

CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS

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ADVOCATE, CHENNAI.



CORE PRINCIPLE

- Innocent unless proven guilty
- Guilt beyond reasonable doubt
- In certain legislations the burden shifts to the accused if the Prosecution proves basic facts Negotiable Instruments Act, Cruelty against Women, (498 IPC) Sexual intent in POCSO
- DEJURE AND DEFACTO SITUATION

Babu v. State of Kerala, (2010) 9 SCC 189

- Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence.
- For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction.

BABU VS STATE OF KERALA CONTINUED

- Statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. ***However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.***

Kali Ram Vs Himachal Pradesh, (AIR 1973 SC 2773 Justices HR Khanna, Hans Raj, Alagirisamy, Sarkaria and Ranjit Singh)

“There are certain cases in which statutory presumptions arise regarding the guilt of the accused.

but the burden even in those cases is upon the, prosecution to prove the existence of facts which have to be present before the presumption can be drawn.”

ELEMENTS OF A FAIR TRIAL

PRE TRIAL STAGE

Rights on arrest- Ought not to be arbitrary

Production within 24 hours- information on the grounds, (Article 22 of the Constitution of India)

role of court to ask the accused about treatment at the time of arrest- details of arrest etc
Medical examination if the accused so desires

Information to a family member Police station to keep an entry

At the stage of police custody- once again similar role

Right to a counsel- language known to the accused- interpreters (section 303 Crpc)

POWERS OF A MAGISTRATE

- The magistrate can pass directions to ensure that a “proper investigation” is made
- The magistrate has “ all such powers which are necessary to ensure that a proper investigation is made “ which include “ monitoring” an investigation. (Sakiri Vasu vs State of U.P. and others 2008 2 SCC 409)

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- Bail- “ Bail not Jail” Justice Krishna Iyer. Discretionary
 - The more heinous the crime the greater chance of rejection though it depends on the facts of the case.
 - Non cooperation with investigation
 - Threats to witnesses
 - Fear of absconding.
 - Anticipatory Bail
 - Under trial prisoners Hussainara Khatoon AIR 1979 1369

SPECIAL LEGISLATIONS UNLAWFUL ACTIVITIES PREVENTION ACT

- Court to pursue the court diary or the police report (charge sheet) and if it is of the opinion that there are reasonable grounds for believing that the accusation against the person is prima facie true it can reject it. (43 D 5)
- Non Indian citizen denied bail under this Act except under exceptional circumstances
- House arrest evolving principle

TRIAL STAGE

- Right to a lawyer free legal aid from the stage of production before the magistrate (Khatari vs State of Bihar 1981 2 SCC 493)
- Right of accused to know the allegations
- Right to be tried in the presence of the accused
- Right to get copies of all documents
- Rights at during trial- chief, cross and re examination, to examine himself etc
- Questioning of the accused by the Court-
- Right to recall witness

COURT'S POWER TO EXAMINE THE ACCUSED

SECTION 313 CRPC

- At any stage without warning the accused the Court can put questions to the accused as it considers necessary
- Also after the witnesses for the prosecution are examined and before the accused proceeds with the defense, question about the case.
- Accused has right not to answer
- Answers given by the accused may be taken into consideration by the court for or against him in any other enquiry for any other offence if it tends to show he has committed the offence.

SHRI SURJIT BISWAS VS STATE OF ASSAM

ROLE OF COURT IN SECTION 313

- It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. audi alterum partem.
- This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. <http://indiankanoon.org/doc/168007417/>

CONTINUED

- The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.

SURJIT BISWAS CONTINUED

- In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete.
- No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him.

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WITNESS PROTECTION SCHEME 2018 FORMULATED BY THE SUPREME COURT

- Providing police escort
- Using audio visual means for recording testimony
- Safehouse
- Providing new identity
- Relocation of witnesses in extreme cases

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- 3 Categories of threat perceptions
 - A life threatening to the witness or family members
 - B threat extends to the safety, reputation or property of the witness or family members
 - C where the threat is moderate and extends to harassment or intimidation
 - (all from the investigation stage)

Addressing hostile witness due to their vulnerability

Witness Protection Scheme 2018

Class A- witness or family members get threats to their life

Class B – Safety, reputation, and property of the witness and his family members during investigation

Class C- threat only extends to harassment to witness and his family members during proceedings

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- Witness Protection Order to be passed by authority including courts
 - Measures
 - Installation of security cameras,
 - Regular patrolling, and recce of the witness's house
 - Monitoring the call records, e mails messages etc
 - Relocation of the witness based on the threat analysis report
 - Emergency contact numbers provided by the witnesses