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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

(2013) 7 Supreme Court Cases 57

RAJINDER SINGH (DEAD) BY LRS
VS
DELHI COLLEGE OF ENGINEERING

Land Acquisition Act, 1894 – S. 23 – Compensation – Market value – Factors for consideration – Large contiguous extent of land acquired (more than 700 bighas) – Adjoining land/Land in adjacent village(s) – Value of – Consideration of – High Court relying on its earlier decisions wherein it had considered sale deeds of similarly situated land besides others factors to determine value of land at Rs 42,000 per bigha – Land in present matter adjoining the lands in said other cases – Held, High Court's reasoning in determining value of land based on value of adjoining land is justified, but there is no warrant for making any deduction therefrom – Hence, modifying the rate fixed, value of land enhanced to Rs 50,000 per bigha in terms of earlier decision of High Court

(2013) 7 Supreme Court Cases 62

S. IYYAPAN
VS
UNITED INDIA INSURANCE COMPANY LIMITED AND ANR

A. Motor Vehicles Act, 1988 – Ss. 149, 146 and 147 – Third – party insurance – Insurer's liability to pay compensation to third party (victim of accident) – Breach of condition of insurance policy – Effect of – Compensation to third party, reiterated, has to be paid by insurer even in such a case – Insurer may proceed against insured for recovery of amount paid in such an event

B. Motor Vehicles Act, 1988 – Ss. 149(2) (a) (II), 146, 147, 3 and 10 – Third – party insurance – Insurer's liability to pay compensation – Defence by insurer as to breach of condition of policy excluding driving by person who is not duly licensed – Availability of – Commercial light motor vehicle (i.e. Mahindra Maxi Cab), which was insured – Met accident while it was being driven by a person holding licence to drive light motor vehicle - But no endorsement in said licence to drive light motor vehicle used as commercial vehicle – Effect thereof – Held, mere absence of said endorsement in license could not be a ground for insurer to disown its liability to pay compensation to third party – More so when third party had statutory right to recover compensation from insurer and it was for insurer to proceed against insured for recovery of amount paid to third party in case there was any breach of condition of insurance policy

C. Motor Vehicles Act, 1988 – Ss. 146, 147 and 149 – Third – party insurance of vehicle – Compulsory duty imposed under MV Act to obtain such insurance – Object and purpose thereof, reiterated

D. Motor Vehicles Act, 1988 – S. 149(2) – Third – party insurance – Insurer's liability – Defences available to insurer against insured person

**SATYA JAIN (DEAD) THROUGH LRS. AND ORS
VS**

ANIS AHMED RUSHDIE (DEAD) THROUGH LRS. AND ORS

Contract and Specific Relief – Specific Relief Act, 1963 – S. 16 (c) – Readiness and willingness to perform his part of agreement on part of appellant-plaintiff – Determination of – Business efficacy principle – Applicability – Suit for specific performance of agreement for sale of/to sell suit property decreed – Decree of trial court set aside by High Court invoking principle of business efficacy to interpret contract to hold that appellant-plaintiff failed to fulfil his part of contract by not paying balance sale consideration to defendant and also on ground of limitation – Sustainability

Held, principles of business efficacy can be invoked to ascertain intended meaning of parties only when terms of agreement/contract are ambiguous or are not clear – In instant case, per agreement, purchaser had no obligation to tender any further payment directly to vendor – Further, Cl. (7) of agreement is clear as to liability of appellant-plaintiff to pay remaining sale consideration to Income Tax Department on request of defendant to get tax clearance certificate, upon which appellant-plaintiff insisted – Hence, held, High Court erred in invoking principles of business efficacy to tweak terms of agreement to hold appellant-plaintiff failed to fulfil his obligations – Further held, time during which defendant was absent from India has to be excluded in computing period of limitation for filing of suit – Since defendant was factually absent from India for certain period prior to filing of suit by appellant-plaintiff, said period is liable to be excluded – Thus, excluding said period, held, suit was well within time – Limitation Act, 1963 – S. 15 (5) – Exclusion of period of absence of defendant from India – Held, is liable to be excluded from computing limitation for filing suit – Words and Phrases – “Business efficacy” principle

Limitation Act, 1963 – S. 15 (5) – Exclusion of period of absence of defendant from India – Held, is liable to be excluded for computing limitation period for filing suit – Suit for specific performance of agreement for sale of/to sell suit property – Decree of trial court set aside on ground that suit was barred by limitation – Tenability – Held, time during which defendant absent from India has to be excluded in computing period of limitation for filing of suit – Since defendant was factually absent from India for certain period prior to filing of suit by appellant-plaintiff, said period is liable to be excluded – Thus, excluding said period, held, suit was well within time – Contract and Specific Relief – Specific Relief Act, 1963 – S. 9 – Limitation Act, 1908, S. 13

Contract and Specific Relief – Specific Relief Act, 1963 – S. 20 – Exercise of discretion under – Norms for – Efflux of long time after agreement and escalation of value of property meanwhile – Effect of, on offer much higher price/market price at date of specific performance – Effect – Balancing both the issues i.e. efflux of time after said agreement and escalation of value of real estate – Held, relief of specific performance of agreement cannot be denied on ground of efflux of time and escalation of price of property meanwhile – However, in order to balance both the issues, based on plaintiff’s offer Supreme Court awarded additional compensation to vendor by granting market value than what had been stipulated in agreement – Hence, in light of plaintiff’s offer directed that sale deed that will now have to be executed by defendants in favour of plaintiffs will be for the market price of suit property as on the date of present order – As no material, whatsoever is available to enable the Court to make a correct assessment of market value of suit property as on date, trial Judge directed to undertake the said exercise as expeditiously as possible in the prevailing facts and circumstances

Contract and Specific Relief – Construction/Interpretation of contract – General principles of Business efficacy principle – When applicable – Held, principles of business efficacy can be invoked to achieve intended meaning of parties only when terms of agreement/contract are ambiguous or are not clear – Further, when a term of agreement/contract is not clear, said principle is invoked to read a term in an agreement or contract so as to ascertain intention to parties acting as prudent businessmen – Said principle should be applied only where the term that is sought to be read as implied only when it can be said that it was clearly intended by parties at the time of making of agreement – Evidence Act, 1872, Ss. 91 and 92

