Eknath kisan kumbharkar v. state of Maharashtra

- **TOPIC :** Supreme Court Upholds Conviction Of Father For Pregnant Daughter's Murder Over Inter-Caste Marriage, Commutes Death Sentence
- **BENCH :** Justices BR Gavai, Aravind Kumar, and KV Viswanathan

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether conviction can be upheld of the father who committed the gruesome daylight murder of his pregnant daughter also leading to the death of the child in the womb.
- **BACKGROUND**
  - This was the case where the appellant/accused was unhappy with his daughter's (deceased) decision to marry a man lower than his caste. Against the appellant's wishes, the deceased got married.
  - The appellant was also furious that his image was tarnished by his daughter's act and that he was not accepted by the people of his caste.
  - One fine day, the appellant approached his pregnant daughter's matrimonial home with the reason to take her on the false pretext that her mother (appellant's wife) was in hospital and wanted to see the deceased.
  - Meanwhile, when PW 2 (traveling along with the appellant and deceased) went to find the watchman, the appellant strangulated the deceased to death.
  - The Trial Court convicted the appellant under Section 302 IPC and sentenced him to the death penalty, which was confirmed by the High Court. Following this, the appeal was preferred before the Supreme Court.
- **OBSERVATIONS**
  - The Supreme Court today upheld the conviction of the father who committed the gruesome daylight murder of his pregnant daughter, also leading to the death of the child in the womb.
  - While holding so, the bench comprising Justices BR Gavai, Aravind Kumar, and KV Viswanathan rejected the appellant's/father's contention that the non-examination of the independent witnesses by the prosecution would prove fatal to the prosecution's case.
  - The Court said that non-examination of the independent witnesses by the prosecution would not affect its case when the eyewitness testimony was unquestionable and credible.
  - ‘‘The thrust of the arguments canvassed on behalf of the appellant is to the effect that non-examination of the owner of the tea stall located near the scene of crime; non-examination of the ward boy of Savkar hospital; non-examination of independent witnesses who had assembled near the scene of crime on hue and cry being raised by PW-2; was fatal to the prosecution case.
  - Though at first blush, said arguments look attractive, on deeper examination it has to be answered against the appellant as it is a settled principle of law that non-examination of independent witnesses by itself would not give rise to adverse inference against the prosecution.
  - It would only assume importance when the evidence of eyewitnesses raises a serious doubt about their presence at the time of actual occurrence.’’, the court observed.
  - While upholding the conviction, the Supreme Court discussed whether the appellant's case falls within the category of 'rarest of rare cases' to approve the sentence of capital punishment.
  - After perusing the Prison Conduct Report, Probation Officer's Report of the accused, Psychological Evaluation Report of the Accused, and Mitigation Investigation Report, the Court observed that the present case doesn't fall within the category of rarest of rare case.
  - ‘‘We have scrutinized the aforesaid reports submitted to this court. We find that the present case would not fall in the category of ‘‘rarest of rare cases’’ wherein it can be held that imposition of death penalty is the only alternative. We are of the considered opinion that the present case would fall in the category of middle path as held by this court in various judgments of this court.’’
  - ‘‘In the instant case, it is to be noted that appellant hails from a poor nomadic community in Maharashtra. He had an alcoholic father and

suffered parental neglect and poverty. He dropped out of school when he was 10 years old and was forced to start working to support his family, doing odd jobs. All efforts put by the appellant to bring his family out of poverty did not yield desired results. Neither the appellant nor any of his family members have any criminal antecedent. It cannot be presumed that the appellant is a hardened criminal who cannot be reformed. Hence, it cannot be said that there is no possibility of reformation, even though the appellant has committed a gruesome crime.'', the court added.

- ''The doctrine of ''rarest of rare'' requires that the death sentence should not be imposed only by taking into consideration the grave nature of crime but only if there is no possibility of reformation by a criminal. Being conscious of the fact that sentence of life imprisonment is subject to remission, which would not be appropriate in view of the gruesome crime committed by the appellant, the course of middle path requires to be adopted in the instant case. In that view of the matter, we find that the death penalty needs to be converted to a fixed sentence during which period the appellant would not be entitled to apply for remission.''
- In view of the above, the court overturned capital punishment to 20 years of rigorous imprisonment without remission.

