

The Crime & Justice Gazette

NEWSLETTER BY GNLU CENTRE FOR RESEARCH IN CRIMINAL JUSTICE SCIENCES

"Fear can hold you prisoner but hope can set you free"

-The Shawshank Redemption

He admitted that he had perfected the skill of cutting bodies in such a way that there was little blood oozing out after mutilation.

A woman cannot be forced to live with her husband even when the court decrees the restitution of conjugal rights of her husband.

- Gujarat High Court



A HOLIDAY SPECIAL: MURDERS OF THE HOLIDAY SEASON

MESSAGE FROM THE CENTRE-HEAD

May the truth always win and good triumph over evil.

It is my utmost pleasure to write this message in the third edition of the Crime and Justice Gazette, a newsletter by the GNLU Centre for Research in Criminal Justice Sciences. Truth, courage & bravery, these qualities are a must for every criminal case that is to be instituted, investigated and tried.

Our Hon'ble Director Sir, Prof Dr. S. Shanthakumar, who laid the foundation of this centre, two years before, made its mandate clear that GCRCJS should bring out study, research and training in every aspect of criminal justice and the present Newsletter, is one step ahead in the same direction.

This is the result of the hard work of our student team, which has infinite zeal and never ending motivation. I wish the team every success and also hope that this newsletter will fill the gap of information in the field of Criminal laws for its readers. My best wishes to the student convener (Nihal), who has made this newsletter a reality, to the editors, to every team member as contributors, and every reader, who will let us know improvements and enable further excellence in this endeavor.



Dr. Anjani Singh Tomar

MESSAGE FROM THE TEAM

The GNLU Centre for Research in Criminal Justice Sciences, ever since its inception, is making continuous efforts to improve the culture of Research and Analysis in the field of Criminal Law and Justice System. The Centre has seen new heights in the past three months after the new team for the Academic Year 2021-22 was constituted. In the said time, we have managed to successfully conduct one National Essay Writing Competition; a Certificate Course on Cyber Crime, Cyber Forensics and Law (in collaboration with National Forensic Sciences University, Gandhinagar and Police Academia Interactive Forum); three sessions of “Crime & Justice: A Discourse Series” on some of the pertinent topics having great contemporary relevance; several research posts for our instagram page. The centre provides a platform for a holistic research environment and aims to further knowledge and academic discussions about the multifaceted dimensions of criminal science.

GNLU Centre for Research in Criminal Justice Sciences is committed to achieving a goal of motivating law students to do research, especially in criminal law. And, for the same here we are with our first ever newsletter 'The Crime & Justice Gazette' which aims to cover contemporary developments as well as criminal law cases and events from the past.

We would like to express our heartfelt gratitude to our Hon'ble Director Sir, Prof Dr. S. Shanthakumar, for his unwavering support, as well as our Faculty Convenor, Dr. Anjani Singh Tomar, for believing in us and encouraging us to pursue our research in every possible direction.

Disclaimer

The authors' opinions expressed in the newsletter are their own, and neither GCRCJS nor GNLU is responsible for them. The case briefs solely summarise the current state of the cases' verdicts or orders, and do not cover anything with respect to future proceedings or appeals. The newsletter is only for internal circulation in GNLU and will be available on the GCRCJS official webpage on a later date.

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P R E F A C E

Criminal law is a dynamic study of law that undergoes development at every curve of dawn. This newsletter attempts to encapsulate the recent advancements in criminal law through various judgements, movie reviews and report analysis.

To begin, the author has presented a comprehensive study of the landmark case, *Joseph Shine v. Union of India*. The brief provides an in-depth examination of the judgement, as well as observations and case analysis. Several in-news case briefs on recent decisions and rulings have also been compiled in the Recent Developments section.

The newsletter explains how serial killer Chandrakant Jha murdered and mutilated several persons and scattered their remains in and around Delhi. It also features a holiday special article, which talks about horrendous murders which have taken place around the world in the Yuletide season. In addition, to raise your legal understanding, we have an article dedicated to laws against sharing obscene images. We've also provided a movie review of *The Shawshank Redemption* for the cinephiles. The fun doesn't stop there; there's also a mind-boggling legal crossword for you to solve! Also, please be sure to check the answer of last issue's riddle!