Contract and Specific Relief – Specific Relief Act, 1963 – S. 16 (C) – Readiness and willingness to perform obligation – Test as to – Held, no straitjacket formula can be laid down but depends on overall conduct of parties to agreement prior and subsequent to filing of suit – In instant case, appellant-plaintiff was, at all times, ready and willing to perform his part of contract – On the contrary it was defendant who had defaulted in execution of sale document – Insistence of defendant on further payments by plaintiff directly to him and not to Income Tax Authorities as per agreement, held, was not justified – No blame can be attributed to plaintiff for not complying with said demand(s) of defendant

(2013) 8 Supreme Court Cases 389

REKHA JAIN

Vs

NATIONAL INSURANCE COMPANY LIMITED and Ors

- (A) Motor Vehicles Act, 1988 – Ss. 166 and 168 – Compensation – Permanent partial disability – Functional disability arising therefrom – Loss of a chance/opportunity – Compensation for loss of future earnings – Yardstick for quantification – Extent of functional disability caused – Nature of vocation/career/job of claimant victim and ability to pursue career/loss of career as a result of the accident – Relevance of – Even though claimant does not suffer 100% physical permanent disability, he/she, held, could suffer from 100% functional disability if he loses capacity to pursue his work (loss of career) as a result of the accident
- Appellant, film and TV actress, aged 27 yrs and earning ₹ 5,00,000 p.a. [as assessed by Supreme Court], injured in motor accident – Permanent partial disablement and disfigurement of face – Inability to perform roles as actress in films and TV in future i.e. loss of her career had resulted – Permanent disability reckoned at only 30% by Tribunal and High Court for determining compensation – Sustainability – Held, for a film actress, physical appearance particularly facial features are very important – On account of the accident her face was disfigured, she had put on weight and therefore was unable to perform roles as an actress in films/on TV in future – Having regard to nature of vocation, opportunity is lost on account of disfigurement of her face – Hence, appellant's permanent disability should be treated as she cannot act in films and TV serials in future at all – Functional disability is a forceful alteration/closure of career option of appellant who has already undergone physical and mental injuries because of the accident – Hence, she is entitled to higher compensation – Courts below did not apply guiding legal principles laid down to award just and reasonable compensation under heading of future loss of earnings – Tribunal awarded ₹ 23,51,726 as total compensation amount which was reduced by High Court to ₹ 14,00,000 – Supreme Court awarding ₹ 42,50,000 towards loss of future earnings enhancing compensation amount to ₹ 79,66,000 along with interest of 6% p.a. from date of application till date of deposit of amount – Total Law – Compensation/Damages – Entertainment, Amusement and Leisure – Performers/Entertainers – Rights of – Debt, Financial and Monetary Laws – Interest – Compensation as interest/Interest on compensation
- (B) Motor Vehicles Act, 1988 – Ss. 168 and 166 – Compensation - Computation of income – Loss of a Chance/opportunity – Loss of future earnings – Rule of thumb in Sarla Verma, (2009), 6 SCC 121, applied – Annual income of claimant film actress assessed at ₹ 5,00,000 p.a. – It would be just and proper to take 50% of her annual income for computation of her loss of future income keeping in view that throughout her life she may not be in a position to act in films, albums and modeling, which is ₹ 2,50,000 p.a. – Proper multiplier is 17 considering her age of 24 yrs at the time of accident - ₹ 42,50,000 compensation awarded under this head – Tort Law – Compensation/Damages – Loss of a chance/opportunity – Future prospects – Quantification of damages
- (C) Motor Vehicles Act, 1988 – Ss. 166 and 168 – Permanent partial disability – Compensation – Non-pecuniary heads under which compensation to be granted are : 1) damages for mental and physical shock, pain and suffering already undergone/likely to be undergone in future, (2) damages for loss of

amenities of life on account of injury, (3) damages for the loss of expectations of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life – Compensation substantially enhanced by Supreme Court under these heads – Tort Law – Compensation/Damages

- (D) Motor Vehicles Act, 1988 – Ss. 173, 170 and 149(2) – Insurer’s right to appeal – Grounds that may be taken by insurer in defence – Limits on – Findings of fact – When may be challenged by insurer in appeal – Findings of fact – When may be challenged by insurer in appeal – Finding of 30% permanent partial disability – Absence of challenged by insurer – Held, finding of fact had attained finality – Finding recorded by Tribunal on this important aspect on basis of legal evidence not challenged either by owner of truck that had caused accident or by insurer – Insurer could not have challenged the said finding without obtaining permission as required under S. 170(b) to avail defence of insured to contest the case – In the absence of such permission, insurer has limited defences as provided under S. 149(2), which provides for the conditions which determine breach of the terms and conditions of insurance policy – Hence, both Tribunal and High Court gravely erred both on facts and in law in not evaluating legal evidence on record to award just and reasonable compensation in favour of the appellant claimant

(2013) 8 Supreme Court Cases 491

UTTAR PRADESH POWER CORPORATION LIMITED AND ORS

Vs

ANIS AHMAD

- A. Consumer Protection Act, 1986 – Ss. 2(1)(b) and 2(1)(d) – “Consumer”/“Complainant” – Electricity matters – Maintainability of complaint before Consumer Forum – Complaint against final order of assessment under S. 126, Electricity Act, 2003 in respect of “unauthorized use of electricity” by persons having electrical connections for industrial/ commercial purposes – Words “complainant” and “consumer” in Ss. 2(1)(b) and 2(1) (d) of Consumer Protection Act, 1986 – Scope of
- Order of National Commission allowing complaint, holding it was complainant’s option to file complaint either under Consumer Protection Act or to file appeal under S. 127 of Electricity Act, 2003 – Order of National Commission, held, erroneous – Person(s) availing services for “commercial purpose” do not fall within meaning of “consumer” in S. 2(1)(d), Consumer Protection Act, 1986 and cannot be a “complainant” for purpose of filing a “complaint” before Consumer Forum – Transactions of persons indulging in “unauthorized use of electricity” under S. 126, Electricity Act, 2003, do not come within ambit of “complaint” – Therefore, a complaint against assessment under S. 126 of the 2003 Act is not maintainable before Consumer Forum – Words and Phrases – “Consumer”, commercial purpose” – Electricity Act, 2003, Ss. 126, 127 135 to 140 and 153
- B. Consumer Protection Act, 1986 – S. 2(1)(d) – “Consumer” – Electricity matters – Consumer complaint in respect of – When maintainable – A “consumer” within meaning under S. 2(1)(d) may file a valid complaint in respect of supply of electrical or other energy, if the complaint contains allegation of unfair trade practice or restrictive trade practice; or there are defective goods; deficiency in services; hazardous services or a price in excess of the price fixed by or under any law, etc. – Person(s) availing services for “commercial purpose” do not fall within meaning of “consumer” and cannot be a “complainant” for the purpose of filing a “complaint” before the Consumer Forum – Services – Electricity
- C. Consumer Protection Act, 1986 – S. 2(1)(d) – “Consumer” – Electricity – Scope – Position vis-à-vis S. 2(15), Electricity Act, 2003 – Held, under Electricity Act, 2003, “consumer” includes any person who is supplied with electricity for his own use by a licensee and also includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, irrespective of the fact whether such person is supplied with electricity for his own use or not – Per contra, under S. 2(1)(d) of Consumer Protection Act, 1986 those who were supplied with electricity for commercial purpose and those who do not avail services for consideration,

