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APPEAL:		
Criminal Appeal - Duty of appellate court - Held: High Court being the first appellate court was required to independently reappraise the entire material, and record the conclusions supported by cogent reasons - High Court failed to independently examine the correctness of findings recorded by trial court and simply extracted a portion of the judgment of trial court, while affirming the conviction - It failed to exercise its jurisdiction in dismissing the appeal.		
(Also see under: Narcotic Drugs and Psychotropic Substances Act, 1985)		
<i>Gurjant Singh @ Janta v. State of Punjab</i>	.....	180
ARMS ACT, 1959:		
ss.25 and 27.		
(See under: Bail)	.....	165
BAIL:		
Cancellation of bail -- A group of persons led by first respondent, armed with lathis and firearms causing death of one person and injuries to others - High Court granting anticipatory bail to first respondent - Held: Additional Sessions Judge has found prima facie case against first respondent and other accused - Incident had caused public panic in the area - First respondent is a very influential person in the area - Moreover, his antecedents are such that a reasonably strong apprehension of his tampering with witnesses or to carry out threats is imminent and omnipresent - The severity of the attack and leading role of first respondent should not be overlooked - In the circumstances, the impugned order is set aside and bail granted to first respondent is cancelled - Penal Code, 1860 - ss. 109, 114, 148, 302, 307, 323, 325 r/w s.149 - Arms Act, 1959 - ss.25 and 27.		
<i>Sita Ram v. Balbir @ Bali & Anr.</i>	165
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Government of Rajasthan Circular dated 26.7.2006. (See under: Practice and Procedure)	20
CODE OF CIVIL PROCEDURE, 1908:		
O.21, r.89 - Application to set aside sale, on deposit - Order of High Court affording the judgment-debtors one more opportunity to deposit the amount - Challenged by auction-purchaser - Held: Immediately after the order of High Court, judgment-debtors had deposited the amount - Exercise of discretion by High Court cannot be found to be erroneous nor contrary to law so as to warrant interference in exercise of jurisdiction under Art. 136 of the Constitution - There is no substantial question of law - Constitution of India, 1950 - Art.136.		
<i>Sukumar De v. Bimala Auddy & Ors.</i>	.....	198
COMPENSATION:		
Medical negligence.		
(See under: Consumer Protection Act, 1986)	.....	30
CONSTITUTION OF INDIA, 1950:		
Art.136.		
(See under: Code of Civil Procedure, 1908)	.....	198
CONSUMER PROTECTION ACT, 1986:		
Complaint - Medical negligence -Contributory negligence - Death of an US based patient in hospital in India - Held: Appellant-Hospital is vicariously liable for its doctors and is, therefore, directed to pay total amount of compensation amounting to Rs.6,08,00,550/-, under various heads as detailed in judgment, after deducting Rs.25 lakhs payable by appellants-doctors - National Commission erred in holding that claimant had contributed to negligence of appellant-doctors and Hospital which resulted in death of his wife when Supreme Court had clearly absolved the claimant of such liability and remain		

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back to National Commission only for determining the quantum of compensation - Finding of National Commission in this regard is set aside and it is re-emphasized that claimant did not contribute to negligence of appellants-doctors and Hospital which resulted in death of his wife - Consumer Protection Rules, 1987 - r.14(c).

(ii) Enhancement of compensation by complainant subsequent to filing of claim petition - Claimant making additional claims by way of affidavit before National Commission - Held: Claim for enhancement of compensation by claimant is justified - Claimant is entitled for enhanced compensation under certain items in additional claim - Further, claim of claimant having remained pending for 15 years, value of money has devalued to a great extent - Therefore, inflation should be considered while deciding the quantum of compensation - Supreme Court has got the power under Art. 136 of the Constitution and the duty to award just and reasonable compensation to do complete justice to the affected claimant - Code of Civil Procedure, 1908 - Constitution of India, 1950 - Art.136.

(iii) Just and fair compensation - Held: Status, future prospects and educational qualification of deceased must be judged for deciding adequate, just and fair compensation - Court is duty bound and entitled to award 'just compensation' irrespective of the fact whether any plea in that behalf was raised by claimant or not.

(iv) Future prospects of income - Held, 'Future loss of income' is different from 'future prospects of income' in terms of potential of victim - In awarding just and reasonable compensation, future prospects of deceased must have been reasonably judged by the National Commission.

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(v) Compensation - Multiplier method - Held: Just, fair and reasonable compensation has to be determined on the basis of the income of deceased at the time of death of the victim and other related claims on account of the death - Therefore, the plea to apply the multiplier method in determination of compensation, does not inspire confidence.

(vi) Medical negligence - Death of patient - Compensation towards loss of income of deceased - Held: While determining the income of deceased, evidence on record has to be relied on - Further, 30% added towards future loss of income of deceased - 1/3 of total income is required to be deducted towards personal expenditure of deceased - Estimating the life expectancy of a healthy person as 70 years, compensation to be awarded by multiplying the total loss of income by 30.

