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# Topic : [POCSO Act] Kerala High court Awards 20 – Yr Sentence To Father Convicted For Repeatedly Raping Minor Daughter Over Two Years



**CASE NAME:** V.M.Abdulkhader @ Kader v State of Kerala

**BENCH :** Justice P.B.Suresh Kumar And Justice C.Pratheep Kumar

**FORUM:** Kerala High Court



## Topic : Main Issue



Whether the father of the minor daughter will be liable for repeatedly raping and committing penetrative sexual assault upon the minor victim.



## Topic : Background



- The allegation is that the accused committed rape/penetrative sexual assault repeatedly on the minor daughter at their own residence. The abuse started when the minor was in VII standard and continued for more than 2 years, until November 2017 when the mother witnessed the sexual assault.
- The Counsel for the accused argued that there is a difference in the statements of the victim which were given on the same day.



- The Court noted that the first statement was the written complaint of an innocent minor, who was merely aged 14 years. It noted that the second statement is the original First Information Statement recorded by the Woman Police Constable.
- It thus stated that the differences between the statements are for 'obvious reasons' since the FI statement has the professional touch of a police officer. The Court stated that both statements are not contradictory, but rather complementary to each other.





## Topic : Observation



- The Kerala High Court has convicted and sentenced an accused, the father of the minor daughter, to 20 years of rigorous imprisonment for repeatedly raping and committing penetrative sexual assault upon the minor victim.
- The Court passed the above order in the appeal filed by the accused challenging the order of the Special Judge for the trial of offences under the POCSO Act.



- The Special Court convicted the accused and sentenced him to life imprisonment under Sections 376(2)(f)(k) and (n) of the IPC. Furthermore, he was also given a life sentence under Section 5 read with Section 6 of the POCSO Act.
- The Division Bench comprising Justice P.B.Suresh Kumar And Justice C.Pratheep Kumar ordered that the accused cannot be convicted both under the IPC and the POCSO Act and that he can be convicted for the offence providing a greater degree of punishment.



- The Court thus ordered that the accused can be convicted under Section 6 of the POCSO Act, since it provides a greater degree of punishment.
- The Court stated that no child would usually make sexual abuse allegations against the father. It also stated that no wife would also raise such allegations against the husband unless they have enmity. In the facts of the case, the Court noted that the minor's mother and the accused had no enmity. The Court also rejected the argument that the minor's mother was falsely implicating the accused.



- From the statement of the minor and the doctor, the Court noted that there is evidence of penetrative sexual assault.
- The Court thus stated that the prosecution has proved rape/penetrative sexual assault committed by the accused on the minor.
- The Court stated that the Trial Court was not justified in convicting the accused both under the IPC and POCSO Act.





- It stated that the accused can be convicted under Section 6 of the POCSO Act since it provides a greater degree of punishment.
- As such, the Court modified the sentence and convicted the accused to 20 years of rigorous imprisonment under Section 6 of the POCSO Act.



# Topic : 'No Minimum Sentence Prescribed For Conviction Under S.304 A & 338 IPC' : SC Alters Sentence In Negligent Driving Case



**CASE NAME:** GEORGE VERSUS STATE OF KERALA

**BENCH :** Justice Hrishikesh Roy and Justice Satish Chandra Sharma

**FORUM:** Supreme Court



## Topic : Main Issue



Whether the reduction in punishment is possible or not?



## Topic : Background



- In the present case, the appellant was arrested on 10.05.2024 and by he was in custody for about 117 days.
- The appellant was convicted of the offences punishable under Sections 279, 337, 338, and 304(A) of the Indian Penal Code, 1860 (for short, the “IPC”) in connection with a road accident.





- The allegation against the accused was that he drove the mini Lorry in a rash and negligent manner and the mini Lorry hit against the motorcycle coming from the opposite direction. The pillion rider (deceased) fell down from the impact, sustained grievous injuries, and died.
- The main charge against the appellant is about causing death by rash and negligent driving of the mini Lorry which resulted in the death of the pillion rider of the motorcycle.