Muhammad Ilyas v. State of Kerala

- **TOPIC** : Criminal Courts Can Frame Charges By Excluding Offences In Final Report Or Including Offences Not Mentioned In Final Report: Kerala HC
- **BENCH :** Justice A. Badharudeen

- **FORUM:** Kerala High Court
- **MAIN ISSUE**
  - Whether criminal courts can frame charges or not based on the prosecution records, excluding the offences in the Final Report.
- **OBSERVATIONS**
  - The Kerala High Court stated that the criminal courts can frame charges based on the prosecution records, excluding the offences in the Final Report and even including offences not mentioned in the final report as per Section 228 and Section 240 of the CrPC.
  - Section 228 pertains to framing of charges in Session cases and Section 240 deals with framing of charges for trial of warrant cases.
  - Justice A. Badharudeen was considering a revision petition of the accused, a school van driver accused of sexually assaulting a minor child. He had approached the Court to set aside the charges framed by the Special Court for offences which were not incorporated by the police in the Final Report.
  - Court said, ''Reading the above provisions, it is clear that, after consideration of the prosecution records, if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the Judge can frame charge for the said offence, disclosed from the prosecution records. To express differently, a Criminal Court can frame charge for the offence/s made out from the prosecution records, excluding the offence/s incorporated by the Police in the Final Report and also including any offence/s not included by the Police in the Final Report.'' In this case, the investigating officer filed final report against the petitioner alleging commission of offences punishable under Section 354(B) of IPC, Section 75 of the Juvenile Justice (Care and Protection) of Children Act and under Sections 8 read with 7, 10 read with 9(m) and 9(n) of the POCSO Act.
  - The petitioner stated that the Special Court for trial of POCSO cases framed charges against the petitioner alleging offences which were not incorporated in the final report by the police.
  - It was argued that the police had not incorporated offence of aggravated sexual assault under Section 5, punishable under Section 6 of the POCSO Act against the petitioner in their final report.
  - The petitioner submitted that the Special Court initially framed charges for offences punishable under Section 5(n) read with 6(1) of the POCSO Act. It was argued that without mentioning anything, this charge was altered to as under Section 5(p) read with 6(1) of the POCSO Act.
  - It was contended that no offence of aggravated sexual assault is made out from the final report.
  - The Public Prosecutor submitted that the offence of aggravated sexual assault was made out from the

prosecution records.

- The Court found that the offence of aggravated sexual assault is made out from the statement of the victim even though the police have failed to file charges.
- The Court went on to state that if the judge believes there is ground for the presumption that the accused has committed offences not mentioned in the final report, the judge can frame those charge offences if it is disclosed from the prosecution records.
- As such, the Court dismissed the revision petition and held that the petitioner is liable to be prosecuted for the altered charge framed against him by the Special Court.

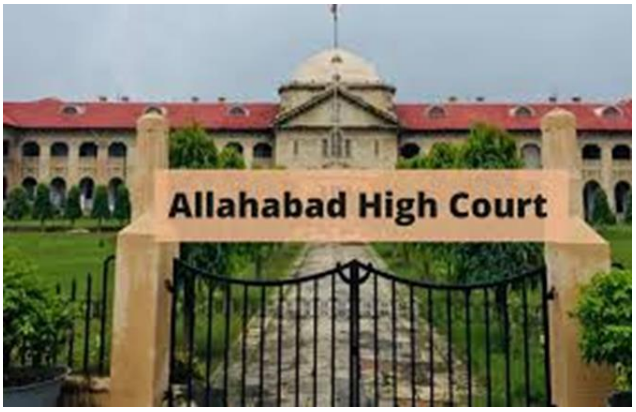
Shaikh Tareq Mohammad Abdul Latif v. State of Maharashtra

- **TOPIC :** S. 295 IPC - Throwing Earth Material, Stones On Grave While Digging Land Doesn't Damage It, No Religious Sentiments Are Hurt: Bombay High Court
- **BENCH :** Justices Vibha Kankanwadi and Santosh Chapalgaonkar