irrespective of electricity connection in their premises do not come within the meaning of “consumer” – Electricity Act, 2003 – S. 2(15) – Words and Phrases – “Consumer”

- D. Consumer Protection – Consumer Forums – Jurisdiction and powers of Consumer Forum – Exclusion of jurisdiction – Electricity matters – Assessment in case of various acts of “unauthorized use of electricity” constituting “offences” under Electricity Act, 2003 – Complaint against assessment made under S. 126 or action taken against those committing offences under Ss. 135 to 140 of Electricity Act, 2003, held, is not maintainable before a Consumer Forum – Civil court’s jurisdiction to consider a suit with respect to the decision of assessing officer under S. 126, or with respect to a decision of the appellate authority under S. 127 is barred under S. 145 of Electricity Act, 2003 – Therefore, it is clear that after notice of provisional assessment to the person alleged to have indulged in unauthorised use of electricity, the final decision by an assessing officer, who is a public servant, on the assessment of “unauthorised use of electricity” is a quasi-judicial decision and does not fall within the meaning of “consumer dispute” under S. 2(1)(e) of Consumer Protection Act – Offences referred to in Ss. 135 to 140 can be tried only by a Special Court constituted under S. 153 of Electricity Act, 2003, hence, also the complaint against any action taken under Ss. 135 to 140 of Electricity Act, 2003 is not maintainable before Consumer Forum – Electricity Act, 2003 – Ss. 126, 135 to 140 – U.P. Electricity (Consumers) Regulations, 1984
- E. Infrastructure Laws – Energy and Power – Electricity – Electricity Act, 2003 – Ss. 173, 174 and 175 – Scope - Saving of provisions of Consumer Protection Act, 1986 in case of inconsistency in statutes – Effect – Held, in case of inconsistency between Electricity Act, 2003 and Consumer Protection Act, 1986, provisions of Consumer Protection Act will prevail, but ipso facto the same will not vest Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of “service” or “complaint” as defined under Ss. 2(1)(0) and 2(1) (c) of Consumer Protection Act, 1986 – Hence, by virtue of S. 3 of Consumer Protection Act, 1986 or Ss. 173, 174 and 175 of Electricity Act, 2003, Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under S. 126 or offences under Ss. 135 to 140 of Electricity Act, as the acts of indulging in “unauthorized use of electricity” do not fall within the meaning of “complaint” as defined under S.2(1)(c) of Consumer Protection Act, 1986 – Consumer Protection Act, 1986, Ss. 3, 2(1)(0) & (c)

SUPREME COURT CITATIONS CRIMINAL CASES

(2013) 4 MLJ(Crl.) 399 (SC)

Sunil Dutt Sharmai
Vs
State (Govt. of. NCT of Delhi)

Criminal Procedure – Punishment – Quantum of sentence – Indian Penal Code, 1860, Section 304B – Trial court acquitted Accused/Appellant of offence under Section 302 of IPC but found him guilty under Section 304 B of IPC – Sentence of life imprisonment imposed – Conviction and sentence affirmed by High Court – Appeal – Whether sentence of life imprisonment imposed on accused/Appellant for commission of offence under Section 304 B of IPC is in any way excessive or disproportionate – Held, death of wife of Accused/Appellant occurred within two years of marriage – Presence of demand for dowry and evidence of cruelty or harassment – Autopsy report showed external marks of injuries but case of death of deceased resulted from strangulation – Trial Court acquitted accused of offence under Section 302 of IPC on benefit of doubt as no evidence that accused caused strangulation – Offence under Section 304B of IPC held to be established but does not disclose any extraordinary, perverse or diabolic act of part of Accused/Appellant – Accused/Appellant has infant son – No previous record of crime – Maximum punishment of life imprisonment cannot be awarded to Accused/Appellant – Impugned order modified and punishment of ten years RI imposed for commission of offence under Section 304B of IPC – Appeal partly allowed.

(2013) 4 MLJ(Crl.) 499 (SC)

Gurjant Singh @ Janta
Vs
State of Punjab

Criminal Procedure – Narcotics – Possession of contraband – Search – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 15, 42 and 50 – Allegation that illicit article seized from possession of Appellant – Appellant alleged violation of Sections 42 and 50 of NDPS Act, that search not conducted in presence of Gazetted Officer or Magistrate – Trial Court convicted Appellant holding that it was not necessary to comply with Section 50 of NDPS Act – Conviction confirmed by High Court – Whether Trial Court was justified in holding that compliance of Section 50 of NDPS Act was not applicable – Whether High Court failed to exercise its jurisdiction in dismissing the appeal – Held, compliance under Section 50 of holding search and seizure in presence of Gazetted Officer or Magistrate not empty formality – Offer to be searched in presence of Gazetted Officer or Magistrate, serves purpose of ensuring bona fide effort by prosecution to establish truth – Section 50 ensures holding of search and seizure, not farce of exercise to falsely implicate – Trial Court wrongly omitted to examine whether P.W.3 who stated to be D.S.P. was competent Gazetted Officer to validate search – Trial Court failed to appreciate whether search or seizure held in accordance with Sections 42 and 50 – High Court failed to independently examine correctness of findings – Sentence and conviction without any ratiocination, set aside – Appeal allowed.