- For conviction under Section 304(A) and Section 338 of the IPC, there is no minimum sentence prescribed but the term of sentence may extend to 2 years. The sentence can also be limited to a fine without any term of imprisonment. For the offence under Sections 279 and 337 of the IPC, the maximum punishment prescribed is 6 months and punishment can also be fine only.



- The High Court in the impugned judgment after noticing the circumstances and the material evidence upheld the conviction and sentenced the appellant to suffer simple imprisonment for 6 months.
- The accused was also asked to pay compensation of Rs.2.5 lakhs based on the assurance given by his counsel offering to compensate the victim's family.



## Topic : Observation



- Recently, the Supreme Court ordered the release of a convict charged for causing the death of a pillion rider of a motorcycle due to his rash and negligent driving by reducing his period of sentence to a period already suffered by him during custody.





- Noting that there's no minimum punishment of sentence prescribed for under Sections 304 A and 338 of the IPC, the bench comprising Justice Hrishikesh Roy and Justice Satish Chandra Sharma upon placing reliance on the case of Surendran v. Sub-Inspector of Police reported in LL 2021 SC 279 ordered for substitution of sentence to only fine.



- Upholding the conviction, the Supreme Court modified the impugned judgment of the High Court while reducing the period of sentence to the sentence already suffered by him while he was in custody.
- Also, the court reduced the amount of compensation payable by him to the deceased family from Rs. 2.5 Lakhs to Rs. 50, 000/- upon acceding to the Appellant's argument to waive or reduce the compensation considering the fact he's a poor man aged man suffering from severe medical issues.



- “Following the above, and the modification of sentence to the period undergone, the appellant, who is lodged currently in the Central Prison and Correctional Home, Thiruvananthapuram, is ordered to be released forthwith. The appeal is disposed of with this order.”, the Court ordered.



# Topic : Co – Accused Can't Be Implicated U/S 149 IPC If there is No Meeting Of Mind Concerning any Common Object : Allahabad HC



Justice Ram Manohar Narayan Mishra

**CASE NAME:** Gorelal Alias Shyam Narain And Others  
vs. State of U.P.

**BENCH :** Justice Siddhartha Varma and Justice Ram  
Manohar Narayan Mishra

**FORUM:** Allahabad High Court





## Topic : Main Issue



Whether co-accused be implicated u/s 149 IPC or not if there is no meeting of mind concerning any common object.



## Topic : Background



- Essentially, on 6th May 1983, an incident occurred where the victim (Gopi Krishna Gupta) was shot at his shop allegedly by seven accused persons.
- His son lodged an FIR related to the incident, wherein he accused Gorelal, Sheo Ram, Shatrughan Singh, Ompal Singh, Rajendra Singh, Narendra Singh, and Shiv Singh (who was allegedly unarmed) of attacking his father (Gopi Krishna).



- In the FIR, it was alleged that Accused-Gorelal fired the first shot, followed by indiscriminate firing from the other accused.
- Though victim Gopi's injury was recorded, he was still alive at the time of the lodging of the FIR and in his dying declaration (recorded by a Doctor), he identified accused Gorelal as the one who shot at him.



- Following an investigation, charges were framed against the accused under the abovementioned Sections of IPC. A separate charge was framed against accused Shiv Singh, including the murder of another victim, Ram Gopal, who was allegedly found near the place of the incident.
- After the trial, all seven accused were convicted of Gopi Krishna's murder under Section 302, read with Section 149 IPC and sentenced to rigorous imprisonment.



- They were also convicted under Section 148 IPC for armed rioting.
- However, all the seven accused were acquitted of charges pertaining to the murder of Ram Gopal.
- Aggrieved by the trial court's judgment, the accused appellants moved to the High Court. During the pendency of their appeals, accused Gorelal, Shatrughan Singh, Rajendra Singh and Narendra Singh died, and thus, their appeals were abated.





- In essence, the appeal was heard for the appellants, namely, Sheoram Singh, Shiv Singh and Ompal Singh.



