

Weekly Judiciary Digest

Download pdf from www.DeFactoJudiciary.in

Current & Conceptual Weekly

1st Jan - 7th Jan, 2024

1. Supreme Court Emphasises Scrutiny in Circumstantial Evidence Cases.....	1
2. Benefits of Doubt in Murder Case.....	2
3. Pernod Ricard's Appeal Against Trademark Infringement.....	3
4. Old vs New: Bail Provisions.....	3
5. Past Exam Highlight: Pre and Mains.....	4
6. Clear Concepts: Understanding Quantum of Maintenance in Matrimonial Disputes.....	6

1. Supreme Court Emphasises Scrutiny in Circumstantial Evidence Cases

Topics Covered:

Principles of Circumstantial Evidence
Appraisal of Evidence

In *Pradeep Kumar v. State of Haryana*, the Supreme Court has underscored the importance of meticulous examination when a prosecution relies solely on circumstantial evidence. The bench, comprising Justices B.R. Gavai and P.S. Narasimha, reversed the concurrent findings of the High Court and the Trial Court in a case where the accused was charged under Section 302 read with Section 34 of the Indian Penal Code, 1860.

Key Observations and Rationale

The Court highlighted a significant "yawning gap" between the charges against the appellant and the evidence presented by the prosecution. It stressed that circumstantial evidence should not only be consistent with the hypothesis of guilt but also devoid of doubts, improbabilities, and inconsistencies.

In this specific case, the prosecution's narrative centred on the murder of the deceased, who was found with his throat knotted and right eye injured. The Court noted that the evidence presented did not establish the appellant's guilt, introducing doubts and inconsistencies.

Factual Background

The prosecution's story revolved around the deceased leaving his shop and subsequently being found dead. The absence of eyewitnesses meant the case relied solely on circumstantial evidence. The trial resulted in the appellant's conviction, which was upheld by the High Court.

Court's Scrutiny and Displeasure

The Court expressed dissatisfaction with the High Court's findings, noting that it seemed to have accepted the defence's submission without adequately scrutinising certain witness testimonies. It particularly questioned the reliability of the evidence presented by a key witness, highlighting that the High Court failed to discuss this crucial aspect.

De Facto IAS
Judiciary Exam: Current Affair

Furthermore, the Court independently examined the evidence and found witness testimonies to be unreliable. It also cast doubt on the forensic evidence, emphasising discrepancies in the FSL report and the lack of independent witnesses during recoveries.

The Court referred to its previous decision and the 'panchsheel' of the proof of a case based on circumstantial evidence. It reiterated the conditions that must be fulfilled, including the conclusive nature of circumstances and the exclusion of every possible hypothesis except guilt.

Important Links for Judiciary Free Resources
(Click on Each to Open Respective Pages)

Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
Free Answer Writing Course	Judgement Writing
Telegram Link	Youtube Link

2. Benefits of Doubt in Murder Case

Topics Covered:

Beyond Reasonable Doubt

Dying Declaration

Related Witness

In **JITENDRA KUMAR MISHRA @ JITTU V. THE STATE OF MADHYA PRADESH**, the Supreme Court has emphasised the responsibility of appellate courts to give the benefit of doubt to the accused when evidence fails to conclusively prove guilt beyond a reasonable doubt. The ruling, delivered by Justices Abhay S Oka and Pankaj Mithal, overturned the concurrent findings of a trial court and the High Court in a 2007 murder case.

Key Observations

The Court underscored the principle that appellate courts should exercise caution but not hesitate to overturn convictions if evidence suggests a plausible alternative view. The bench stated, "where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons."

Case Background:

The accused were convicted by the Fast Track Court, Jabalpur, under Section 302 read with Section 34 of the IPC, each sentenced to life imprisonment and a fine of Rs. 5000/-. The High Court upheld the conviction. During the appeal, one of the appellants passed away.

Court's Observations:

Doubts Over Dying Declaration: The Court critically examined the prosecution's reliance on the dying declaration of the victim. It noted a lack of specific evidence to establish that the deceased was alive or capable of making a declaration when his relatives reached the scene. The Court

highlighted that a dying declaration cannot be accepted at face value without corroboration, which was absent in this case.