(2013) 4 MLJ(Crl.) 507 (SC)

Shree Mahavir Carbon Ltd
Vs
Om Prakash Jalan (Financer) and Anr

Criminal Procedure – Quashing of complaint – Reasons for decision – Code of Criminal Procedure, 1973, (2 of 1974), Section 482 – Lower Court took cognizance and issued summons to respondent – Respondent applied for quashing of complaint – High Court, by impugned judgment, set aside order taking cognizance on ground that dispute was of civil nature – Whether High Court justified in quashing order taking cognizance without citing

reasons for holding dispute between parties to be civil in nature – Held, objective in giving judgment is to make effective, practical and workable decision – Court to record sufficient reasons to arrive at particular decision – Reasons to demonstrate that decision arrived at on objective consideration – No discussion as to how and on what basis High Court accepted plea of respondents that case was of rendition of accounts simplicitor and civil in nature – Matter remanded – High Court to take note of arguments of complainant justifying cognizance of complaint and arguments of respondents that case was pure civil dispute – Conclusion to be backed by reasons as to why arguments of complainant are meritless and for accepting case of accused persons – Impugned judgment set aside – Appeal allowed.

2013-2-L.W.(Crl) 581

Ganga Singh
Vs
State of Madhya Pradesh

I.P.C., Section 376,

Evidence Act, Sections 146, 157/Rape, Corroboration whether necessary – Burden on prosecution.

Corroboration in material particulars of the evidence of the prosecutrix – Whether needed in case of rape.

Omission in evidence by not stating about seizure of dhoti, etc. – Effect of - Need for a question in cross-examination – Effect of.

Section 146 – Effect of – When a witness is cross-examined, he may be asked any question which tend to test his veracity – Absence of any question – No ground to doubt the veracity of her evidence.

Section 154 – Other evidence to corroborate testimony of a witness – Scope, Effect – Appellant had not taken defence of consent, Appellant has committed rape.

2013-2-L.W.(Crl) 719

Shridhar Namdeo Lawand
Vs
State of Maharashtra

Practice/ Criminal appeal, Court not to decide in absence of Counsel, appointing of amicus curiae, duty of Court,

Prevention of Corruption Act (1988), Sections 7, 13(1)(d)/Criminal Appeal, absence of counsel,

None appeared for the appellant accused before the High Court.

Court should not decide criminal case in the absence of the counsel for the accused – An accused in a criminal case should not suffer for the fault of his counsel – Court should, in such a situation must appoint another counsel as an amicus curiae to defend the accused.

Duty of the appellate court to look into the evidence adduced in the case to arrive at an independent conclusion as to whether the said evidence can be relied upon or not – If it can be relied upon, whether prosecution can be relied upon, whether prosecution can be said to have been proved beyond reasonable doubt on the said evidence – Credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts – Appellant ordered to be released on bail.

HIGH COURT CITATIONS CIVIL CASES

(2013) 7 MLJ 35

B. Dhanam

Vs

P. Usha Rani and Ors

Civil Procedure – Executing Court – Jurisdiction of – Code of Civil Procedure, 1908, Order 21 Rules 97 to 101 read with Section 151 – Suit for specific performance filed by Petitioner, decreed – 4th Respondent was sole Defendant – Sale deed executed by Trial Court – Execution petition terminated – Respondents 1 to 3/legal heirs of 4th Respondent sought direction to determine their rights and share in suit property – Suit for declaration, possession and injunction filed by Respondents 1 to 3 – Subsequently separate suit filed by Respondents 1 to 3 for partition – District Court ordered for transfer of case – Civil revision petition – Whether petition filed by Respondents 1 to 3 should be decided by Executing Court or it should be transferred and tried along with partition suit – Held, as per Rules 97 to 101 of Order 21, Executing Court has power and jurisdiction to decide all questions raised by Respondents 1 to 3 – Purpose and object of introduction of Rules is to avoid technical objections by allowing Executing Court itself to decide questions and not by separate suit – Duty cast upon regarding right, title or interest in property, notwithstanding provisions of any other law to the contrary – Suit for partition filed much after initiation of execution proceedings – Application filed by Respondents 1 to 3 ought not to have been transferred to be tried along with original suit – Civil revision petition allowed.

(2013) 7 MLJ 49

M.K. Selvaraj and Anr

Vs

Hameed Fathima Ghani

- (A) Tenancy Law – Eviction – Sub-letting – Property let out by Respondent/Landlady to 1st Petitioner for vegetable Vending – Petition filed by Respondent/landlady seeking eviction of Petitioners – Grounds of wilful default, act of waste, sub-letting, public nuisance and personal occupation raised – Rent Controller allowed petition on grounds of wilful default, act of waste, sub-letting and public nuisance – On appeal, Appellate Authority confirmed order of eviction on grounds of wilful default, act of waste and sub-letting, rejected ground of public nuisance – Civil Revision Petition – Whether 1st Petitioner has sub-let the premises without consent of landlady – Held, Property taken on lease only by 1st Petitioner for running his own business in said premises – Claim that both Petitioners are doing business jointly cannot be accepted as true – If joint business is being done, no necessity for putting up separate boards – There cannot be any presumption of joint business – 1st Petitioner bound to prove that presence of 2nd Petitioner in the premises is with landlady’s permission, when landlady denied the same – Rent received through some one, on behalf of tenant alone does not mean landlord has accepted sub tenancy – Material evidence to be placed to show that recognition from landlord is in express terms – No material placed to prove such permission – 1st Petitioner has sub-let premises to 2nd Petitioner without permission of landlady – On that ground alone orders passed by lower courts are to be sustained, Petitioners liable to be evicted – Civil Revision Petition dismissed.
- (B) Tenancy Law – Eviction – Wilful default – Whether tenant has committed wilful default – Held, landlord entitled to receive only one month agreed rent by way of advance – Any amount in excess of same liable to be refunded to tenant or adjusted towards rent at the option of tenant – When amount not refunded then landlord bound to adjust the same towards rental arrears due from tenant – Defaulted period is only three months – Attempts made by tenant to pay the rent, which landlady refused to accept – Still an amount is retained by landlady in excess by way of advance – Landlady cannot maintain eviction petition without refunding the amount to Petitioner – Petitioner has not committed any default much less wilful

default – Orders passed by Lower courts in ordering eviction on the ground of wilful default not sustainable.

