but altered the conviction of others to Section 323** of the IPC for voluntarily causing hurt and not murder.

The Appellant alone was convicted of Murder and Imposed a death sentence. Afterwards, the Appellant brought this matter before the Apex Court on questions of fact and law.

Issue involved:

Whether the Appellant could legally be convicted of murder and sentenced under Section 302 of IPC (S 103(1) of BNS) **when he was not charged with that offence?**

Whether Section 149 of IPC (S 190 BNS) **creates a specific offence?**

Arguments on behalf of the appellant

It was contended on behalf of the appellant that **since he was acquitted of the charges of rioting and offence under Section 302** read with Section 149 of the IPC, he cannot be convicted of the offence of Murder separately. A charge under Section 302 has not been framed against him.

It was further argued that, in order to try the accused on distinct charges, there must be those distinct charges filed against him. Every such charge is tried separately except in cases mentioned under- Sections 234, 235, 236, 237 and 239 of the CrPC/BNSS. It is submitted that the charge under Section 149 is different from the offence of murder under Section 302 of the IPC. The exceptional provisions of CrPC did not apply to the facts of this case

The Court observed that Section 34[section 3(5) of BNS, 2023] of the IPC focuses on common intention to commit an offence. Under this section, several individuals acting in furtherance of a common intention can each be held liable for the offence as if they had individually committed it. This requires a shared intention to commit the offence and each participant's actions are seen as part of the collective intent.

On the other hand, Section 149(Section 190 of BNS) does not consider common intention. It attributes the actions of one member of an unlawful assembly to all members irrespective of their individual intentions or participation in the specific act. This distinction between object and intention is crucial, while the

object of the assembly might be common, the intentions of its members can differ. The Court referred to several key cases to clarify the application of Sections 149 (Section 190 of BNS) and 34[section 3(5) of BNS, 2023].

Held : *When a charge under Section 302 read with Section 149 was framed against the appellant, the Supreme Court was indicating that the appellant was not being charged with the offence of Murder. Therefore, convicting him of Murder under Section 302 would be to convict him of an offence with which he has not been charged.*

As per the medical evidence present and the statements given by eyewitnesses, it is not proven that the appellant used the Takwa on the deceased. Therefore, no particular charge was framed against the appellant and thus convicting him on a separate charge would be prejudicial to his interests and the law. The appeal was therefore allowed by the Court, and the conviction of the appellant set aside.

K.N. Mehra Vs. State of Rajasthan, AIR 1957 SC 369 S-303(Temporary retention of property is enough for theft)

Fact of the case :

In 1952, two training cadets named K.N. Mehra and M.Z. Phillips took a Harvard H.T. 822 aircraft **without due permission from the authorities** of the Indian Air Force Academy, Jodhpur. A day prior to the incident, i.e. 13th May 1952, **Phillips was dismissed from the academy for breaking the rules** of conduct. The next day, on 14th May, Mehra was receiving navigator (a person who helps pilots use instruments and maps) training for which he was scheduled to take a Dakota flight, along with another flying cadet, Om Prakash. Philips was in the process of departing as a result of his release from the training.

Meanwhile, all of a sudden, Mehra and Phillips boarded not a Dakota, but a Harvard H.T. 822 and initiated a flight upon blatant disregard of the rules. This was done without authorisation and without observing any of the formalities, which are prerequisites for an aircraft-flight. On the same day **they**

landed at a place in Pakistan about 100 miles away from the Indo-Pakistan border.

A Military Adviser to the Indian High Commissioner, J. C. Kapoor in Pakistan at Karachi, was contacted by Mehra and Phillips in person and informed him that they had lost their way and force-landed in a field and that they left the plane there. Kapoor **made arrangements for both of them being sent back to Delhi** in an Indian National Airways plane and also arranged for the Harvard aircraft being sent away to Jodhpur. While they were on their return to Delhi, the plane was stopped at Jodhpur and both were arrested.