Questioning the Prosecution Witness: The Court scrutinised the testimony of a prosecution witness (PW 13), who claimed to have witnessed the assault. It expressed scepticism, considering PW 13's relationship with the deceased, noting that he was a relative and, therefore, not an independent witness. The Court cautioned against blindly relying on such witnesses and emphasised the need for corroborative evidence.

Critical Analysis of Evidence: The Court found that the testimony of PW 13 was inconsistent with other evidence on record. It observed that neither the deceased's family nor the dying declaration mentioned PW 13's presence or attempt to rescue the deceased. The absence of any mention in the FIR further cast doubt on the credibility of PW 13's testimony.

Given the lack of corroboration for the dying declaration and the unreliable testimony of the prosecution witness, the Court granted the benefit of doubt to the appellants. Consequently, it set aside the convictions, discharged the bail bond, and ordered the release of the accused.

3. Pernod Ricard's Appeal Against Trademark Infringement

Topics Covered:
Trademark Infringement
Passing Off

In a significant development, the Supreme Court has issued notice on a special leave petition filed by Pernod Ricard India Pvt Ltd, challenging the Madhya Pradesh High Court's decision to deny an injunction against alleged trademark infringement of whiskey brands such as "Blender's Pride" and "Imperial Blue". The bench, headed by Chief Justice of India DY Chandrachud and Justices JB Pardiwala and Manoj Misra, also issued notice on the stay petition.

Background and Allegations:

Pernod Ricard India Pvt Ltd, an international liquor manufacturer's Indian subsidiary, contends that the respondents are infringing on the trademarks of their whiskey brands, including "Blender's Pride" and "Imperial Blue," through the product "London Pride." The alleged infringement pertains to bottle design, packaging, and name.

Senior Advocate Mukul Rohatgi, representing Pernod Ricard, showcased the bottles of the brands to the bench, emphasising the identical nature of the bottle design and labelling. He pointed out that both "Blender's Pride" and "Imperial Blue" are registered brands with a substantial turnover. Rohatgi highlighted the alleged copying on three fronts: registered marks, name, and packaging. The CJI recalled a Bombay High Court judgement, Gorbatschow Wodka Kg v. John Distilleries Limited, dealing with a similar issue of passing off in the shape of a vodka bottle.

High Court's Refusal

The Madhya Pradesh High Court had declined to grant an injunction, stating that premium whiskey consumers would be capable of distinguishing between the brands, citing the absence of "deceptive similarity." Rohatgi argued that the violations were evident, and the interim relief was crucial. He requested a stay on the impugned order.

Supreme Court's Decision:

The Supreme Court bench issued notice on the special leave petition, making the matter returnable on January 19, 2023. The court's decision to take up the case indicates the importance it places on issues of trademark infringement and passing off.



FREE RESOURCES FOR JUDICIARY EXAM

www.DeFactoJudiciary.in

Mains(PYQ) Solution

Concept Notes

Legal Doctrines

Prelims(MCQ) Solution

Subject Wise Notes

Judgement Writing

Weekly Current Affair

Free Answer Writing Course

4. THEN and NOW: Bail Provisions

Bail Provisions

In a significant overhaul of procedural codes, the recently introduced BNSS (New Procedural Code) has brought about substantive changes to bail provisions in comparison to the existing code, Cr.P.C. While much of the text remains similar, BNSS introduces crucial definitions for "bail," "bail bond," and "bond," providing clarity to these terms.

Introduction of Definitions

Under Section 2 of BNSS:

- Bail is defined as the release of a person accused or suspected of an offence from custody upon certain conditions imposed by an officer or court on execution of a bond or bail bond.
- Bail Bond is defined as an undertaking for release with surety.
- Bond is defined as a personal bond or an undertaking for release without surety.

Changes in Undertrial Prisoner Provisions

A notable departure in BNSS is the introduction of changes to Section 436A of Cr.P.C., addressing the release of undertrial prisoners who have undergone detention for a specified period.

1. Early Release for First-Time Offender:

- In BNSS, the provision now allows for the early release of a first-time offender, who has never been convicted before. If such an offender has spent up to one-third of the prescribed sentence as an undertrial prisoner, the court shall release them on bond.
- **Proviso 1 to Section 479 of BNSS states:**
"Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law."

