X v. State of Gujarat

- **TOPIC :** Whether Girl want To terminate Pregnancy Or Give Birth Is ‘‘Purely Her Wish’ ,Says Gujarat High court, Permits Father To Withdraw Plea
- **BENCH :** Justice Nirzar S Desai

- **FORUM:** Gujarat High court
- **MAIN ISSUE**
  - Whether a man's plea seeking termination of his minor daughter's 25 week pregnancy can be approved or not.
- **OBSERVATIONS**
  - While hearing a man's plea seeking termination of his minor daughter's 25 week pregnancy, the Gujarat High Court orally said on Wednesday that the girl's consent was required before termination and her parents cannot force her to terminate the pregnancy.
  - The court thereafter permitted the father to withdraw the petition and disposed of the matter.
  - The petition was filed seeking termination of pregnancy on the ground that the 16 year old girl was a rape victim coming from the very lower strata of the society.
  - On Monday (September 23) the court had directed the medical superintendent of the concerned hospital to conduct a medical examination of the girl by Tuesday and submit a report about the possibility of safely terminating the pregnancy at an advanced stage and whether the girl is "mentally and physically" fit to undergo such a procedure.
  - Thereafter when the matter was listed on Wednesday (September 25), a single judge bench of Justice Nirzar S Desai orally asked the petitioner's counsel, "Yes, what do you want? I am directing registration of FIR against parents...When the girl doesn't want to terminate the proceedings why are the parents forcing?’’
  - The counsel for the petitioner father submitted that the victim is only 16 years-old. To this the high court orally said, ‘‘She may be...she understands the consequences, right? Her consent is required before termination? Her consent is required".
  - The counsel thereafter submitted that since the girl is a minor, the parents' consent is also required.
  - The court however orally said, ‘‘Suppose if the parents are forcing...consent and force are two different things". The father's counsel however said that the accused is the "cousin" and marriage between them is neither permissible nor possible.
  - At this stage the court orally said, ‘‘Permissible, possible all are different. Can anyone be forced to terminate the pregnancy? Therefore, you take instructions, I am directing registration of FIR against them (parents)".
  - The petitioner's counsel however requested for the counselling of the girl arguing that she is 16 years old and "not aware about the consequences of the pregnancy and birth of the baby".
  - The court however said, ‘‘Sorry, I will not say anything. Your petition is for termination, why should I say she may be counselled and all this? No, she is aware about everything. If she is not willing, you cannot force her to terminate.
  - I am not going to say anything,... if you want to withdraw this petition withdraw or I am passing appropriate orders’’. At this stage the counsel said that the marriage is within the "prohibited degree".
  - The court however orally remarked that it was not saying that the girl must marry the person who is accused but whether she wants to "terminate the pregnancy or give birth to the child is purely her wish".
  - At this stage the counsel sought instructions from the petitioner's father who was present in court, and prayed that "on instructions he may be permitted to withdraw" the plea.
  - The Petition stands disposed of as withdrawn," the high court directed.

Sujata Mehta v. Dakshin Haryana Bijli Vitran Nigam and others

- **TOPIC:** Pension Is Not charity By state To Employees But its Duty
- **BENCH :** Justice Jasgurpreet Singh Puri
- **FORUM:** Punjab & Haryana High Court
- **MAIN ISSUE**
  - Whether denying pension to a widow for over 12 years is valid or not