The appellant, **K. N. Mehra, and M. Z. Phillips both were convicted** under Section 379 of the Indian Penal Code. The conviction and sentence against them have been confirmed on appeal by the Sessions Judge and on revision by the High Court. Aggrieved by this decision, a Special Leave Petition was filed in the Supreme Court by the Appellant i.e. K.N Mehra.

Issue Involved

Whether the appellant's actions constituted the offence of theft as under section 378 of the IPC (303(1) of BNS)?

Did the appellant possess any 'dishonest intention' during taking off the aircraft from the beginning and such a commission was authorized by the authority by any chance?

One of the main contentions of the accused was that if they had the inclination to take the aircraft to Pakistan, they would not have contacted the Indian High Commissioner at Karachi later. But the prosecution succeeded in proving that this apparent innocent move did not necessarily make negative their intention at the time of taking off .The cadets intentionally took the flight for the purpose of going to pakistan and seeking employment there, which becomes clear through many instances before and after the take-off.It was enough to constitute the offence that they had the dishonest intention at the commencement of their journey.

The court also explained the true meaning of theft as follows

Held : "*Dishonest intention with reference to its definitions in Section 23 and 24 of IPC [Section 2(7)), 2(36), 2(37) and 2(38) of BNS] along with wrongful loss and wrongful gain. Taking these two definitions together, a person can be said to have dishonest intention if in taking the property, it is his intention to cause gain by 'unlawful means' of the property to which the person so losing is legally entitled. It is further clear from the definition that the gain or loss contemplated* ***need not be a total acquisition or a total deprivation****, but it is enough if it is temporary retention of property by the person wrongfully gaining or a temporary 'keeping out' of property from the person legally entitled*"

Satishchandra Ratanlal Shah Vs. State of Gujarat, AIR 2019 SCC 1538 S - 316 & 318(Dishonest intention from initial stage)

Fact of the case :

The complainant is the director of a money lending company by the name of Dharshan Fiscal Pvt. Ltd. The appellant, who is a retired bank employee, approached the complainant's company in the month of January 2008 for a loan of Rs. 27,00,000/-. Accordingly, complainant transferred the funds as a loan, which was to be repaid by the appellant within a year with interest.

Thereafter, the **appellant has not repaid the amount** back to the complainant. Further, complainant alleged that when he approached the appellant, he was threatened by the appellant with dire consequences. Thereafter, the respondent no.2 filed a complaint based on which the FIR bearing I/C.R. No. 22/2012, dated 25.01.2012, was filed before the Kagdapith Police Station. the appellant was enlarged on bail by the High Court after being arrested on 29.01.2012. The appellant preferred an application under Section 482 of the Cr.P.C for the quashing of the FIR bearing I/C.R No. 22/2012.

Held : "*The Supreme Court observed* ***that inability of a person to return the loan amount cannot give rise to a criminal prosecution*** *for cheating unless*

fraudulent or dishonest intention is shown right at the beginning of the transaction".

Sherras Vs. De Rutzen, (1895) 1 QB 918 (Strict liability offence /Absence of Mens Rea)

Fact of the case :

The defendant in this case was a licensee of a public house (i.e., a person licensed to sell alcohol). Under Section 16(2) of the Licensing Act 1872, it was an offence for a licensee to supply alcohol to a police officer on duty. A police officer, while present at the establishment, purchased liquor**. However, the officer was not wearing his armlet,** a device worn by officers to indicate they were on duty. In this case, the absence of the armlet was widely regarded as indicating the officer was off duty. Based on this common understanding, the defendant assumed the officer was not on duty at the time and thus served him liquor.

In this case the **defendant was convicted of selling alcohol to a police officer whilst on duty** under section 16(2) of Licensing Act, 1872. It was customary for police officers to wear an armlet whilst on duty but this constable had removed his armlet. The appellant therefore believed that he was off duty.