RECENT DEVELOPMENTS

SHREYA GUPTA AND SWETHA SOMU

Gopi @ Saravanan v. State & Anr. (Crl.R.C.No.708 of 2014)

In the Madras High Court

Held that the lack of physical and violent resistance by the rape victim will not make it a consensual act.

Section 375 of Indian Penal Code, Section 90 of Indian Penal Code, Section 114-A of the Indian Evidence Act, Section 376 Indian Penal Code.

The victim was raped at the age of 17 when she went out for grazing cattle. Although when the horrific act was committed on her, she did not exert any valiant and violent effort on her part. Her brother, who was the witness of the act, claimed that she was indeed subjected to rape. Relying on statement given by the prosecution witness and the forensic and medical evidence, the magistrate and sessions judge were convinced of rape.

The appeal to the High Court was made to lower the sentence to less than seven years because the victim was no more and that the accused himself has become an alcoholic and was undergoing treatment in hospital. To this, the HC referred to Shimbhu and Ors. Vs. State of Haryana where the Supreme Court held that in regards to the offence of rape, nor the socio-economic condition or the element of time concerning the accused cannot give rise to 'special reasons' for lowering the sentence from the prescribed minimum.

Hence, basising its judgment on Shimbhu case, the High court held the trial court's sentence of seven years with a fine of 500Rs while reiterating that the objective of punishing rape is to act as a deterrent in our society.

Jinnat Fatma Vajirbhai Ami W/o Nishat Alimadbhai Polra v. Nishat Alimadbhai Polra

In the Gujarat High Court

Woman cannot be forced to live with her husband even when the court decrees the restitution of conjugal rights of her husband.

Section 282 of the Mohammedan Law, Order XXI Rule 32(1) and (3) CPC.

The appellant-wife left her matrimonial house without telling anyone and also without any lawful ground. The lower court, despite many tries to reconcile both the parties, had failed hence the respondent-husband moved to the family court under Section 282 of the Mohammedan Law for the restitution of his conjugal rights.

The Banaskantha family court allowed the plea by the husband and directed the wife to return to her matrimonial home.

The High court stated that the grant of conjugal rights doesn't wholly depend on the husband's right but the family court should answer whether it would make it inequitable for it to compel the wife to live with her husband.

The court observed that the Mohammedans marriages are a civil contract and the plea for restitution of conjugal rights is a specific performance of that contract hence it becomes and equitable relief under the court's discretion.

However, the court pointed to Order XXI Rule 32(1) and (3) CPC and stated that the decree for restitution of conjugal rights is unenforceable except through attaching properties of the opposite party or through mesne profits.

In this matter, the court found no property of the wife that could be attached hence allowed the wife's appeal by setting aside the decree given by the family court.

**Sandeep Aggarwal v. Priyanka Aggarwal,
2021 SCC OnLine Del 5521**

In the Delhi High Court

Failure to disclose mental disorder before marriage constitute perpetration of fraud so as to grant divorce

Section 28 of the Hindu Marriage Act, 1995 read with Section 19 of the Family Courts Act, 1984.

The appellant-husband has been married to the respondent-wife for 16 years now. The appellant stated that the respondent was suffering from Acute Schizophrenia since before marriage itself and this was not disclosed by the respondent family before marriage.

The appellant tried to cure her illness by taking her to hospitals yet there was no improvement hence he questioned her parents about her mental health. Subsequently her father took the respondent to her maternal home and since then has been living there. In contrary, the respondent has filed a restitution of conjugal rights stating that the appellant, his family and friends have been in contact with her even before marriage and that she wasn't mentally ill prior and during the marriage.

The court after finding enough evidence that she was suffering schizophrenia before marriage annulled the marriage between them Section 12(1)(b) of the Hindu Marriage Act and stated that it is fraud on the part of the respondent for not disclosing her mental disorder before marriage.

**Ajay Kumar Shukla v. Arvind Rai (2021
SCC OnLine SC 1195)**

In the Supreme Court of India

Consideration for promotion has become a fundamental right even when the Right to promotion is not considered to be a fundamental right.

