

Weekly Judiciary Digest

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Current & Conceptual Weekly

20th May - 26th May, 2024

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Supreme Court's Firm Stance on Accused's Statements

In a landmark ruling in **Vijay Kumar vs. The State of Himachal Pradesh**, the Supreme Court upheld the conviction of the accused in a rape case, emphasizing the importance of the cross-examination process and the role of statements made under Section 313 of the Criminal Procedure Code (CrPC). The apex court ruled that if an accused claims that the prosecutrix consented to sexual intercourse in their Section 313 statements, such claims must be put to the prosecutrix during cross-examination to be considered valid evidence.

Section 313 Statements

Section 313(4) of the CrPC allows for the use of the accused's statements against them during the trial. Justices Abhay S. Oka and Ujjal Bhuyan highlighted that if the accused's statements include claims about the victim's consent, these claims need to be challenged and verified during the cross-examination of the prosecutrix. In the case at hand, the accused argued that the sexual intercourse was consensual and part of a paid arrangement. However, these claims were not suggested to the prosecutrix during cross-examination, denying her the chance to rebut them.

The Cross-Examination Evidence

The court meticulously examined the cross-examination of the prosecutrix and found no suggestion that the sexual intercourse was consensual. The prosecutrix's testimony, asserting that the accused committed rape, remained unchallenged. The accused, Vijay, claimed a consensual relationship involving monetary transactions, but this narrative was not presented to the prosecutrix during her cross-examination. Similarly, the claims by accused Sunil and Ravi were also not put forth for rebuttal by the prosecutrix.

Judicial Reasoning and Precedents

Drawing from the *State of Punjab v. Gurmit Singh* (1996) precedent, the court reinforced the prosecutrix's credibility, noting that her lack of strong motive to falsely implicate the accused should lead to the acceptance of her evidence. The court highlighted that the testimony of a rape victim is

as credible as that of an injured witness, and does not necessarily require corroboration to base a conviction.

The Gurmit Singh case established that the court should not view a rape victim's testimony with inherent suspicion. The ruling emphasised that the victim's evidence, if consistent and credible, should be sufficient for conviction without the need for additional corroboration.

Affirmation of Conviction

Based on these legal principles, the Supreme Court dismissed the appeal and affirmed the conviction of the accused. The court reiterated that the failure to challenge the victim's testimony about the lack of consent during cross-examination rendered the accused's claims under Section 313 unsubstantiated and insufficient to overturn the conviction.

Dying Declarations: Sole Basis for Conviction

In the case of **Rajendra S/O Ramdas Kolhe vs. State of Maharashtra**, the Supreme Court reaffirmed that a dying declaration, if credible and voluntary, can be the sole basis for convicting the accused without the need for corroboration. Justices Abhay S. Oka and Ujjal Bhuyan emphasised that the authenticity of a dying declaration should inspire confidence in the court, thus eliminating the necessity for additional evidence.

Principles of Dying Declaration

The court laid down several principles regarding the use of dying declarations in legal proceedings:

1. **Sole Basis for Conviction:** A dying declaration does not need corroboration if it is found to be authentic and credible.
2. **Case-Specific Determination:** Each case must be evaluated on its specific facts and circumstances.
3. **Equal Weight:** A dying declaration is not inherently weaker than other forms of evidence.
4. **Judgement on Surrounding Circumstances:** It should be assessed in the context of the surrounding circumstances and existing evidence.
5. **Recorded by Competent Authority:** Dying declarations recorded by a magistrate hold more weight than oral declarations, which may suffer from human error.
6. **Reliability Factors:** The court must consider the condition of the declarant, the timing of the statement, and the absence of tutoring by interested parties.

Court's Observations on Witness Testimonies

The court noted that minor inconsistencies in the testimonies of prosecution witnesses do not undermine the validity of a dying declaration if the core facts remain consistent. In this case, the appellant contested the conviction based on inconsistencies in the prosecution witnesses' evidence. However, the court found that these inconsistencies were natural given the passage of time and did not affect the fundamental truth of the dying declaration.

Case Analysis and Verdict

The incident occurred on July 22, 2002, with the dying declaration recorded the same day. The evidence was presented in court five years later, leading to expected minor discrepancies in

witness testimonies. The court found that these inconsistencies did not discredit the dying declaration, which was corroborated by the attending doctor's certification of the deceased's capability to narrate her statement.