2. Bail Denial for Multiple Pending Cases:

- Unlike the existing law, BNSS introduces a stricter provision denying bail to an under-trial prisoner if investigations, inquiries, or trials are pending for more than one offence or in multiple cases against them.
- Sub-clause 2 of Section 479 of BNSS provides:
“Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry, or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.”

3. Bail on Superintendent's Report:

- BNSS mandates the Superintendent of Jail to submit a written application to the court for the release on bail of an under-trial prisoner who has completed one-third or one-half of the prescribed sentence, depending on the case.
- Sub-clause 3 of Section 479 of BNSS states:
“The Superintendent of Jail shall submit an application in writing to the Court to proceed to release on bail the under-trial prisoner who has undergone detention for a period extending up to one-third or one-half of the sentence, as the case may be, prescribed for the offence in the 'Sanhita'.”

These changes signify a Sophisticated approach toward bail provisions, emphasising fairness, especially for first-time offenders, while introducing stringent measures for cases involving multiple offences.

5. Past Exam Solution: Pre and Mains

Mains Question:

Q. Though the Transfer of Property Act deals with transfer inter vivos, an interest may be created in favour of an unborn person. Discuss. [BJS 2018]

A. The Transfer of Property Act, 1882 primarily governs the transfers of property between living persons. However, it is essential to note that an unborn person, defined as someone not even in existence in the mother's womb, poses a unique challenge to property transfers.

In traditional legal understanding, an unborn person is an entity that does not exist, even in the mother's womb. The Act recognizes that a child in the mother's womb is considered a competent transferee as the child exists at that time. However, transferring property to an unborn person who does not yet exist, even in the mother's womb, is explicitly prohibited.

Every property transfer involves the transfer of interest, and for this interest to vest, the transferee must be in existence. Otherwise, the interest remains in abeyance until the transferee comes into existence. This aligns with the fundamental concept of interest in property – the transferor being divested, and the interest being vested in the transferee.

Provisions under Section 13

Section 13 of the Transfer of Property Act explicitly states that property cannot be directly transferred to an unborn person. However, it can be transferred for the benefit of an unborn person under certain conditions. The fulfilment of two essential conditions is required:

- **Prior Life Interest:** Before the actual transfer takes place, a prior interest must be created in favour of a living person on the transfer date. The unborn person must be in existence when the prior interest comes to an end.
- **Absolute Interest:** The whole of the remaining interest of the transferor in the property must be given to the unborn person. Only absolute interest, not limited or life interest, can be transferred in favour of the unborn person.
- **Illustration:** A transfers his properties to X for life, then to Y for life, then to Z for life, and thereafter to the unborn child of Z. Here, X, Y, and Z are living persons. The property may

be given to more than one living person successively for life before it ultimately vests in an unborn child.

Girish Dutt v Datadin

In this case, A made a gift of her property to B for life, who was her nephew's daughter, then to B's male descendants (if any) absolutely. In case she had no male descendants than to B's daughter without power of alienation and if there were no descendants of B, male or female, then to her nephew. B died without issue. The gift to the unborn daughters, being of a limited interest and subject to the prior interest created in favour of B was held to be invalid under section 13, while gift to the nephew failed under section 16.

Prelims Questions

1. Under which provision of the C.P.C., is a suit to set-aside a decree on the ground of lack of territorial jurisdiction barred?

- a. Section 21
- b. Section 21-A
- c. Section 22
- d. Section 37

Ans: b

Explanation: Section 21A of the Civil Procedure Code explicitly bars a suit to set aside a decree on the grounds of objection to the place of suing. This provision aims to prevent the re-litigation of issues related to territorial jurisdiction once a decree has been passed, ensuring finality in litigation.

2. A proposes, by letter sent by post, to sell his house to B. The proposal of A is accepted by B by letter sent by post. When can A revoke his proposal?

- a. A may revoke proposal after B sent letter of acceptance by post
- b. A can revoke proposal at any time before B sent letter of acceptance
- c. Both (a) and (b) are correct
- d. None of the above

Ans: b

Explanation: According to the Indian Contract Act, 1872, a proposal may be revoked at any point before the communication of acceptance is complete as against the proposer, which in this case would be when B sends the acceptance letter.