## Topic : Observation



- The Allahabad High Court has observed that when the other co-accused were not present at the scene and when there was no meeting of mind concerning any common object, the co-accused could not be implicated under Section 149 IPC.
- For context, Section 149 IPC makes every person who is a member of unlawful assembly at the time of committing the offence guilty of that offence.



- A division bench of Justice Siddhartha Varma and Justice Ram Manohar Narayan Mishra observed thus while allowing appeals filed by three accused challenging their conviction by trial court in 1986 under Section 302 read with Section 149 IPC and Sections 148 IPC and 147 IPC.
- The Court also took into account the fact that the firearm injuries were only of one size, and if the other co-accused had also fired, then there would have been injuries of different sizes, and, therefore, the court added, this also falsified the case of the prosecution.



- In view of this, the Court, while allowing the appeal, stressed that when the other co-accused were not there at the spot and when there was no meeting of mind concerning any common object, then the various co-accused persons could not be implicated under Section 149 IPC.



# Topic : Persons With Disabilities Should Not Be Deprived From Public Employment Despite Being Eligible & Meritorious On Hyper – Technical Grounds : Rajasthan HC



**CASE NAME:** State of Rajasthan & Ors. v Sunita & Ors.

**BENCH :** Justice Kuldeep Mathur and Justice Shree Chandrashekhar

**FORUM:** Rajasthan High Court





## Topic : Main Issue



Whether person with disabilities should be deprived or not from public employment despite being eligible & Merituous on hyper-technical grounds.



## Topic : Background



- The appellant had published an advertisement regarding the post of nurse and women health worker wherein 3% of posts were reserved for PWDs suffering from 40% or more disability in one leg.
- Applications were submitted by the respondents but they were not selected despite having higher marks than the ones who were selected.



- A writ petition was filed by the respondents before the Court and in the reply to that writ, the State submitted that in the medical examination of the respondents, they were found to be having not only disability of more than 40% in one leg but also some deformity in other leg.
- Hence, being treated as disabled in both legs, they were not fulfilling the requisite eligibility for the post.



- The single judge ruled that the State's act of rejecting the respondents' candidature amounted to a denial of fair opportunity in public appointment and thus violated the 2016 Act and the Rajasthan Rights of Persons with Disabilities Rules, 2017 (“2017 Rules”).



- The Court also highlighted that since the respondents had produced disability certificates from competent authority during document verification, they should not have been subjected to a fresh medical examination to ascertain the percentage of their disability that went on to reveal the further deformity in another leg.
- An appeal was filed by the State against the order of the single judge.





## Topic : Observation



- Rajasthan High Court has ruled that the intention behind enacting the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“1995 Act”), and the Rights of Persons with Disabilities Act, 2016 (“2016 Act”) was to ensure full participation of people with disabilities (“PWDs”) in public employment and all-round efforts were needed to ensure that no opportunity was left for their integration into the mainstream society.



- The division bench of Justice Kuldeep Mathur and Justice Shree Chandrashekhar observed that it was the duty of a welfare State to ensure that PWDs are not deprived of public employment on hyper-technical grounds.
- The Court opined that if a person was suffering from disability to a certain extent in another leg or body part, it could not be said to mean that the candidate was not fit to perform his/her duty.



- In this background, the actions of the state were declared bad in the eyes of the law and the appeals were accordingly dismissed directing employment being granted to the respondents.



# Topic : Recreational Gaming Activities Such As Poker Or Rummy Are Games of Skill, Not Gambling : Allahabad High Court



**CASE NAME:** M/S Dm Gaming Pvt Ltd v. State Of Up  
And 6 Others

**BENCH :** Justice Shekhar B. Saraf and Justice Manjive  
Shukla

**FORUM:** Allahabad High Court



## Topic : Main Issue



Whether recreational gaming activities such as Poker or Rummy are games of skill or games of gambling.