- **FORUM:** Bombay High Court
- **MAIN ISSUE**
  - Whether a First Information Report (FIR) lodged against a businessman under Section 295 of the Indian Penal Code (IPC) can be quashed or not.
- **OBSERVATIONS**
  - The Bombay High Court while quashing a First Information Report (FIR) lodged against a businessman under Section 295 of the Indian Penal Code (IPC) held that mere throwing of earth material (soil, rocks etc) and stones on a grave while carrying out a digging work nearby it, would not amount to damaging, destroying or defiling the grave to hurt the religious sentiments.
  - Sitting at Aurangabad, a bench of Justices Vibha Kankanwadi and Santosh Chapalgaonkar noted that the petitioner Shaikh Tareq Mohammad Abdul Latif, had instructed some persons to level the land, he owned, which was abutting the grave. The judges noted that during the digging activity, some earth material was found to be thrown on the grave along with stones.
  - The judges, further, referred to Section 295 of the IPC, which penalises any act of injuring or defiling a place of worship with intent to insult the religion of any class.
  - The bench said that to prove a case under this act, a damage or defilement of any place of worship or sacred object held by class of persons would be necessary to be established, along with an intention of insulting religion of class of person or with knowledge that class of persons is likely to consider such destruction as an insult to their religion.
  - Admittedly, in the present case, the bench said, there is nothing to show that damage is caused to the object of worship.
  - "The word 'defile' cannot be confined to the idea of making, dirty but must also be extended to ceremonial pollution, but it is certainly necessary to prove pollution. In the present case, from the contents of FIR and panchanama it can be seen that the object of ongoing work at the place was levelling land, which is of private ownership and no existence of graveyard was seen. In adjacent gut numbers, existence of some graves was noted and during cleaning or levelling, some earth material appears to have been flown to the graves. Accepting all these contents as it is, it is difficult to stretch the factual matrix to such an extent to bring it within mischief, which is made punishable under Section 295 of the IPC," the judges said.
  - The object of Section 295, the bench emphasised, is to punish those persons, who intentionally wound religious feelings of others by injuring or defiling places of worship. The core of the section is to prevent wanton insult to religious notions of class of persons, it added.
  - "In the present case, the applicant belongs to the same class of citizen as that of the informant. There is nothing in the charge-sheet that would depict his intention to defile or damage any object held as sacred by class of persons. In fact, there is nothing to depict that the applicant involved or indulged himself in any act of injuring or defiling sacred places with intention to insult religion or class," the judges said.
  - Further the bench pointed at the possibility of a civil dispute being turned into criminal prosecution and malicious use of procedure on part of the complainant and therefore, quashed the FIR.

Arif Hussain @ Sonu Singh And Others v. State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And Others

- **TOPIC:** Allahabad HC Questions Gang-Rape Accused On Aadhaar Application As Muslim After Converting To 'Sanatan', Denies Relief
- **BENCH :** Justice Vivek Chaudhary and Justice Narendra Kumar Johari



- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Whether a relief can be granted to a man or not(Arif Hussain @ Sonu Singh) who has been accused of enticing away a Hindu woman (informant), raping her after concealing his real name and religion, and after that, forcing her to get married to him.
- **OBSERVATIONS**
  - The Allahabad High Court recently denied relief to a man (Arif Hussain @ Sonu Singh) who has been accused of enticing away a Hindu woman (informant), raping her after concealing his real name and religion, and after that, forcing her to get married to him.
  - Though it was the case of the accused that he adopted 'Sanatan Dharma' 15 years ago while marrying the victim in an Arya Samaj temple in 2009, a division bench of Justice Vivek Chaudhary and Justice Narendra Kumar Johari noted that after he purportedly converted his religion from Islam to Sanatan in 2009, he applied for Aadhar in the year 2012, showing himself to be a follower of Islam in the name of Arif Hussain.
  - Essentially, it was the case of the informant-wife that the accused, by identifying himself with the wrong name, initially enticed her away and raped her and, after that, forced her to marry him.
  - In the FIR, she also alleged that he forced her into establishing a physical relationship against her will with his two brothers (co-accused).
  - Challenging the FIR, Petitioner No.1 (husband-accused) moved the HC, wherein his counsel claimed that he had converted his religion from Islam to Sanatan. Conversion and marriage certificates issued by Arya Samaj Mandir, Lucknow were also filed to support this claim.
  - However, the Court found both certificates to be 'dubious' as it noted that both contained the same serial number and the age of the parties was not mentioned in the marriage certificate, and the wording in the conversion certificate was also improper.
  - The Court also noted that despite his claim that he had converted his religion from Islam to Sanatan in 2009, the petition contained a copy of an Aadhar Card issued in 2012, which was in the name of Arif Hussain.
  - To this, when the division bench inquired of the counsel as to why the petitioner No. 1, who had already converted from Islam to Sanatan in 2009, applied for Aadhaar in 2012 as Arif Hussain, identifying himself as a follower of Islam, no explanation could be given.
  - In view of this and considering the peculiar facts and circumstances of the case, the Court refused to interfere with the FIR at this stage when the entire investigation was pending. Hence, the writ petition was dismissed.
  - However, the Court granted liberty to the Police to look into the fact as to whether petitioner no.1 had also committed the crime of getting his Aadhar Card prepared in the year 2012 in the name of Arif Hussain based on false/incomplete information when he had already converted his religion from Islam to Sanatan in the year 2009.

X v. State of Maharashtra

- **TOPIC :** Possible That Daughter Implicated Father In False Rape Case Due To Matrimonial Dispute Between Parents: Bombay High Court Grants Bail To Man
- **BENCH :** Justice Manish Pitale
- **FORUM:** Bombay High Court
- **MAIN ISSUE**
  - Whether a bail can be granted to a man who booked for allegedly sexually assaulting his own minor daughter or not.
- **BACKGROUND**
  - As per the prosecution's case, the parents of the victim were living separately. The victim had joined her father's company in the month of October 2023. On October 13, 2023, when she dropped her younger sister to school and returned

home, her father allegedly sexually assaulted her.

- A case was lodged against the applicant on October 25, 2023 and he was immediately arrested and since then has been in jail.

❖ **OBSERVATIONS**

- The Bombay High Court while granting bail to a man, booked for allegedly sexually assaulting his own minor daughter, observed that there is every possibility of the daughter implicating her father in a false case at the behest of her mother, since the parents have locked horns in a separate matrimonial dispute.
- Single-judge Justice Manish Pitale noted the pending matrimonial dispute between the applicant and his wife, which the judge said assumed significance.
- "The matrimonial dispute between the applicant and the mother of the victim assumes significance. In this context, when the document styled as Deed of Divorce by Mutual Consent is perused, it is found that the applicant was required to take care of the financial needs of the victim, her sister and their mother," the judge noted in the order.
- Even before this Court, Justice Pitale noted that the counsel appearing for the victim made submissions to the effect that the applicant had not abided by the obligations cast upon him under the said Deed of Divorce by Mutual Consent.
- "This further indicates that there could be a possibility of involving the applicant in the present case in the backdrop of serious disputes between the victim's mother and the applicant. A prima facie case is made out by the applicant in his favour. He has already suffered incarceration for about 1 year. The charges are yet to be framed, despite the fact that the charge-sheet was filed as far back as on December 4, 2023. This Court is, thus. inclined to allow the present application," the court said while granting bail to the applicant.
- The bench noted that the girl lodged the complaint against her father after a delay of nearly 11 days and that too only after she met her mother.
- The judge further noted that though in her initial statements, the victim stated that she was abused only on October 13, but in her medical history, she pointed out multiple instances when her father abused her.
- Further, the judge noted that the girl claimed that her father sexually abused her even during the Covid19 lock down period and thereafter she started living with her mother. However, the court doubted the same statement, questioning as to why she again joined the father's company despite being abused earlier.
- "There is substance in the contention raised on behalf of the applicant that if it was true that even two years prior to the incident of October 13, 2023, the applicant had forcible physical relations with the victim, in the natural course of human behaviour, the victim would not have joined the company of the applicant. The reason stated by the victim that she came to her father because she had some difference of opinion with her mother, also does not prima facie fit into the natural course of human conduct. Equally, the mother of the victim would have ensured that the victim does not join the company of her father i.e. the applicant, despite being aware of forcible physical relations established by the applicant two years prior to the October 13, 2023 incident," the bench opined.
- With these observations, the bench granted bail to the applicant.