3. Representative Suit under Order 1 Rule 8 of CPC may be permitted by the Court when

- a. Numerous persons are parties in another suit
- b. Numerous persons belong to the same family
- c. Numerous persons have the same interest in one suit
- d. None of the above

Ans: c

Explanation: A representative suit under Order 1 Rule 8 of the Civil Procedure Code (CPC) may be permitted by the Court when numerous persons have the same interest in one suit. This provision allows a suit to be filed by or against one or more people on behalf of a larger group with the same legal interest, without the need to include everyone directly in the suit. The primary objective is to facilitate judicial efficiency and avoid multiplicity of litigation when dealing with a large group of individuals having common or similar interests or grievances.

4. "Quantum meruit" means

- a. the amount involved
- b. extent and quality
- c. to the extent of the work done
- d. none of the above

Ans: c

Explanation: "Quantum meruit" is a Latin term that means "to the extent of the work done." It refers to a principle in contract law where a party can claim reasonable compensation for goods or services provided, even if no specific contract existed, or the contract was not fully performed, as long as the work was done under circumstances implying an agreement to pay for it.

5. To constitute adverse possession, possession must be :

- a. for a longer period
- b. without paying any rent to the owner
- c. with the permission of the owner
- d. open and hostile enough to the parties interested in the property

and hostile enough to the parties interested in the property." This means that the person claiming adverse possession must occupy the property in a manner that is visible, exclusive, and against the rights of the true owner, and without the owner's permission. The possession must be such that it notifies the true owner and the public that the possessor is asserting a claim of ownership.

Ans: d

Explanation: To constitute adverse possession, the possession must be "open

6. Clear Concepts: Understanding Quantum of Maintenance in Matrimonial Disputes

Quantum of Maintenance in matrimonial disputes is a crucial aspect that requires careful consideration by the court. The primary objective of awarding interim or permanent alimony is to ensure that the dependent spouse does not face destitution or vagrancy due to the breakdown of the marriage. It is essential to note that the purpose of maintenance is not punitive but rather protective.

Several factors play a significant role in determining the quantum of maintenance, and there is no one-size-fits-all formula. The court considers the status of the parties involved, the reasonable needs of the wife and dependent children, the educational and professional qualifications of the applicant, the existence of an independent source of income, and whether the income is sufficient to maintain the previous standard of living. Additionally, the court evaluates whether the wife had to sacrifice employment opportunities for family duties, including child-rearing and caring for other family members.

In the assessment of the husband's financial capacity, the court takes into account his actual income, reasonable expenses for personal maintenance, obligations towards dependent family members, existing liabilities, and the standard of living. The court must also consider inflation rates and the high costs of living prevailing in society.

Section 23 of the Hindu Marriage Act (HAMA) provides statutory guidance, including factors like the position and status of the parties, reasonable wants of the claimant, reasons for living separately, value of the claimant's property, and income from various sources. Section 20(2) of the Domestic Violence Act emphasises that the monetary relief granted must be adequate, fair, reasonable, and consistent with the standard of living accustomed to in the matrimonial home.

The Delhi High Court, in *Bharat Hegde v Smt. Saroj Hegde*, has outlined specific factors for consideration, including the status of the parties, reasonable wants of the claimant, independent income, the number of persons the non-applicant has to maintain, and the provision for various necessities like food, clothing, shelter, education, and medical attendance.

Factors Influencing Maintenance:

- No one-size-fits-all formula.
- Status of the parties.
- Reasonable needs of the wife and dependent children.
- Educational and professional qualifications of the applicant.
- Existence of an independent source of income.
- Ability to maintain the previous standard of living.
- Sacrifice of employment opportunities for family duties.

Maintenance of Minor Children:

- Encompassing expenses for food, clothing, residence, education, and, if necessary, extra coaching or vocational training.
- Serious disabilities or ill health as relevant factors.

In conclusion, the court seeks to strike a balance by considering various factors to ensure that the awarded maintenance is reasonable and realistic, neither oppressive for the respondent nor meagre for the claimant, with the ultimate goal of allowing the claimant to maintain herself with reasonable comfort.