The **statute was silent as to the question of whether knowledge was required for the offence** or not. Upon being convicted, the defendant appealed, contending that the prosecution was required to prove that he had knowledge or was willfully ignorant of the officer's duty status, given the absence of explicit wording in the statute imposing strict liability or dispensing with mens rea.

Issue Involved

Whether the offence required the defendant to knowingly serve liquor to an on-duty officer.

Whether the presumption of mens rea applied to this offence under the Licensing Act, even though the statute itself was silent on the mental element.

Held : *There is a presumption that mens rea is an essential element of every offence. But this presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals.* ***The appeal was allowed and his conviction was quashed.***

"The court noted that there are ***3 types of cases which fall under strict liability****:*

1. ***All cases of public nuisance****. [**Ex:** if a person throws garbage near the door of his neighbour, civil action may lie. But, criminal jurisdiction may be triggered if the same garbage is dumped in public place. In certain situations, civil as well as criminal action may arise out of same case]*

2. ***Acts not criminal in real sense but prohibited in public interest.*** *[**Ex:** if a person digs a manhole in the public place and another person fall into it. Action may be taken by the victim in civil law and criminal case may also be filed by any interested member of the society]*

*3. Civil rights enforced through criminal law. [**Ex: Possession of adulterated foods]"***

Note

The principle laid down in this case is followed in several Indian decisions such as Union of India Vs. M/s Ganesh (AIR 2000 SC 1102) [The court recognized the exceptions of mens rea liability].

R.Vs. Tolson, (1889) 23 QBD 168 (Marriage under good faith)

Fact of the case :

In this case it, has been held that Mrs. Tolson was charged with bigamy under section 57 of the Offences Against the Person Act 1881 **for contracting**

a second marriage during the lifetime of her former husband; she was acquitted on the ground that she believed in good faith and on reasonable grounds that her husband had died prior to the time of her second marriage. Mrs. Tolson married Mr Tolson on September 11, 1880.

After a year he deserted her on December 13, 1881. On inquiries made by her father and others, she was led to believe that her husband had been drowned in a vessel bound for America, which went down with all hands on board.

On January 10, 1887, Mrs. Tolson, supposing herself to be a widow and contracted a second marriage with another man. The circumstances were well known to the second husband and the ceremony was in no way concealed. The intent to commit bigamy was held to be negatived by the accused's mistaken belief of the death of her husband.

Issue Involved

Whether an honest and reasonable belief in the death of a spouse could constitute a defence to bigamy.

Held : "*Court observed that as a general rule there must be a guilty mind before there can be a crime. Hence, it is concluded that* ***mistake was reasonable****".*

State of Maharashtra Vs. Mayer Hans (M.H.) George, AIR 1965 SC 722
(Mens rea is excluded)

Fact of the case :

In this case, on 25th August 1948, a notification was passed by the government of India stating that any gold and **gold article should not be bought into India or sent to India without general or special permission** given by the Reserve Bank of India this was under the power of section 8 of Foreign Exchange Regulation Act, 1947.

On November 8th, 1962 a notification was given by the Reserve Bank of India that it had **restricted the transit of any gold article** being sent outside India with a condition that it should be declared in the "Manifest" for transit in the "same bottom cargo" or "transshipment cargo". This notification was published on 24th November, 1962.

Mayer Hans George, a German smuggler, left Zurich by plane on 27th November 1962 with 34 kilos of gold **concealed on his person to deliver** it in Manila. The plane arrived at Bombay on 28th of November. George did not come out of the plane. The Customs Authorities examined the aircraft to see if any gold was consigned by any passenger and found George.

On removing the jacket which George was wearing, it was found to have 28 specially made compartments, 9 of which were empty and the remaining 19 pockets had 34 bars each weighing approximately 1 kg and seized it. George was convicted by the Presidency Magistrate of Bombay and sentenced to rigorous imprisonment for one year.