(vii) Medical negligence - Death of patient - Claim by husband under the heads loss of income for missed work, travel expenses and legal expenses - Held: Claim towards missed work cannot be allowed as the same has no direct nexus with the negligence of appellant-doctors and hospital - However, claim towards travel expenses and legal expenses, partly allowed.

(viii) Other pecuniary damages - Medical negligence - Death of patient -- Expenses incurred by claimant towards treatment, travel and hotel expenses in this regard, allowed.

(ix) Non-pecuniary damages - Medical negligence - Death of patient - Compensation under the head 'pain and suffering of patient during the course of treatment', allowed - Loss of consortium, allowed - However, under the head, 'emotional distress, pain and suffering for claimant himself', no compensation can be awarded since this claim bears no direct link with negligence of hospital

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treating claimant's wife.

(x) Medical negligence - Interest on compensation amount - Held: Not awarding interest by National Commission on compensation amount from the date of filing of original complaint up to the date of payment is most unreasonable and is opposed to provisions of Interest Act - Therefore, 6% interest is awarded on the compensation finally determined from date of the petition till payment - Interest Act, 1978.

(See under: Consumer Protection Act, 1986)

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CONTEMPT OF COURT:

(i) Contempt proceedings - A contempt action being in the nature of quasi criminal proceedings, the degree of satisfaction that must be reached by the court to hold a person guilty of commission of contempt would be akin to what is required to prove a criminal charge, namely, proof beyond reasonable doubt.

(ii) Contempt proceedings - Alleging disobedience of order of High Court - High Court holding the appellant guilty of commission of contempt of its order and directing for his personal appearance for hearing on quantum of punishment - Held: Order of the court in respect of which violation is alleged must be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged - In the instant case, interim order of High Court had directed status quo to be maintained in respect of allotments - Admittedly, no allotments had been made by the appellant or any other authority - Order of High Court set aside - Haryana Development and Regulation of Urban Areas Act, 1975.

(iii) Contempt proceedings - Interpretation of the order alleged to have been disobeyed - Held: Would not be appropriate while dealing with a

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charge of contempt - In a situation like the case in hand, where High Court had directed maintenance of status quo as to allotment, it was not open for High Court to hold the contemnor guilty by understanding the said order to mean status quo or a restraint in respect of grant of licences under the Act.

(Also see under: Contempt of Courts Act, 1971)

T.C. Gupta v. Bimal Kumar Dutta & Ors. 170

CONTEMPT OF COURTS ACT, 1971:

s.12, Explanation - Unconditional apology - Held: An apology tendered by a contemnor should not be rejected merely on the ground that it is qualified or conditional, so long as it is made bona fide - There is nothing on record to suggest that the unqualified and unconditional apology tendered by appellant in his reply before High Court was actuated by reasons that are not bona fide.

(Also see under: Contempt of Court)

T.C. Gupta v. Bimal Kumar Dutta & Ors. 170

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 251
and 269

EVIDENCE:

(1) Arrest - Recovery of vehicles used in crime - Witness of arrest memo and panch witness of recovery of vehicles not examined - Held: In the absence of putting such an issue to Investigating Officer, appellants cannot seek any benefit of such omission or error by prosecution in conducting of trial - If prosecution had not examined Panchnama witnesses and witnesses to the arrest memos, appellants could have examined them in their defence.

(Also see under: Penal Code, 1860)

Gulam Sarbar v. State of Bihar (Now Jharkhand)

(2) Dying declaration - Victim of burn injuries - Doctor who examined the injured in hospital gave a certificate that she was fit to give statement - Larynx and trachea found by post mortem doctor charred by heat - Held: The opinions of the two medical experts are not in variance of the ocular evidence that the deceased was in a position to speak when her dying declarations were recorded - Therefore, the two dying declarations can be relied on by the court - Medical Jurisprudence.

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EVIDENCE ACT, 1872:

(1) s.134 - Number of witnesses - Held: It is not the number of witnesses but quality of their evidence which is important, as there is no requirement under law of evidence that particular number of witnesses is to be examined to prove/disprove a fact - Conviction can be based on testimony of a sole eye-witness - The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy. (Also see under: Penal Code, 1860)

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(2) ss. 113-A and 113-B.
(See under: Penal Code, 1860) 251

INTEREST:

Interest on compensation amount.
(See under: Consumer Protection Act, 1986) 30

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INTERPRETATION OF STATUTES:

Legal fiction - Held: Legislature is competent to create a legal fiction - A deeming provision is enacted for the purpose of assuming the existence of a fact which does not really exist - When legislature creates a legal fiction, court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those

facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction - Legislature, while enacting s.87 of Rajasthan Municipalities Act, has created a legal fiction for the purpose of assuming that the Members, otherwise, may not be public servants within the meaning of s.21 IPC but shall be assumed to be so in view of legal fiction so created - Rajasthan Municipalities Act, 1959 - s.87 -- Penal Code, 1860 - s.21.