The judgement, authored by Justice Ujjal Bhuyan, stated, "The contents of the dying declaration have been proved by PW-6, PW-12, and PW-13. Though there are certain inconsistencies in their evidence, it is quite natural. Moreover, those are not material and do not affect the sub-stratum of her statement." The court concluded that identical statements might indicate tutoring, whereas natural inconsistencies can enhance credibility.

Affirmation of Conviction

The court accepted the dying declaration (Ex. 59) as valid evidence, noting that the attending doctor confirmed the deceased's capacity to make the statement and that the medical history supported the declaration. The evidence on record clearly established the guilt of the appellant beyond a reasonable doubt.

The appeal was dismissed, and the conviction upheld, reinforcing the legal standing that a well-supported dying declaration can independently substantiate a conviction.

Unfounded Allegations and Mental Cruelty

In a significant ruling, the Karnataka High Court recently overturned a trial court's decision by allowing a woman's appeal seeking divorce. The court held that baseless allegations on a spouse's character constitute mental cruelty and can be grounds for dissolving a marriage. The case, **ABC vs. XYZ**, highlights the importance of mutual trust and respect in marriage and the serious consequences of unfounded accusations.

The Case Background

The couple in question married on March 31, 2013. After marriage, the petitioner completed her post-graduation in engineering, while the respondent was involved in a granite partnership firm. Three years into the marriage, the respondent allegedly began torturing the petitioner, suspecting her character and frequently checking her phone records. The petitioner endured physical assaults and eventually moved to her grandmother's house in Bengaluru in 2017, unable to continue living with the respondent.

Allegations and Denials

The husband denied all allegations, asserting that the petitioner developed a superiority complex after completing her post-graduation. He claimed that the petitioner insisted on staying with her maternal family, which he refused due to his responsibilities toward his elderly parents and sister. He specifically denied suspecting the petitioner's fidelity.

Court's Analysis and Findings

Upon reviewing the records, the court noted that the petitioner's claim of the respondent suspecting her character was a central premise of the case. Although the respondent denied these allegations in his written statement, his cross-examination revealed otherwise. The court found that the respondent suggested the petitioner was having an affair and intended to marry another man after

obtaining a divorce. These suggestions, made during cross-examination, contradicted his written denial and established that he indeed suspected her fidelity.

Mental Cruelty and Grounds for Divorce

The division bench, comprising Justices Anu Sivaraman and Anant Ramanath Hegde, emphasised that unfounded allegations against a spouse's character could severely damage the foundation of marriage, which rests on mutual trust and respect.

The court stated, "The institution of marriage rests on the mutual trust, confidence, love, and respect between the couple. When one spouse makes an allegation suspecting the character of the other and if that allegation is not substantiated, the Court has to hold that the allegation is unfounded. The unfounded allegation on the character of a spouse shakes the edifice of the institution of marriage."

The bench concluded that the respondent's actions caused mental cruelty to the petitioner, justifying her petition for divorce. The court rejected the ground of desertion raised by the appellant, noting insufficient pleading to uphold such a claim. However, it clarified that establishing either cruelty or desertion is sufficient for granting a divorce decree.

Old v. New: Confession in Joint Trials

Both the Indian Evidence Act (IEA) and the Bharatiya Sakshaya Adhinyam (BSA) share a fundamental provision regarding the use of confessions in joint trials. Section 30 of IEA and 24 of BSA state that when multiple persons are tried jointly for the same offence, a confession made by one person, which affects both himself and others, can be considered against all implicated parties. This core principle remains consistent, ensuring that a confession can impact all co-accused individuals in a joint trial scenario.

Definition of "Offence"

The definition of "offence" in both laws includes abetment or attempt to commit the offence. This inclusion ensures that the scope of the provision covers a wide range of criminal activities, not just the principal offence. This aspect of the provision is identical in both the old and new laws, maintaining continuity in the legal interpretation of what constitutes an offence within this context.

New Explanation: Absconding Co-Accused

A significant addition in the Bharatiya Sakshaya Adhinyam is Explanation II, which addresses the issue of absconding co-accused. According to this new explanation, a trial is considered a joint trial even if an accused has absconded or fails to comply with a proclamation issued under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023. This provision is absent in the Indian Evidence Act, making the new law more comprehensive by addressing practical challenges in prosecuting absconding accused individuals.

Past Exam Highlights

Prelims

1. In a suit for specific performance of agreement of sale of immovable property, the plaintiff must aver and prove the following

- a) That plaintiff paid entire sale consideration
- b) That plaintiff obtained clearance from all authorities
- c) That plaintiff obtained encumbrance certificate
- d) That plaintiff is ready and willing to perform his part of contract

Answer: (d) That plaintiff is ready and willing to perform his part of contract

Explanation: For a suit for specific performance of an agreement of sale, the most crucial aspect is that the plaintiff must demonstrate they were "ready and willing" to perform their part of the contract from the beginning to the end.