Rule 5 of the Uttar Pradesh Government Servants Seniority Rules, 1991, Rule 5 of the U.P. Engineering Service (Minor Irrigation Department) Rules, 1991.

The appellants from the Department of Minor Irrigation belonged to Civil and Mechanical stream while the private respondents were from Agriculture stream. The appellants stated that the department had made three lists (civil, agriculture, mechanical) using the sequence as they received along with the basis of seniority within the respective candidate in the list.

The single judge bench of Allahabad HC quashed the seniority lists and issued a writ of mandamus for the respondents to draw a fresh seniority list as per Rule 5 of the Uttar Pradesh Government Servants Seniority Rules, 1991. However, the inter court appeal to a division bench overturned the judgment stating that since the writ petitioners didn't object to the final seniority lists, the same is deemed accepted because the same would be barred by the principle of acquiescence.

Rule 5 of the U.P. Engineering Service (Minor Irrigation Department) Rules, 1991 provides for the selection of one person on the basis of merits while Rule 8 states that seniority inter se of persons appointed from the result of that particular selection must match with merit list prepared by the commission/committee.

In this case, there was one selection to be made from the three streams and since there was only one cadre of juniors, there was a seniority list to be made. Hence the court ruled that Appointing Authority had committed an error in the manner in which the seniority list was prepared by placing the three select lists forwarded by the Commission on different dates one after the other en bloc as per the date of receipt of three select lists.

The senior lists were made separately for the three streams hence acting contrary to Rules 5 and 8 of Rules 1991. The seniority list should

have been prepared on the basis of merit and if otherwise, it will lead to the infringement of the right of consideration for promotion of a meritorious candidate.

The SC bench overturned the division bench which dismissed the writ petition and that the single judge bench was right in issuing a writ of mandamus. The final seniority list was set aside and directed the authority to prepare a new seniority list which complies with the Rule 5 and 8 of 1991.

**Taijuddin v. State of Assam & Ors.,
(Criminal Appeal No. 1526 of 2021)**

In the Supreme Court of India

The mere fact that the appellant was not brave enough to conceal where the victim was hiding does not make him a part of the unlawful assembly.

**Sections 147/148/324/302/201 read with
Section 149 of the IPC.**

A house was being built on the victim's land when the accused persons came to the victim's house armed with various weapons. The victim. In order to protect himself, went into one person's house which eventually did not help him as his walls were ultimately brought down and the accused persons assaulted the victim. The victim's body was disposed of in the river.

The 32 accused persons were charged under Sections 147/148/324/302/201 read with Section 149 of the IPC and the sessions judge granted life imprisonment to all the accused. The accused brought an appeal to the High Court where the division bench convicted some and gave the benefit of doubt to some. The unsuccessful accused approached these courts and their SLPs were dismissed too. Only the appellant's (Taijuddin) SLP was issued notice as his role in the crime was pointing out the house where the victim was hiding from.

The court found that the appellant did not have any weapons with him and since his house was adjacent to the victim's hiding place he was

present at that spot. The testimonies produced were inconsistent and there was no evidence for common intention to kill the victim. The counsel for appellant referred to Subal Ghorai v. State of West Bengal to safeguard the innocent bystander appellant of false implications.

Thus, the court found that the mere pointing to the house, with his presence at the site being reasonable as his house was near the crime area, and that the appellant had no common intention nor any motive to kill the victim hence proving beyond reasonable doubt that he is not guilty under Section 147/148/302/201/149. Hence the same was set aside and the appellant was acquitted.

**Ram Ratan v State of Madhya Pradesh
(2021 SCC OnLine SC 1279)**

In the Supreme Court of India

To constitute a charge under Section 397 IPC, it is not necessary to prove that the offender has put the weapon/firearm to "use".

Section 397 of Indian Penal Code, 1860

Rajesh Meena, the complainant alleged that while he was sleeping in his hut, the appellant along with Raju alias Rajendra and Chotu came and woke him up. Raju had a gun which he pointed towards the chest of the complainant and demanded to part with the money. The complainant informed that he did not have any money, due to which the key of his motorcycle and his mobile phone were taken. Thereafter, all the three accused persons forced the complainant to sit on the motorcycle along with them.