- (C) Tenancy Law – Eviction – Act of waste – Whether tenant has committed act of waste – Held, Property let out only for vegetable vending – Storing of vegetables being an automatic business activity, cannot be found fault with – Landlady cannot have any objection that vegetable will become rotten causing damage to the property – Lower Courts have only observed that storage of vegetables would definitely damage the property – Not specifically found that property was in fact damaged – No material placed to show that property was actually damaged – Unless real damage assessed and placed before court with substantive evidence, relief of eviction on ground of act of waste cannot be granted – Mere anticipation or presumption cannot be construed as assertion of damage – Ground of act of waste should be rejected.
- (D) Tenancy Law – Remittance of rent – Tamil Nadu Buildings (Lease and Rent Control) Act, Section 8(5) – Application filed by Petitioner/Tenant seeking deposit of rent into court – Appeal filed by petitioner also dismissed – Civil Revision Petition – Whether tenant entitled to remit rent though Court by filing application under Section 8(5) of Act – Held, Tenant had not committed wilful default – All steps taken to tender rent to Landlady in accordance with law – When such tender refused, tenant entitled to remit same through Court by filing application under Section 8(5) – Order passed by Lower Courts in dismissing application unsustainable – Though Civil Revision Petition filed by tenant on ground of Wilful default, Act of waste allowed, Civil revision petition filed on ground of sublet dismissed – Petitioner/Tenant liable to be evicted.

(2013) 7 MLJ 66

Kamalakannan and Ors
Vs
Kasthuri and Anr

- (A) Family Law – Coparcenary rights – Hindu Succession Amendment Act, 2005 (Central Act 39/2005) – Tamil Nadu Act 1 to 1990 – 1st Defendant having one son and four daughters in first marriage, after death of first wife married 1st Plaintiff – 2nd Plaintiff is son of 1st Defendant and 1st Plaintiff – Plaintiff filed suit for maintenance and partition of suit property – Trial Court decreed maintenance suit – Trial Court also passed preliminary decree for partition directing division of suit properties except absolute properties of 1st Defendant's mother into six equal shares and allotted one such share to 2nd plaintiff – On appeal Lower Appellate Court modified decree in respect of partition holding 2nd plaintiff was entitled to 8/42 share and 1st plaintiff was entitled to 1/42 share – Second appeal – Whether 2nd Plaintiff and Defendants 1 to 5 entitled to 1/6th equal shares as coparceners and Whether 6th appellant would have become a coparcener by virtue of amendment brought to Hindu Succession Act by Act 39 of 2005 - Held, 6th Appellant had not become a coparcener during lifetime of first defendant by virtue of Central amendment and even by virtue of Tamil Nadu Act 1 of 1990, since she was married prior to amendment – 1st defendant, was not alive on the date from which amendment effected by Act 39 of 2005 was brought into effect – Birth of 2nd Plaintiff caused further enlargement of coparcenary – Share claimed by plaintiffs for second plaintiff as 1/6th share is correct – Trial court and lower appellate court rightly held that second plaintiff is entitled to 1/6th share in coparcenary properties as a coparcener – Second plaintiff and defendants 1 to 5 alone constituted coparcenary and each one of them entitled to 1/6th share in coparcenary property – Second appeal partly allowed.
- (B) Family Law – Division of interest – Whether finding of lower appellate court that 1st Plaintiff entitled to 1/42 share and 2nd Plaintiff's share be enhanced to 8/42 share sustainable – Held, Lower Appellate Judge failed to consider whether 1st Defendant who died during pendency of the appeal, died intestate or had left any Will – 1st Defendant himself, during pendency of suit, stated that he executed will in respect his separate properties – Will which had been executed even prior to the filing of suit, is registered will – There is no prohibition for a coparcener to make a testamentary disposition of his interest in coparcenary property even by Act 39 of 2005 – Procedure adopted by lower appellate judge directing division of interest of 1st Defendant in coparcenary property on assumption that he died intestate, perverse and unwarranted – Question of proof of genuineness of and properties affected by Will have not been discussed or decided by Lower Appellate Court – Parties not given any opportunity of leading

evidence - Lower Appellate Court unnecessarily went into question of succession to interest of 1st Defendant in coparcenary property – Finding that 1st Plaintiff entitled to 1/42 share and 2nd Plaintiff's share be enhanced to 8/42 share cannot be sustained – Parties to work out their claims regarding succession to 1/6 interest of first defendant who died pending disposal of first appeal in a separate suit – Decree modified.

- (C) Family Law – Partition – Coparcenary property – Whether Lower Courts right in holding that all properties except absolute properties of 1st Defendant's mother are coparcenary properties – Held, 1st Defendant inherited few acres of ancestral land from his father – All other properties purchased either in his name or in name of his mother – No evidence to prove that he had any separate independent source of income other than income derived from ancestral properties – Out of income derived from ancestral property, other properties purchased – Not only properties inherited by 1st Defendant from his father, but also properties purchased by him are coparcenary properties – Properties that stand in name of 1st Defendants mother cannot be claimed to be coparcenary property – Lower Courts rightly concluded that properties described in plaint schedule except absolute properties of 1st Defendants mother, all other suit properties are coparcenary properties.

(2013) 7 MLJ 112

A.L. Govindarajulu (Died) and Ors

Vs

C.R. Jaganathan & Brothers, Coimbatore and Ors

Family Law – Partnership – Debt – 1st Defendant Partnership Firm in which 2nd Defendant and his brother were partners, borrowed sum from Plaintiff executing promissory note – 2nd Defendant's brother died leaving behind Defendants 3 and 4 as Legal Representatives – Suit filed for recovery of amount as against Defendants – Trial Court decreed suit holding that promissory note will not bind 2nd Defendant – Defendants 3 and 4 liable to pay amount to extent of property inherited by them – Appeal – Whether deceased joined Partnership Firm in capacity of Karta of joint Hindu family, making debt binding on 2nd Defendant – Held, when 2nd Defendant denied status as partner, burden on Plaintiff to prove that 2nd Defendant was partner along with deceased brother – Plaintiff to prove that 2nd Defendant liable to pay debt – No evidence let into prove that 2nd Defendant was partner in Firm – No pleading that deceased as Karta of family entered into partnership and incurred loan for family – Trial Court rightly held that 2nd Defendant cannot be liable for amount borrowed by deceased – Defendants 3 and 4 as Legal Representatives of deceased are liable to pay debt to extent of property inherited by them – Appeal dismissed.