(Also see under: Rajasthan Municipalities Act, 1959)

Manish Trivedi v. State of Rajasthan 205

LEGISLATION:

(See under: Medical negligence) 30

MEDICAL JURISPRUDENCE:

Chemical analysis of viscera - Object of, and circumstances under which it is done - Explained.

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MEDICAL NEGLIGENCE:

Medical Negligence - Liability of nursing homes, hospitals and doctors - Need of an appropriate legislation - Held: Doctors, hospitals and nursing homes and other connected establishments are required to be dealt with strictly if they are found to be negligent with patients and do not take their responsibility seriously - Central and State Governments may consider enacting laws wherever there is absence of one, for effective functioning of private hospitals and nursing homes.

(Also See under: Consumer Protection Act, 1986)

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MOTOR VEHICLES ACT, 1988:

(i) s. 163-A r/w ss. 170 and 173 - Special provisions as to payment of compensation on structured formula basis - Appeal by insurer - Held:

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In view of points (iii) to (v) in Shila Datta's case having been referred to larger Bench as also the view in Sinitha's case that it is open to the owner or insurance company, as the case may be, to defeat a claim u/s 163-A of the Act by pleading and establishing a fault ground (wrongful act or neglect or default), matter referred to larger Bench.
(ii) s.163-A - Petition for compensation - Held: Liability to make compensation u/s 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry u/s 163-A - Once it is established that death or permanent disablement occurred during the course of user of vehicle and the vehicle is insured, insurance company or owner, as the case may be, shall be liable to pay compensation, which is a statutory obligation.

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MUNICIPALITIES:

Members and Councilors.
(See under: Rajasthan Municipalities Act, 1959) 205

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

(i) s. 50 - Requirement and purpose of search and seizure in presence of a Gazetted Officer or Magistrate - Explained.

(ii) ss.42 and 50 r/w s.15 - Appellant caught carrying 3 bags of poppy husk in tractor trolley - Conviction of accused and sentence of 10 years RI and fine of Rs. 1 lakhs u/s 15 - Upheld by High Court - Held: Conclusion of trial court that ss.42 and 50 were not applicable to the case was a total misunderstanding of legal provisions in the light of facts placed before it - Conviction and sentence imposed on appellant is set aside.

(iii) s.50 - Search and seizure in presence of

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Gazetted Officer or Magistrate - Held: In the instant case, trial court omitted to examine defence of appellant that the officer in whose presence search was carried out was not a regularly promoted D.S.P. but an "own rank pay D.S.P."

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NATURAL JUSTICE:

(See under: Practice and Procedure) 20

PARTY:

Non-joinder of affected party - Effect of.
(Also see under: Practice and procedure)

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PENAL CODE, 1860:

(1) ss. 109, 114, 148, 302, 307, 323, 325 r/w s.149.
(See under: Bail) 165

(2) (i) s.302 r/w s.120-B - Murder committed with criminal conspiracy - Conviction and sentence of life imprisonment - Upheld by High Court - Held: The manner in which the crime was committed indicates that it was a pre-planned murder - There was no material contradiction, embellishment or improvement in the deposition of eye-witness - High Court re-appreciated the evidence and upheld the findings of fact recorded by trial court observing that ocular evidence was in conformity with medical evidence and it was a clear case of conspiracy - Findings recorded by courts below do not warrant interference.

(ii) s.120-B - Criminal conspiracy - Ingredients of - Explained.
(Also see under: Evidence; and Evidence Act, 1872)

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(3) s.304-B - Dowry death - Held: One of the essential ingredients of the offence

must have subjected a woman to cruelty in connection with demand of dowry soon before her death - In the instant case, there is nothing to establish that deceased was harassed for dowry soon before her death - As the essential ingredient of s.304-B has not been established by prosecution, trial court and High Court were not correct in holding the appellant guilty of offence of dowry death u/s 304B - Evidence Act, 1872 - s.113-B.

(ii) ss.498-A and 306 - Cruelty and abetment of suicide - Held: The dying declaration of deceased as well as the evidence of her father are sufficient to establish that appellant used to fight on petty issues and give beatings to deceased, which drove her to commit suicide - Appellant had, thus, committed offences punishable u/ss 498A and 306 - Appellant convicted u/ss 498-A and 306 and sentenced to imprisonment for one year under the first count and imprisonment for 3 years under the second count - Evidence Act, 1872 - s.113-A.

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(4) ss.498, 304-B and 306 - Demand for dowry by bride's husband and his parents - Death of bride by consuming poisonous substance - Conviction of husband by courts below - Upheld.