❖ **OBSERVATIONS**

- The Punjab & Haryana High Court imposed a cost of Rs. 1 lakh on Dakshin Haryana Bijli Vitran Nigam (DHBVN) and Haryana Vidyut Prasaran Nigam Limited (HVPNL) for denying pension to a widow for over 12 years, observing that, "the pension and pensionary benefits including a family pension is not a charity done by the State and it is a duty of the State" to provide the same.
- Justice Jasgurpreet Singh Puri noted, "A poor widow has been denied benefit of family pension for 12 long years because of unjustified reasons as aforesaid and she had to run from pillar to post only because the organization was bifurcated and the petitioner did not file an application before the assigned organization."
- The Court said that the State authorities have abdicated their duties by not granting a family pension to a widow to which she was otherwise entitled under the law without any dispute.
- These observations were made while hearing the plea under Articles 226, 227 of the Constitution seeking to quash the action of the Haryana State authorities of not granting interest on the arrears of family pension w.e.f. 20.05.2008 to 31.07.2020, and to direct the respondents to grant the same.
- Counsel appearing for the petitioner, Sujata Mehta submitted that she is a widow and her husband was working as Reader-cum- Circle Superintendent in the erstwhile Haryana State Electricity Board (HSEB) and he retired from the aforesaid Board on 30.06.1999 and the husband passed away in 2008.
- He submitted that Mehta filed an application before the DHBV in 2010, for a grant of family pension but it was intimated to her that since her husband had already retired prior to the bifurcation of HSEB into four organizations in 1999, such cases are to be dealt with by HVPNL authorities and, therefore, necessary correspondence may be made with HVPNL authorities.
- Thereafter, she had been running from pillar to post and had also been meeting various officers of the Nigam but the family pension was not sanctioned to the petitioner, submitted the counsel.
- After hearing the submissions, the Court observed that If a bifurcation of the Haryana State Electricity Board has been done by way of an Act and thereafter various instructions have been issued as to whose family pension is to be dealt with by which organization, then it was the job and burden of the Boards which have been incorporated.
- "It was not the job of a poor widow to have known the aforesaid technicalities as to which organisation she had to apply and the entire onus fell upon the respondents-Statutory Bodies and not upon a poor widow," added the Court.
- Justice Puri said that the method adopted by the respondents in putting the petitioner who is a poor widow to run from one door to the other is not only insensitive but is also highly deprecated.
- In light of the above, the Court allowed the plea and directed to grant interest @ 6% per annum (simple) to the petitioner which is to be calculated from the date of death of the husband of the petitioner till the date of its actual disbursement within a period of three months.
- While disposing of the plea the Court also opined that the widow is entitled to the exemplary costs of Rs. 1 Lakh.

Panna Lal & Ors. v State of Rajasthan

❖ **TOPIC** : Rajasthan HC Upholds 33 – Year – Old Conviction For Culpable Homicide Not Murder But Orders Release of Convicts Citing Their ''Long Order''

❖ **BENCH :** Justice Anoop Kumar Dhand

❖ **FORUM:** Rajasthan High Court

❖ **MAIN ISSUE**

- Whether a 33-year-old order convicting four men for culpable homicide not amounting to murder is correct or not.

❖ **BACKGROUND**

- The four men–appellants had challenged a 1991 order of the sessions court convicting them under IPC Section 304 Part-II IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.1000/- each and in case any default occurs, then to further undergo six months additional rigorous imprisonment.
- As per the facts, the complainant had some altercation with the four appellants in relation to the latter's cattle grazing on the complainant's field.
- Later, the complainant along with his uncle Goverdhan (deceased) was passing by the field when the appellants suddenly appeared in front of them and started assaulting using sticks and gandaasi.
- The complainant managed to escape but the appellants continued to beat the deceased which ultimately resulted in his death.
- The appellants contended that the entire case of prosecution was based solely on the testimony of the complainant who was claiming to have witnessed the entire incident.
- However, owing to the dark surroundings, it was not possible for him to identify the appellants properly. It was also alleged that it was the complainant himself who had killed his uncle who was deaf and dumb, for getting the entire property.

❖ **OBSERVATIONS**

- While upholding a 33-year-old order convicting four men for culpable homicide not amounting to murder, the Jaipur bench of the Rajasthan High Court reduced their seven year sentence to a period already undergone in prison observing that they had to pass through a long ordeal both mentally and financially.
- A single judge bench of Justice Anoop Kumar Dhand in its September 19 judgment said, "The appellants have undergone the imprisonment from 03.10.1990 to 15.06.1991 during investigation and trial and remained in jail after conviction w.e.f. 07.12.1991 till 18.01.1992. The occurrence took place more than three and a half decade back and at the time of occurrence the age of the appellants was approximately 19-20 years. The appellants had to pass through this long ordeal for above 34 years, mentally and financially".
- "In the facts and circumstances of the case, for the occurrence which took place in the year 1990 and at that relevant time, the age of the accused-appellants was approximately 19-20 years and they were young and having no motive, or any intention to cause death of the deceased-Goverdhan. The deceased came in between and suffered injuries and died, they remained in custody during the period of investigation, trial and after conviction for a considerable period of time. Hence, maintaining their conviction, their sentence is reduced to the period of sentence already undergone by them," it added.
- Aligning with the findings and decisions of the trial court, the High Court observed that the defences taken by the appellants were not specific or clear and were contradictory in nature, and were rightly not relied upon by the trial court.
- It observed that even though there was no enmity between the appellants and the deceased, and the former had no intention of causing death of the latter, the injuries that were inflicted upon the deceased were with the "knowledge" that those might result in Goverdhan's death. Hence, the appellants were liable for committing culpable homicide not amounting to murder, the court held.
- Accordingly, the high court partly allowed the convicts' appeal. It upheld the conviction but directed the appellants' release based on their period of imprisonment of around 9 months between 1990 and 1992 during investigation and post-conviction.