2. 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

Answer: (c) Numerous persons have the same interest in one suit

Explanation: Order 1 Rule 8 of CPC allows for a representative suit when numerous persons have a similar interest in one suit. One or more persons can represent, with permission of the court, the interests of the numerous persons.

3. One of the following is not a ground for divorce, under Section 13 of the Hindu Marriage Act, 1955?

- a) Adultery
- b) cruelty
- c) desertion
- d) irretrievable breakdown of marriage

Answer: (d) irretrievable breakdown of marriage

Explanation: "Irretrievable breakdown of marriage" is not explicitly mentioned as a ground for divorce under Section 13 of the Hindu Marriage Act, 1955.

4. A woman with an intention of committing suicide by throwing herself in a Well, actually ran towards it, but changed her mind on the way and returned home. Her act constitutes —

- a) An offence under Section 306 I.P.C;
- b) An offence under Section 309 I.P.C
- c) An offence under Section 306 read with 511 I.P.C

d) No offence.

Answer: (d) No offence.

Explanation: As she changed her mind and did not attempt to commit suicide, there is no offence under the IPC.

5. A robbery becomes dacoity

- a) when two or more persons together commit robbery.
- b) when committed armed with deadly weapons;
- c) when five or more persons together commit the robbery;
- d) none of the above.

Answer: (c) when five or more persons together commit the robbery.

Explanation: Robbery becomes dacoity when it is committed by five or more persons conjointly, as per Section 391 of the Indian Penal Code.

6. Formal expression of an adjudication which, so far as records the court expressing it. conclusively determines rights of the parties, is

- a) decree;
- b) order;
- c) judgement
- d) appellate order.

Answer: (a) decree

Explanation: A decree is the formal expression of an adjudication which conclusively determines the rights of the parties with respect to all or any of the matters in controversy in the suit.(Section 2(2) of CPC)

7. When and in what circumstances a Judicial First Class Magistrate of First Class can add a person as accused in a criminal case?

- a) After taking cognizance of the case and before framing a charge;
- b) During the course of an enquiry in trial when it appears from the evidence;
- c) After framing of the charge and before the trial is commenced;
- d) None of the above.

Answer: (b) During the course of an enquiry in trial when it appears from the evidence.

Explanation: Section 319 of CrPC empowers a Judicial Magistrate to add an individual as an accused based on evidence emerging during an enquiry or trial.

8. Whether a court can dismiss an appeal on the ground of the Limitation Act even if Limitation is not pleaded as a ground?

- a) Yes;
- b) No;
- c) Under certain circumstances;

d) If High Court premises.

Answer: (a) Yes.

Explanation: A court can dismiss an appeal on the grounds of the Limitation Act even if it isn't specifically pleaded, as limitation is a legal point which can be considered suo motu by courts (Section 3).

9. For taking cognizance of an offence committed by a public servant while acting in the discharge of his official duty, the essential requisite is -

- a) Accused must be Gazetted Officer
- b) Accused must be within the jurisdiction of the Court
- c) Previous sanction of the government is required
- d) None of the above.

Answer: (c) Previous sanction of the government is required.

Explanation: For a court to take cognizance against a public servant for actions done in official capacity, prior government sanction is a prerequisite as per Section 197 Cr.P.C.

10. What is not true with regard to 'Complaint' under Section 2(d) of Cr.P.C?

- a) It is made to Magistrate with, a view to his taking action under the code
- b) It is an allegation made orally or in writing
- c) That some person, whether known or unknown, has committed an offence.
- d) It includes a Police Report

Answer: (d) It includes a Police Report.

Explanation: A 'Complaint' as per Section 2(d) of Cr.P.C. doesn't include a police report. A police report and a complaint are treated as distinct entities under the Cr.P.C.

Mains

Q. Analyse the Constitutional Powers and Position of the President of India.

Ans. The Constitutional powers and position of the President of India represent a complex interplay of ceremonial roles, executive authority, and constitutional safeguard. To fully understand this, one must examine the President's role within the framework of the Indian Constitution, particularly under Articles 52 to 78. Additionally, judicial interpretations and practical applications provide deeper insights into these powers.