Issue Involved

Whether the respondent is guilty of bringing gold in India under Section 8(1) and Section 23(1-A) of the FERA which was published in the Gazette of India on 24th November 1962?

Held : *In this case the Supreme Court* ***refused to accept the plea of ignorance of the notification*** *issued by the Reserve Bank of India imposing restrictions on the transit of gold to a place outside the territory of India and held the accused, a French national, liable for violating the said notification.*

Supreme Court stated that "*even actus rea is enough in case of a statutory offence, and mens rea is excluded in such scenarios*". As he had already been in jail for a few months, when the final judgment was announced his imprisonment was reduced accordingly.

R Vs. Prince, (1875) LR 2 CCR 154 (Mistake is no defence if the act is wrongful/ Mens rea is excluded)

Fact of the case :

Prince took a girl below the age of 16 years without the consent of the parents under the belief that she was above 16 years, which is an offence in England under Offences against persons Act, 1861.

Prince contended that he had a bona fide belief, with reasonable grounds, that Phillips was over the age of sixteen. Here actus Reus was present but the men's Reus was absent as the prince didn't know about the actual age of the girl, he proved that the girl he took looked 18 years old and she went with him with her consent and she mentioned her age is 18. He doesn't have mala fide intention to abduct her. In this case **he didn't act in good faith** because he failed to make enquiries to find out the actual age of the girl.

Issue Involved

Whether actus Reus is enough to make someone liable without mens Reus?

Held : *This meant that proof of mens rea (criminal intent) as to the girl's age was not required in order for a conviction to occur. A girl under 16 cannot be taken at all without parental consent, and therefore the plaintiff was guilty of an offence regardless of what the defendant thought. Here strict liability was followed and Prince was convicted of the charges of kidnapping even without a guilty mind.*

"The statute was silent as to any mens rea requirement, and the court found that it was not required to read one into the law. If the legislature meant for mistake of fact to be a defence, then it would have enshrined those provisions in the statute".

Note

One of the essential requirements to get protection under Section 14 and 17 is that the **action must be done in good faith.** Section 2(11) of BNS defines 'good faith'. It provides that nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention. Therefore, a person

is expected to act with due care and caution. Due care denotes degree of reasonableness in the care to be exercised. 'Good faith' is always a question of fact.

T. V. Vaitheeswaran Vs State of Tamil Nadu AIR 1983 SC 361. (Delay in executing a death sentence is violation of Article 21 of Constitution of India.)

Fact of the case :

Appellant was the brain behind a cruel conspiracy to impersonate Customs officer's pretend to question unsuspecting visitors to the city of Madras, abduct them on the pretext of interrogating them, administer sleeping pills to the unsuspecting victims, steal their cash and jewels and finally murder them.

The appellant was sentenced to death in January, 1975 on a charge of committing wicked (evil / morally wrong) and diabolic murders and since then he was in solitary confinement. Before conviction, he had been a 'prisoner under remand' for two years.

The appellant's contention was that to take away his life after keeping him in jail for ten years, eight of which in illegal solitary confinement, would be violative of Art. 21. Allowing the appeal and converting the sentence of death to one of imprisonment for life

Held : *"It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Art. 21 and demand the quashing of the sentence of death. It is therefore accept the special leave petition, allow the appeal as also the Writ Petition and* ***quash the sentence of death. In the place of the sentence of death, Court substitute the sentence of imprisonment for life".***

P. Rathinam Vs. Union of India, AIR 1994 S.C. (Constitutional validity of attempt to suicide)

Fact of the case :

The case concerned two petitions that P. Rathinam (Petitioner 1) and Nagbhushan Patnaik (Petitioner 2) concurrently submitted. The petitioner attempted suicide as a result of an uncontrolled situation that had emerged. P. Rathinam, the petitioner, challenged the constitutionality of Section 309 of the Indian Penal Code (IPC), which criminalizes the act of attempting suicide.