William Dungdung V. State of Jharkhand

❖ **TOPIC:** Family Members Are Natural Witnesses, Cannot be Deemed to be 'Interested Parties Due to Relation with Victim

❖ **BENCH** : Justices Ananda Sen and Gautam Kumar Choudhary,

❖ **FORUM:** Jharkhand High Court

❖ **MAIN ISSUE**

- Whether family members of a victim are natural witnesses to an incident or not.

❖ **FACTS**

- According to the facts of the case, the informant alleged that while he was getting his crops harvested, the accused persons jointly assaulted

him. When the informant's son intervened to help, he was also attacked.

- Following this, a case was registered against the appellants and others under Sections 147, 148, 149, 323, 324, and 307 of the Indian Penal Code. Charges were subsequently framed under Section 307/149, and the appellants were convicted by the lower court. As a result, the present appeal was filed.

❖ **OBSERVATIONS**

- The Jharkhand High Court has held that family members of a victim are natural witnesses to an incident and cannot be deemed biassed solely because of their close relationship to the victim.
- The division bench, comprising Justices Ananda Sen and Gautam Kumar Choudhary, rejected the argument made by the appellants that independent witnesses did not support the prosecution's case, while observing, ‘‘It is difficult to agree with the argument advanced on behalf of the convicts that independent witnesses have not supported the prosecution. Members of the family are natural witnesses to the incident and they cannot be said to be interested only for the reason that they happen to be the close family relatives of the victim.’’
- The Court observed that the plea regarding vital contradictions in the prosecution evidence lacked force and substance and was therefore not sustainable in the appeal against conviction.
- The Court explained, ‘‘There is always a time gap between the actual incidence and when it is reconstructed before the Court on the basis of evidence, which results in peripheral discrepancies in the account of witnesses. Such discrepancies and inconsistencies are normal and depend on the individual human capacity of observation, retention and reproduction. An inconsistency may amount to contradiction when two or more different statements on a topic cannot both be true at the same time and in the same sense so as to render them irreconcilable.’’
- The Court emphasised that the defence failed to point out any valid contradictions that could raise doubts about the veracity of the prosecution's account.
- It also reiterated that ‘‘the law is settled that testimony of injured witnesses deserves a higher degree of credibility, as their presence at the scene is assured, and they would ordinarily not falsely implicate anyone except the real assailants.’’
- Regarding the charge under Section 307 of the IPC, the Court stated that an act amounts to an attempt to murder if it is of such a nature that, if uninterrupted, it would likely cause the victim's death.
- Based on these considerations, the Court concluded that no offence under Section 307 was made out. However, it convicted the appellant under Sections 148 and 326/149 of the IPC.
- With the above direction, the court dismissed the criminal appeal.

Jiten Ray v. The State of Assam

❖ **TOPIC :** Absence of medical Evidence not Fatal To Prosecution Case, Victim Corroborated Her Testimony U/S 164 CrPC

❖ **BENCH :** :Justice Michael Zothankhuma and Justice Mitali Thakuria

❖ **FORUM:** Gauhati High Court

❖ **MAIN ISSUE**

- Whether the conviction of a person under Section 6 of the POCSO Act is correct or not.