Ceremonial Role

The President of India is the ceremonial head of state, symbolising the unity and integrity of the nation. This role is largely symbolic, designed to represent India in interactions with other countries and in various ceremonial functions. As the ceremonial figurehead, the President embodies the nation's sovereignty, dignity, and continuity, while the real power is exercised by the elected representatives.

Executive Powers

Article 53 of the Constitution vests the executive powers of the Union in the President, to be exercised either directly or through officers subordinate to him. However, these powers are predominantly exercised on the advice of the Council of Ministers headed by the Prime Minister, as stipulated in Article 74. This ensures that while the President holds significant formal authority, the actual governance of the country is carried out by the elected government, maintaining the democratic ethos of the Indian polity.

Legislative Powers

The President plays a crucial role in the legislative process. Under Article 111, the President can give or withhold assent to bills passed by Parliament. Additionally, the President can promulgate ordinances under Article 123 when either house of Parliament is not in session, and these ordinances hold the same force as laws passed by Parliament. Furthermore, as per Article 87, the President addresses both Houses of Parliament at the commencement of the first session after each general election, outlining the government's policies and agenda.

Judicial Powers

Article 72 empowers the President to grant pardons, reprieves, respites, or remissions of punishment in certain cases, providing a vital check within the judicial system. The President also appoints the judges of the Supreme Court and High Courts under Articles 124 and 217, respectively. These appointments are made based on the recommendations of the collegium system, ensuring a balance between the executive and judiciary.

Emergency Powers

The President's emergency powers are among the most significant constitutional provisions:

- National Emergency (Article 352): The President can declare a national emergency on grounds of war, external aggression, or armed rebellion.
- President's Rule (Article 356): In case of failure of constitutional machinery in a state, the President can assume certain functions of the state government.
- Financial Emergency (Article 360): The President can declare a financial emergency if the financial stability or credit of India or any part thereof is threatened.

These powers ensure the President can act decisively during crises, although they are exercised based on the advice of the Council of Ministers.

Diplomatic Powers

The President represents India in international forums and affairs, responsible for international treaties and agreements, subject to Parliament's approval. This role emphasises the President's function as the face of India on the global stage, promoting and protecting the nation's interests abroad.

Military Powers

As the Supreme Commander of the Armed Forces, the President has the authority to declare war and conclude peace, subject to Parliament's approval. This role, while ceremonial in peacetime, becomes pivotal during conflicts, aligning with the President's overall function as the guardian of the nation.

Judicial Interpretation

The Supreme Court of India has frequently interpreted the President's powers, highlighting the ceremonial nature of the Presidency and the real executive power residing with the Council of Ministers. Landmark cases such as **Ram Jawaya Kapur v. State of Punjab (1955)** and **Union of India v. H. S. Dhillon (1971)** highlighted that the President's role is largely ceremonial and the true executive authority lies with the elected government. These interpretations ensure a balance of power, preventing any overreach by the President.

Clear Concept: Bar of Limitation

The concept of the "Bar of Limitation" in legal proceedings is critical in determining the timeliness and validity of claims. The doctrine is primarily governed by the Limitation Act, 1963, which prescribes specific time frames within which parties must initiate legal action. Failure to act within these periods typically results in the claim being barred, meaning the courts will not entertain the case. This principle upholds the efficiency and finality in the legal system, ensuring that disputes are resolved within a reasonable period.

Legal Framework

The Limitation Act, 1963, sets out various periods of limitation for different types of suits, appeals, and applications. The general purpose of these limitations is to prevent the resurrection of stale claims and encourage diligent prosecution of claims. For instance, Article 54 of the Act specifies that suits for specific performance of a contract must be filed within three years from the date fixed for performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

Judicial Duty

Section 3 of the Limitation Act, 1963, mandates that it is the duty of the court to dismiss any suit, appeal, or application instituted after the prescribed period, irrespective of whether limitation is set up as a defence. This was affirmed by the Supreme Court in cases such as **V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao**, where the court held that the duty to dismiss time-barred claims is imperative, even if the defendant does not raise the issue of limitation.

Implications of the Bar of Limitation

The bar of limitation serves several crucial functions in the legal system. It promotes diligence among claimants, who must act promptly to enforce their rights. It also provides certainty and stability, ensuring that legal disputes are resolved within a reasonable timeframe. Moreover, it prevents injustice that might arise from the indefinite threat of legal action over past events.

However, there are exceptions and specific provisions that can extend or suspend the limitation period. For example, if the claimant was a minor or mentally incapacitated, the period of limitation may be extended. Similarly, certain types of fraud or concealment of facts can also impact the applicability of the limitation periods.