## Topic : Background



- Recently, the Allahabad High Court reiterated that “Poker and Rummy are absolutely a game of skill and not gambling.”
- Petitioner approached the High Court against the order passed by the office of the D.C.P. City Commissionerate, Agra by which it was denied permission to establish a gaming unit for rummy and poker.



- Counsel for the petitioner relied on the decision of the Supreme Court in the State of Andhra Pradesh Vs. K.S. Sathyanarayana and the judgment of the Madras High Court in Junglee Games India Private Limited Vs. State of Tamil Nadu where it had been held that poker and rummy involve skills and are not gambling.
- It was argued that the permission was simply denied on the grounds that gambling would hamper harmony and peace.



- The bench comprising Justice Shekhar B. Saraf and Justice Manjive Shukla held the permission was denied without going into the issue of Poker and Rummy being card games which are games of skills and not gambling.
- Observing that the officer concerned ought to look into the judgments of the Supreme Court and various High Court regarding poker and rummy being games of skill, the Court held that



- “Denial of the permission only on the basis of the clairvoyance of the officer concerned cannot be a ground that can be sustained. Hard facts are required to be brought on record by the officer to deny the permission for carrying out the recreational gaming activities.”



- Accordingly, the Court directed the respondent to pass a fresh order after giving due opportunity of hearing to the petitioner. The Court added that a grant of permission for setting up a gaming unit does not prevent the authority from checking and taking action against gambling, if any, in accordance with law.





# Topic : No Spouse Expected To Continue Matrimonial Relationship At Risk of Malicious Criminal Prosecution : Allahabad HC



**CASE NAME:** Basant Kumar Dwivedi v. Smt. Kanchan Dwivedi

**BENCH :** Justice Saumitra Dayal Singh and Justice Donadi Ramesh

**FORUM:** Allahabad High Court



## Topic : Main Issue



Related to matrimonial relationships.



## Topic : Background



- It was argued that the respondent-wife permanently deserted the appellant in 1995 and since then the parties never cohabited.
- It was pleaded that no child is born out of the wedlock and the respondent is gainfully employed as a Primary Teacher. Though allegations of demand of dowry were made by the respondent-wife, it was submitted that her brother refuted any such demand in his oral testimony.



- Accordingly, it was argued that the Family Court had misread the evidence and not considered the fact that the wife had treated the appellant and his family with cruelty and had wilfully deserted her matrimonial home.
- Since despite notice, the counsel for respondent did not appear, the Court proceeded ex-parte.



## Topic : Observation



- The Allahabad High Court has held that under Section 13 of the Hindu Marriage Act, 1995 (Uttar Pradesh Amendment) a spouse cannot be expected to continue a matrimonial relationship at the risk of malicious criminal prosecution as it may lead to loss of dignity and reputation, apart from other consequences like being arrested.





- The bench comprising Justice Saumitra Dayal Singh and Justice Donadi Ramesh held that
- “For the purpose of Section 13 of the Act, as amended by the U.P. Amendment, legally, no spouse whether male or female may be expected to continue in a matrimonial relationship at the risk of malicious criminal prosecution.



- Criminal prosecution certainly leads to loss of dignity and reputation, besides other consequences that may arise, if a person is arrested or tried for the offence alleged.”
- The Court observed that abandoning spouse without any reasons amounts to cruelty on the spouse who has been left alone.



- Observing that the Hindu marriage is a sacrament and not a contract, the Court held that desertion by the spouse without any rhyme or reason leads to the death of the soul and spirit of the Hindu marriage, thereby constituting cruelty.
- The Court observed that the respondent-wife had deserted her husband in 1995 and had lived separately since then. It was observed that she was gainfully employed as well.



- The Court further upheld the allegations of cruelty by the wife on grounds of filing false criminal case against the husband before any other proceedings were instituted by the husband. It was held that appellant being a government employee, false criminal prosecution against him put him at a grave risk.
- Holding that the order of the Family Court was based on surmises and conjectures, the Court set aside the decree of restitution of conjugal rights and granted a decree of divorce in favour of the appellant-husband.





***THANK***

***YOU***