X v. Y

❖ **TOPIC :** Orders Passed U/S 12 Of Guardians And Wards Act Appealable U/S 19 Of Family Courts Act: Delhi High Court

❖ **BENCH** : Justice Rekha Palli, Justice Jasmeet Singh and Justice Amit Bansal

❖ **FORUM:** Delhi High Court

❖ **MAIN ISSUE**

- Whether orders passed under Section 12 of the Guardians and Wards Act would be appealable or not under Section 19 of the Family Courts Act.

❖ OBSERVATIONS

- A full bench of Delhi High Court ruled that the orders passed under Section 12 of the Guardians and Wards Act would be appealable under Section 19 of the Family Courts Act.
- Section 12 of Guardians and Wards Act gives power to the Family Court to pass an interlocutory order for production of minor and interim protection of person and property.
- Section 19 of Family Courts Act states that appeals can be made from any judgment or order of a Family Court to the High Court , except for interlocutory orders.
- The full bench comprising Justice Rekha Palli, Justice Jasmeet Singh and Justice Amit Bansal was answering a reference in a minor custody case. The question before the full bench was whether an order passed under Section 12 of the GW Act would be appealable under Section 19 of the FC Act?
  - While answering the reference, the Bench noted that the FC Act bestows the Family Courts with ''multifarious jurisdictions'' arising out of marriage and family affairs and was clearly intended to consolidate the jurisdictions which were available with different Courts or Tribunals under the relevant statutes in one specialised Court being the Family Court.
  - ''It is, for this reason, that while introducing one single appellate provision under the FC Act, a non-obstante clause has been used to avoid the confusion which was earlier arising from multiple appellate provisions spread over various pre- existing statutes,'' the court said.
- It added that while enacting the FC Act, the legislature had consciously introduced a provision providing for appeals to the High Court against orders passed under different statutes relating to marriage and family affairs.
- ''The purpose of this appellate provision by way of Section 19 (1) of the FC Act was, therefore, meant to provide for an appeal against all orders passed by the learned Family Court, irrespective of the fact as to whether the said order is appealable or not under the parent statute, the only rider being that the order should not be an interlocutory order,'' the bench said.
- It added that once the provisions of the FC Act clearly indicate that the enactment will have an overriding effect on all other statutes relating to marital and family matters, the effect and ambit of the provisions of the FC Act, including that of the appellate provision under Section 19 (1), which conceptualises a common appellate forum, cannot be controlled by the provisions of the parent statute, including the GW Act.
- ''We are, therefore, in agreement with the learned Amicus Curiae as also the appellant, that the provisions of the GW Act could not curtail the right of appeal available to the appellant under Section 19 of the FC Act,'' the court said.
- Furthermore, the bench ruled that the description of an order as an interlocutory order under the GW Act, cannot be a ground to treat the said order as an interlocutory order for the purposes of the FC Act.
- ''Merely because an order, despite affecting the vital rights of the parties, is labelled as an interlocutory order under a particular statute, cannot imply that the same must always be treated as an interlocutory order,'' it held.
- The bench also ruled that only those orders which are merely procedural and do not have trappings of finality can be treated as interlocutory orders and would not be amenable to appeal under the FC Act.
- ''The mere fact that an order under Section 12 of the GW Act has been labelled as an interlocutory order under the said Act, cannot, therefore, be a ground to hold the same as an interlocutory order under the FC Act, which Act was enacted 94 years later and was intended to provide a much wider window for appeal,'' the court said.
- It added that in every case, when an order passed by the Family Court is taken in appeal before the High Court, it would be incumbent upon the Court to examine the nature of the impugned order in its entirety to determine whether the same is in the nature of an adjudicatory order which decides valuable rights of the parties.
- ''Whenever the Court finds that an order touches upon the vital rights of the parties in contradistinction to an order which is merely a procedural order, an appeal ought to be entertained, irrespective of the fact that the order was passed during the pendency of the proceedings before the learned Family Court,'' the court said.