(2013) 7 MLJ 457

Karuppathal and Ors

Vs

Muthusami and Anr

Property Law – Redemption of mortgage – Limitation Act, 1963, Article 61(a) (b) – Suit property mortgaged to original mortgagee with clause on redemption – Original mortgagee without informing Plaintiffs, assigned property to another person/assignee, who sold property to 1st Defendant's father – 1st Defendant further sold property to 2nd Defendant – Plaintiffs filed suit for redemption against Defendants – Suit dismissed by Trial Court and same confirmed by Appellate Court – Second Appeal – Whether Lower Courts justified in holding that suit barred by limitation, as Plaintiffs did not prove that suit was filed within 12 years from date of knowledge of sale deed – Held, suit for redemption entertained by Trial Court in absence of legal representative of original mortgagee or assignee – Lower Courts held that relevant documents not filed to prove date of knowledge of Plaintiffs about sale deed – Claim that Plaintiffs had knowledge about deeds only on seeing encumbrance certificates, not considered by Lower Courts – Simply because encumbrance certificates not filed, Plaintiffs cannot be deprived opportunity to place relevant facts before Court – Court to consider whether date of obtaining encumbrance certificates constitutes actual date of knowledge – Lower Courts adverted to oral evidence to hold that Plaintiffs had knowledge on possession of property by their parties – Should have been specific finding based on evidence about precise alleged knowledge by Plaintiffs – Lower Courts not justified in holding that suit barred by limitation –

Lower Courts not decided case properly – Matter remanded to First Appellate Court to adduce additional evidence – Directions issued – Second appeal disposed of.

(2013) 7 MLJ 471

Jayamoorthy and Ors
Vs
Palani and Ors

Civil Procedure – Additional Evidence – Code of Civil Procedure, 1908, Order 41 Rule 27 and Rule 28 – Suit filed by first respondent for partition, separate possession and for mesne profits – Suit dismissed by trial court – On appeal, first appellate court, reversed – Second appeal – Whether first appellate court failed to follow procedure of law in marking documents filed as additional evidence at a belated stage – Held, there is no discussion as to reasons for failure to produce documents before trial court itself – Finding that production of said document absolutely necessary in the interest of justice for rendering a proper and complete justice also absent – Error committed in not following procedure contemplate under Order 41 Rule 27 and Rule 28 CPC in dealing with application seeking permission to adduce additional evidence in appellate stage – which clauses of Rule 27 was relied on for allowing said application, permitting 1st Respondent to adduce additional evidence, not been indicate – Averments made in the affidavit filed in support of application and averments made in counter affidavit of opposite party also not been discussed – Points on which additional evidence to be adduced needs to be indicated in order allowing application – First appellate court, either in ignorance of said provision or in disregard for same, omitted to follow procedure – Grave error in law committed in simply marking documents procedure by first respondent giving them exhibit numbers and referring them in judgment of lower appellate court – Admissibility, genuineness and reliability of documents produced along with application being challenged – First appellate court should not have chosen to simply mark documents as exhibits and proceed with disposal of appeal - Procedure for taking additional evidence in appellate stage not followed – Judgment and decree of First appellate court set aside – Second appeal allowed.

(2013) 7 MLJ 490

V. Jeevaramamoorthy
Vs
Ms. Sabana Berween

Tenancy Law - Eviction – Commercial property – Tamil Nadu Buildings (Lease and Rent Control) Act, Section 10(3) (a) (iii) – Civil revision petition against order of eviction – Whether requirement of petition premises by Respondent/landlady was bonafide and in accordance with Section 10(3)(a)(iii) – Held, Respondent requires petition premises for her own occupation for purpose of running coconut business – It was proved that landlady was not owning any other premises other than petition premises – Landlady was running coconut business already at different place – No necessity for her to show preparatory work Absence of any preparatory work cannot be put against landlady to contend that there was no bonafide on her party – Requirement of landlady was genuine and bonafide – Tenant had not established that landlady had threatened him to vacate suit property – Order passed by Appellate Authority in ordering eviction is perfectly valid – Civil revision petition dismissed.

(2013) 7 MLJ 496

B. Vijay Venkatasamy and Ors
Vs
Jain Housing and Constucitons Ltd. Rep. by its general Manager S. Palaniappan

Property Law – Injunction – Balance of convenience – Arbitration and Conciliation Act, 1996, Secitons 11, 37 – Agreement entered into between Appellant and Respondent for joint venture and development of Appellant's property – Appellant received a sum from Respondent as refundable security deposit – Appellant informed by Respondent that property to be developed along with adjacent property on joint approval – Appellant terminated agreement and revoked powers of attorney – Respondent moved Arbitration Petition seeking injunction against Appellant – Injunction ordered - Civil Miscellaneous Appeal – Whether Respondent entitled to relief of injunction restraining Appellant from alienating or encumbering property – Held, Respondent without concurrence of Appellant, sought to effect joint development both of Appellant as also adjacent property, which delayed obtaining of requisite approvals – As on date Respondent not in position to carry forward joint development agreement –

Balance of convenience lies in favour of Appellant – As Appellant willing to repay sum, there could be no irreparable injury to Respondent not entitled to discretionary relief of injunction unless established that it is capable of avoiding inconvenience caused to other side by its conduct – Order passed by Lower Court set aside.

(2013) 7 MLJ 853

Santhi and Ors
Vs
Sivamurughan and Anr

Motor Vehicles – Enhancement of compensation – Fatal accident – Tribunal awarded compensation – Appeal for enhancement of compensation – Whether compensation awarded to claimants is liable to be enhanced – Whether gross salary or net salary should be taken as basis for calculating loss on account of monetary loss – Held, compulsory deductions on account of payment of income-tax/professional tax cannot be counted towards head ‘salary’ for computation of loss – Deductions made towards future benefit of person earning should not be counted/subtracted from total amount payable to person earning – Deduction towards contributions like General Provident Fund, Family Benefit Fund and Special Provident Fund should not be omitted while considering monthly contribution of deceased to family – Only gross salary to be considered for quantifying compensation and not net salary – Tribunal wrong in not taking into account, future anticipated increase in income – When no proof for salary, 30% increase to be considered for Government employee – Total compensation enhanced – Appeal allowed.