Rathinam contended that this provision was a violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Indian Constitution, arguing that the state should not penalize individuals who are already in a state of severe mental distress.

In its examination, the Court recognized that the right to life under Article 21 encompasses (incorporate) the right to live with dignity, which includes the right to die. The Court noted that criminalizing suicide attempts could be counterproductive and detrimental to individuals in distress, who might require medical and psychological help rather than penal sanctions.

Held :*"The Supreme Court declared Section 309 of the IPC* ***unconstitutional,*** *ruling that the provision violated the right to life and personal liberty under Article 21 of the Constitution. The Court held that the right to life includes the right to die, and therefore, criminalizing attempted suicide was inconsistent with the principles of human dignity and compassion".*

Navtej Singh Johar& Ors. Vs. Union of India, (2018) 10 SCC1 (Unnatural offences is unconstitutional)

In the present case, the petitioner who was dancer and identified as a member of LGBTQ community filed a petition before the Supreme Court in 2016. The petitioner sought recognition of the right to sexuality, right to sexual autonomy and right to choose a sexual partner to be part of the right to life guaranteed by Article 21 of the Constitution of India,

Issue involved:

Whether criminalizing 'consensual acts of adults in private' falling Under Section 377 of Indian Penal Code is constitutionally valid?

Held : "*Supreme Court held Section 377 of Indian Penal Code held unconstitutional to that extent it criminalizes consensual homo-sexual acts in private*". The Supreme Court overruled its previous 2013 judgement in Suresh Kumar Kaushal v. Naz Foundation.

Joseph Shine Vs. Union of India, (2024)2 SCC 334 (Striking down Adultery under IPC/BNS)

Fact of the case :

Joseph Shine, a non-resident Keralite, filed public interest litigation under Article 32 of the Constitution challenging the constitutionality of adultery as defined under Section 497 of the Indian Penal Code (IPC) and its corresponding provisions in Section 198(2) (219 of BNSS) of the Criminal Procedure Code (CrPC). Section 497 IPC criminalized adultery by imposing culpability on a man who engages in sexual intercourse with another man's wife, punishable with up to five years of imprisonment. Importantly, women were exempt from prosecution, and the section did not apply when a married man had relations with an unmarried woman. Section 198(2) CrPC stipulated that only the husband could file a complaint for adultery.

Issue involved

1. Whether Section 497 of the Indian Penal Code, which criminalizes adultery, is unconstitutional and violative of Articles 14 (Right to Equality), 15 (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty) of the Indian Constitution.

2. Whether the provision fosters (encourage by development) gender discrimination by treating women as subordinate to men in matters of personal relationships.

Held : Section 497 is archaic (very old) and is constitutionally **invalid**-

Section 497 disposes women from her autonomy, dignity and privacy. It is considered as the encroachment on her right to life and personal liberty by accepting the notion of marriage which overthrows the true equality. Equality is overthrow by adopting the sanctions of penal code to a gender based approach to the relationship of man and woman. Sexual autonomy falls within the area of personal liberty under article 21 of Constitution of India.

Adultery is no longer be a criminal offence & Husband is not the master of his wife

A crime is committed against the society as a whole whereas adultery is a personal issue. Adultery does not fit into the ambit of crime as it would otherwise invade the extreme privacy sphere of marriage.

The judgment focuses on the fact that women should not be considered as the property of their husband or father anymore. They have equal status in the society and should be given every opportunity to put their stance (attitude) forward.

Section 497 is arbitrary-

"In the whole of the judgment it was pointed out that nature section 497 is arbitrary. As husband can give his consent to allow his wife to have an affair with some other person. Hence, this section does not protect the 'sancity of marriage'. This section preserves the proprietary rights of the husband that he has over his wife. This section does not allow the wife to file a petition against her husband. This section does not contain any provision which deals with a married man having an affair with unmarried women".