❖ **BACKGROUND**

- The case of the prosecution was that the informant (mother of the victim) lodged an FIR dated September 16, 2019, stating that at around 8 am on September 13, 2019, the accused-appellant had raped her minor daughter aged about 10 years in his bedroom.
- On the basis of the said FIR, a case under Sections 376AB, 506 of IPC and Section 6 of the POCSO Act was registered against the accused-appellant.
- The Trial Court convicted the appellant under the aforesaid provisions and sentenced him to undergo life imprisonment and rigorous imprisonment for 2 years which were to run concurrently.
- Hence, the present appeal was filed by the appellant challenging the conviction and sentence passed by the Trial Court

❖ **OBSERVATIONS**

- The Gauhati High Court on Tuesday upheld the conviction of a person under Section 6 of the POCSO Act on the ground that the testimony of the victim girl before the trial court was corroborated by her statement recorded under Section 164 of CrPC and therefore, found to be trustworthy in the absence of a proper medical report.
- However, the division bench of Justice Michael Zothankhuma and Justice Mitali Thakuria reduced the sentence imposed from life imprisonment to rigorous imprisonment of 20 years considering the age of the convict.
- The Court noted that the only evidence against the appellant is the evidence of the victim, who has stated that the appellant had raped her.
- ‘‘The medical examination report on the minor victim has not been properly done. It is unfortunate that the medical Doctor had not examined the hymen of the victim girl and/or made any comment with regard to the hymen of the victim girl. The medical report, by itself, does not indicate in any manner that there was any rape committed by the appellant on the minor girl,’’ the Court said.
- The Court further observed that there is nothing to show that the victim girl had been tutored or that she had given false testimony and the statement of the victim under Section 164 CrPC corroborates the testimony given by her during trial.
- The Court remarked that there is no opinion made by the doctor with regard to the hymen of the victim, which cast doubt as to whether the doctor had even examined the hymen of the victim.
- Thus, the Court upheld the conviction of the appellant.
- ‘‘However, on considering the fact that the appellant is approximately 54 years old, we are of the view that justice would be served if the appellant is sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs.5,000/-, in default, to undergo simple imprisonment for 2 months,’’ it said.

S. Vijikumari v. Mowneshwarachari C

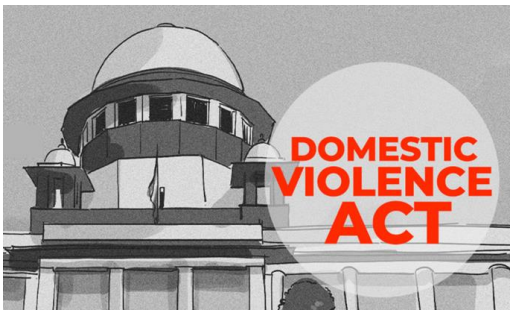
❖ **TOPIC:** Domestic violence Act Applicable to Every Women In India Irrespective of Her Religious Affiliation & Social Background

❖ **BENCH** : Justices BV Nagarathna and N Kotiswar Singh.

❖ **FORUM:** Supreme Court

❖ **MAIN ISSUE**

- Whether the Protection of Women from Domestic Violence Act, 2005 is applicable to every woman in India irrespective of her religious affiliation or not.



❖ **BACKGROUND**

- In this case, on 23.02.2015 the Magistrate passed an order under Section 12 of the DV Act allowing Rs.12,000 as monthly maintenance and Rs.1,00,000 as compensation for the wife. The order attained finality.
- In 2020, the husband filed an application under Section 25(2) of the Act seeking revocation/modification of the order owing to change in circumstance.
- Though the Magistrate dismissed the application, the Sessions Court directed the Magistrate to consider the same. The wife's revision against the Session's Court's order was dismissed by the High Court and she appealed to the Supreme Court.
- The wife argued that the husband in effect was seeking the setting aside of the original order passed in 2015, which is not permissible under Section 25(2).
- In the application under Section 25(2), the husband sought the setting aside of the order passed in 2015 and a direction to the wife to return the entire amount received by her.

❖ **OBSERVATIONS**

- The Supreme Court has observed that the Protection of Women from Domestic Violence Act, 2005 is applicable to every woman in India irrespective of her religious affiliation.
- "The Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship," observed a bench comprising Justices BV Nagarathna and N Kotiswar Singh.
- The bench made this observation while deciding an

appeal against the High Court direction to a Magistrate to admit an application under Section 25(2) of the Act for the alteration/modification of an order passed under Section 12.

- The Court observed that there cannot be a setting aside of the order dated 23.02.2015 for the period prior to such an application for revocation being made.
- The Court held that alteration/modification/revocation of an order passed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) can be sought through Section 25(2) only on the basis of change of circumstances which took place subsequent to the passing of the order. "..for the invocation of Section 25(2) of the Act, there must be a change in the circumstances after the order being passed under the Act," the Court stated.