(2013) 7 MLJ 881

Manonmani Sundarraj (deceased) and Ors
Vs
Jalal Hajee Abdul Karim Sahib Trust rep. by its Secretary and Managing Trustee, J.A. Rahman

Civil Procedure – Appeals – Transfer of Property Act, Section 106 – Suit for eviction by plaintiff – Defendants pleaded adverse possession - Trial Court dismissed suit, as possession – Trial Court dismissed suit, as notice under Section 106 to TP Act not issued – Plaintiff not appealed, instead Defendants preferred appeal – Alleged that Trial Court not considered Defendants’ plea of adverse possession – First Appellate Court dismissed appeal – Second Appeal – When original suit itself is dismissed, whether it is necessary for Defendants to file appeal – Held, Defendants pleaded that original suit filed by Plaintiff was dismissed on ground that notice under Section 106 was not served – Now, Plaintiff issued notice under Section 106 of TP Act and filed now suit against Defendants – Defendants apprehended that as their plea was rejected in earlier suit, same will affect resisting of new suit – Once main suit of plaintiff itself dismissed, its prayers become in-executable – Cannot press into service res judicata or estoppels in new suit – Defendants need not have filed first appeal and second appeal – Findings in earlier suit would not be an embargo for pending new suit.

HIGH COURT CITATIONS CRIMINAL CASES

2013 – 4 – L.W. (CrI) 280

K.A. Thirupathi Raja
Vs

Aswin Kotnis, I.P.S., Superintendent of Police, Salem and Ors

Criminal Law – Forcible eviction – Police Officials – Petitioner purchased property adjacent to 5th Respondent's property – 5th Respondent obtained order from Court that in case of encroachment by Petitioner, 5th Respondent shall approach Respondent Police for assistance – Police Official Respondents entered into property in possession of Petitioner, forcibly ejected him from property at the instance of 5th Respondent – Criminal Original Petition – Whether Police Official by misusing and misrepresenting order of Court, dispossessed Petitioner from subject property – Whether positive direction to be issued to Respondent Police to put Petitioner into possession of subject property – Held, 5th Respondent already lodged complaint against Petitioner alleging trespass into property is in possession of disputed property – Entire dispute between parties purely civil in nature – Respondent Police has no right to dispossess Petitioner from subject property when there is no positive direction from Court to evict Petitioner from subject property – Legality of possession of property by petitioner to be decided only in Civil Court – Possession of subject property taken forcibly by 5th Respondent only with help of police officials – Court cannot give positive direction to Respondent police to put Petitioner into possession of subject property as delivery of possession can be ordered only by Civil Court – For wrong doing of Police, Petitioner can seek only civil remedy by claiming damages before appropriate forum – Criminal Original Petition disposed of.

2013 – 4 – L.W. (CrI) 323

K. Vadivelu
Vs

Rangasamy and Ors

Criminal Procedure – Complaint – Return of – Code of Criminal Procedure, 1973, Sections 200, 202, 204 and 156(3) – Petitioner Presented complaint under Section 200 of Code complaining commission of cognizable offences by certain persons – Magistrate returned complaint to Petitioner – Whether Magistrate erred in returning complaint to Petitioner without taking any action – Held, Magistrate has to record statement of complaint and witness and can order police investigation under Section 202 Code – If prima facie case found, Magistrate can take cognizance and issue summons to accused under Section 204 and under Section 156(3) he can direct police to register case and investigate – Failure to choose appropriate mode – Without taking action, Magistrate has no power to return complaint – Code of Criminal procedure does not authorize returning of private complaint by Magistrate – Direction issued – Petition disposed of.

2013 – 4- L.W. (CrI) 354

S. Nalini
Vs

State rep. by Inspector of Police, Vellore and Anr

Criminal Procedure – Quashing of proceeding – Prison offences – Code of Criminal Procedure, Section 482 – Prisons Act, 1894, Sections 42, 46 and 52 – Tamil Nadu Prison Rules, 1983, Rule 301 – Prison offences alleged to be committed inside cell of Petitioner / Prisoner – Allegation that Petitioner / Prisoner found with cell phone, did not allow jail officials to seize it and committed act of indiscipline – Superintendent conducted enquiry and awarded major punishment – Subsequently, Superintendent made complaint against Petitioner / Prisoner – Petition for quashing proceeding – Whether criminal proceeding initiated against Petitioner / Prisoner liable to be quashed – Whether prosecuting Petitioner / Prisoner before Magistrate was justified when Jail Superintendent has already awarded major punishment as per Rule 301 of Tamil Nadu Prison Rules 1983 – Held, When offences committed

inside prison, Rule 301 gives choice to Superintendent, either to proceed in exercise of power under Jail Rules or proceed against prisoner before Magistrate – Superintendent, cannot again be prosecuted and punished before Magistrate – Superintendent already opted one mode by which punishment was awarded to Petitioner / Prisoner – No jurisdiction to proceed further against Petitioner / Prisoner – When there is no jurisdiction to proceed with criminal proceedings, to secure ends of justice, it has to be halted in exercise of inherent power – Entire pending proceedings quashed – Petition disposed of.

(2013) 4 MLJ (Cr.) 385

Udhaya @ Udhayakumar and Ors

Vs

State, rep. by the Asst. Commissioner, Chennai

Criminal Law – Lurking and Murder – Indian Penal Code, 1860, Sections 120-B, 460, 460 r/w 120 B, 382 r/w 120-B, 302 r/w 34, 302 r/w 120-B – Conviction and sentence – Allegation that pursuant to conspiracies, Appellants/accused entered into house for looting wealth and murdered deceased/D1 to D3 – Trial Court convicted for offences of triple murder, conspiracy and theft – Whether conviction and sentence passed by Trial Court against Appellants/accused are sustainable – Held, clear that pursuant to conspiracies, Appellants/accused entered house of deceased/D1 for looting wealth – Evidence proves that Appellants/accused not intended to commit heinous crime of murder of deceased/D1 to D3 – No identification parade conducted to identify Appellants/accused – No specific evidence as to how Appellants/accused entered house of deceased as it was locked inside – Recovered material objects not sent to Court – Defects fatal to case of prosecution and to be rectified – How Appellants/accused divided jewels and currencies belonging to deceased has to be investigated – Case to be split up as, crime before and after date of occurrence – Matter remitted to CBI for reinvestigation afresh – Conviction and sentence set aside – Directions issued – Appeals allowed.