(ii) ss.304-B and s.306 - Dowry death - Chemical examination of viscera - Held: Not mandatory in every case of a dowry death - Even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable u/s 304-B or u/s 306 takes place - In a case of unnatural death inviting s.304-B IPC (read with the presumption u/s 113-B of Evidence Act) or s.306 IPC (read with the presumption u/s 113-A of Evidence Act) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary.

(iii) ss.304-B and 306 - Dowry death and suicide

- Held: ss.306 and 304-B are not mutually exclusive
- If a conviction for causing suicide is based on s.304-B, it will necessarily attract s.306 - However, the converse is not true.

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PRACTICE AND PROCEDURE:

Promotion - Challenged before High Court in writ petition - Persons junior to respondents, but promoted, not arrayed as parties in writ petition filed by respondents - Writ petition allowed by High Court - Held: Once respondents are promoted, the persons who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of principles of natural justice - Judgments of single Judge and Division Bench of High Court are set aside - However, the finding of High Court holding that circular dated 26.7.2006 was not applicable as the controversy relating to promotion pertained to the year 1996-97, is unexceptionable and is concurred with - Service law - Government of Rajasthan Circular dated 26.7.2006 - Rajasthan Police Service Rules, 1954.

State of Rajasthan v. Ucchab Lal Chhanwal 20

PREVENTION OF CORRUPTION ACT, 1988:

s.2(c)(viii) - 'Public servant' - Appellant a Municipal Councillor and Member of Municipal Board - Held: Is a public servant within the meaning of s.2(c) - Clause (viii) of s.2(c) makes any person, who holds an office by virtue of which he is authorized or required to perform any public duty, to be a public servant - Word 'office' in the context would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it - Councillors and Members of Municipal Board are positions u

Municipalities Act -- They perform various duties which are in the field of public duty - Rajasthan Municipalities Act, 1959 - s.87 - Penal Code, 1860 - s.21.

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RAJASTHAN MUNICIPALITIES ACT, 1959:

s.87 of Rajasthan Act r/w s.21, IPC and s.2(c)(viii) of PC Act - 'Public servant' - Appellant, a Municipal Councilor and Member of Municipal Board - Held: By s. 87 of Rajasthan Municipalities Act, Legislature has created a fiction that every Member of Municipal Board shall be deemed to be a public servant within the meaning of s. 21, IPC - Thus, appellant is a public servant within the meaning of s.21,IPC - Penal Code, 1860 - s.21 - Prevention of Corruption Act, 1988 - s.2(c)(viii).

(Also see under: Prevention of Corruption Act, 1988)

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RAJASTHAN POLICE SERVICE RULES, 1954:

(See under: Practice and Procedure) 20

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

(i) ss. 2(zc) and 2(zf) - Security interest - Original title deeds of properties deposited with bank creating equitable mortgage against loan - Held: Security interest, within the meaning of s.2(zf) has been created in respect of the properties in question which are secured assets within the meaning of s.2(zc), in favour of the secured creditor (the bank) within the meaning of s.2(zd) - On failure to re-pay, the bank can always enforce its security interest over the secured assets.

(ii) ss.13(4), 17 and 34 - Title deeds deposited with bank as security against loan - Borrower failed to repay the loan - Bank sold the property after publishing the auction notice - Suit by plaintiff's

claiming the property as HUF property - Held: In case the borrower fails to discharge his liability, the bank can take the "measures" provided in s.13(4) for recovery of the loan amount - s.17 confers a right of appeal to any person, aggrieved by any of the "measures" referred to in sub-s. (4) of s.13 taken by the secured creditor - Expression 'any person' used in s.17 is of wide import and takes within its fold the borrower, the guarantor as also the plaintiffs in the suit as well - Thus, irrespective of the question whether the civil suit is maintainable or not, under the Act itself, a remedy is provided to such persons so that they can invoke provisions of s.17, in case the bank (secured creditor) adopts any measure including the sale of secured assets, on which plaintiffs claim interest.

(iii) s.34 r/w s.35 - Civil court not to have jurisdiction - Held: Civil court jurisdiction is completely barred, as regards the "measure" taken by a secured creditor under sub-s. (4) of s.13 against which an aggrieved person has a right of appeal before DRT or Appellate Tribunal to determine as to whether there has been any illegality in the "measures" taken - Bank, in the instant case, has proceeded only against secured assets of borrowers - In the circumstances, High Court was in error in holding that only civil court has jurisdiction to examine as to whether the "measures" taken by secured creditor under sub-s. (4) of s.13 were legal or not - Judgment of High Court is set aside - Code of Civil Procedure, 1908 - s.9.

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WORDS AND PHRASES:

'Office' - Connotation of - Prevention of Corruption Act, 1988.

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