(2013) 4 MLJ (Cr.) 462

K. Saravanan and Ors

Vs

ICICI Bank Limited, represented herein by its Chief Manager N. Anandakumar

Criminal Procedure – Quashing of complaint – Dishonour of cheque – Liability of Director – Code of Criminal Procedure, Section 482 – Negotiable Instruments Act, Sections 138, 141(1) and (2) – Cheque issued by 1st accused/Company to discharge debt, dishonoured – Company lodged against Petitioners/accused 2 to 6 being Directors of 1st accused/Company, in control and management of day to day affairs – Petition filed to quash complaint – Whether complaint against Petitioners/accused 2 to 6 liable to be quashed – Whether there should be specific allegation in complaint for offence under Section 138 NI Act as to how Petitioners/Directors are responsible for conduct of business of accused/Company – Held, to fasten vicarious liability against persons responsible to company for conduct of business, averment that accused is in control and management itself is sufficient – Petitioners are Directors of 1st accused/Company and fall under Section 141(1) of Act – Allegation in complaint that Accused 2 to 6 being Directors are in control and management of Company is sufficient to maintain complaint – No valid ground to quash complaint – Petition dismissed.

(2013) 4 MLJ (Cr.) 485

Thiyagu @ thiyagarajan

Vs

State rep. by the Insepector of Police B 2 R.S. Puram (Crime) Police Station Coimbatore

Criminal Laws – Robbery – Indian Penal Code, Section 392 read with Section 397 – Allegation of robbery against appellant/A.1 and co-accused A.2 and A.3 – Appellant/A.1 convicted – Co-accused A.2 and A.3 acquitted by Trial Court – Appeal offence punishable under Section 392 read with Section 397 based on evidence of eye witnesses, justifiable – Held, conducting of Test Identification Parade not sine qua non if from circumstances guilt of accused established – No provision in Cr.P.C. which obligates investigating agency to claim test identification parade – Test identification Parade conducted by P.W.8(Judicial Magistrate) not substantive piece of evidence – Omission to mark Test Identification proceedings in Trial Court not fatal – Unavailability of photograph of damaged

bus on record not of much relevance – P.W.1 (Conductor) and P.W.2 Driver clearly identified appellant/A.1 – Witnesses spoke about role played by appellant/A.1 in commission of offence – Prosecution proved charge against appellant/A.1 under Sections 392 read with 397 IPC beyond all shadow of doubt – Conviction and sentence upheld – Appeal dismissed.

2013 – 2 –L.W. (CrI.) 631

S. Yuvaraj

Vs

State rep. by the Inspector of Police, Gobichettypalayam

Criminal Procedure Code, Sections 280, 303, 304, 309 (2)/Right of accused, Presence of defence Counsel, Assistance of a lawyer,

I.P.C., Sections 302, 380/Right of accused, Presence of defence Counsel, Assistance of a lawyer,

Constitution of India, Articles 21, 22, 39-A/Right of accused, Presence of defence Counsel, Assistance of a lawyer,

Practice/Examining accused in absence of defence counsel, not proper, trial judges, role of method to follow.

Principal Sessions Judge, Erode in his report stated because of the Advocates boycott, the defence counsel was not present – And as usual he had examined witnesses in chief in the absence of defence counsel.

Most trial Court Judges, in the habit of recording the evidence of prosecution witnesses in the absence of defence counsel, Sessions Judges can invoke power u/s. 309(2), Cr.P.C. and adjourn the case.

Trial of a person without the assistance of a lawyer militates against the constitutional promises.

A counsel on behalf of the accused/defence shall participate in the trial proceedings – It is part of the right of the accused persons.

Procedure adopted by the learned Principal Sessions Judges, Erode of examination of witnesses – In chief, in the absence of his counsel is not a fair procedure and it is in violation of right of the accused.

2013- 2 -LW (CrI.) 640

M/s. Durairaj Mills Ltd. Etc.

Vs

M/s. Siruvanee Clothing Company rep. By its Partner R. Mohanasundaram, No.66-A, Raja Annamalai Road, Saibaba Colony, Coimbatore – 11 & Ors

Negotiable Instruments Act (1881), Section 87/ 'material alteration'; what is; Section 138/Cheques, issued by Partner of a firm, material alteration, when arises,

Evidence Act, Section 34, statement of books of account, admissibility of,

Partnership Act (1932), Negotiable instrument, material alteration, liability of partner.

2 cheques were issued wherein original dates were scored out and written – When presented, they were returned as 'account closed' – Cheques issued by one of the partners, alteration made whether authorized by other partner – 'Material alteration', what is.

Held: No evidence whether the second respondent/A2 (Partner) and another partner viz., third Respondent/A3 had signed Exs. P2 and P3 prior to any correction/alteration of the date viz., on the original dates

mentioned therein – No evidence to show that the alteration of date mentioned in Exs.P2 and P3 were made by the second respondent/ A2 without the consent or concurrence of the third Respondents were not examined as witnesses.

No bar against the voluntary revalidation of a negotiable instrument by the drawer after the lapse of its validity Period.

2013- 2 -LW (CrI.) 657

Sridhar
Vs

State rep. By Special Sub-Inspector of Police, Avinashipalayam Police Station, Tiruppur District

I.P.C., Section 420/Quashing of FIR, for cheating,

Criminal Procedure Code, Section 482/Quashing of FIR for cheating – Loan obtained – Allegation of grabbing property by cheating for repayment of loan, by selling it at meagre price – Execution of Power of attorney – Effect of – Similar allegation of obtaining title document from others and selling for lesser price and causing wrongful loss.

Allegation do not contain the ingredients of cheating literally by word by word – It could be inferred from circumstances, including the property from the defacto-complainant.

Not necessary that a false pretence should be made in express words by the accused – Prima facie there is a case for investigation.

2013 – 2 –L.W. (CrI.) 685

Thiyagu @ Thiyagarajan
Vs

State rep. by The Inspector of Police B2 R.S. Puram (Crime) Police Station Coimbatore

I.P.C., Sections 392,397.

Highway robbery in bus - Ingredients proved – In a highway robbery, the value of stolen property is not the criterion whereby the quantum of punishment is to be decided.

Salient features of robbery, what should the prosecution prove – Conductor of the bus identified A1 – Since the Test Identification Parade conducted by PW8 (Judicial Magistrate) is not a substantive piece of evidence, the omission to mark in the trial Court is not fatal.