When they reached the village Nanawat, the motorcycle got punctured and therefore all the persons compelled the complainant to get down from the motorcycle and the motorcycle was taken away. The complainant narrated the incident to his uncle and a complaint was lodged thereafter. The police, having taken action, recovered the motorcycle as well as the mobile phone and apprehended the accused. The police on completing the investigation filed the

the chargesheet against the appellant for the offences under Sections 392/397 of IPC.

The three judge bench held that the use of the weapon to constitute the offence under Section 397 of IPC does not require that the “offender” should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient.

Furthermore, if the charge of committing the offence is alleged against all the accused and only one among the “offenders” had used the firearm or deadly weapon, only such of the “offender” who has used the firearm or deadly weapon alone would be liable to be charged under Section 397 of IPC.

In the teeth of the offence under Section 397 of IPC being applicable to the offender alone, the vicariability of the same will also have to be noted if the charge against the accused under Sections 34, 149 of IPC and such other provisions of law, which may become relevant, is also invoked along with Section 397 of IPC. In such an event, it will have to be looked at differently in the totality of the facts, evidence and circumstances involved in that case and the provisions invoked in that particular case to frame a charge against the accused.

In the instant case, the charge under Section 34 of IPC was not framed against the appellant nor was such an allegation raised and proved against the appellant. It was held that the benefit of the interpretation raised on the scope of Section 397 of IPC to hold the aggressor alone as being guilty, will be available to the appellant if there is no specific allegation against him.

Kallu Khan v. State of Rajasthan (2021 SCC OnLine SC 1223)

In the Supreme Court of India

NDPS: ownership of vehicle, non-production of

contraband etc. are not fatal to the trial.

Sections 8 & 21 of Narcotic Drugs and Psychotropic Substances Act, 1985.

As per prosecution allegations, while on routine patrolling, police constables saw the accused Kallu Khan riding an unnumbered motorcycle and coming from the opposite direction. On seeing the police patrolling vehicle, Kallu Khan turned back and tried to run away. In enquiry about his behaviour, accused Kallu Khan did not give a satisfactory reply. As an independent witness could not be found immediately for search, constables were made witnesses and the accused Kallu Khan was given notice under Section 50 of NDPS Act informing that he could be searched before a Gazette Officer or Magistrate, on which, he gave his consent for search by S.H.O. in search of motorcycle, a polythene bag beneath the seat of motorcycle was found, containing brown substance resembling smack which was burnt on a paper and, from its smell, it was confirmed to be smack.

The substance weighed 900gms, out of which, two samples were prepared, sealed and marked as ‘A’ & ‘B’ respectively. On completion of investigation, a charge-sheet was filed against accused Kallu Khan before the Court of Special Judge, where charges under Sections 8 & 21 of NDPS Act were framed. The accused abjured his guilt and demanded trial taking defence of false implication.

The division bench went through a number of decisions on the Narcotic Drugs and Psychotropic Substance Act and reiterated certain principles relating to the degree of proof in such cases. When the seizure of the vehicle is proved beyond reasonable doubt, the question of ownership of the vehicle is not relevant. When the seizure of material is proved on record and is not even disputed, the entire contraband material need not be placed on record. If seizure is otherwise proved and the samples taken from and out of contraband material were kept intact;

the report of a forensic expert shows potency, nature and quality of contraband material, essential ingredients constituting offence are made out and the non-production of contraband in the Court is not fatal.

Further, the court held that merely because independent witnesses were not examined, the conclusion could not be drawn that accused was falsely implicated and in the present case, the appellant was unable to show any deficiency in following the procedure or perversity to the findings recorded by the Trial Court, affirmed by the High Court.

Hence, looking at the facts of the present case, it was held that the findings concurrently recorded by the Courts holding the accused guilty for the charges and to direct him to undergo sentence as prescribed did not suffer from any perversity or illegality warranting interference by the Supreme Court.

Jaikam Khan v. State of UP (2021 SCC OnLine SC 1256)

In the Supreme Court of India

Three death row convicts walk free as SC finds them “not guilty” of murdering six family members as the prosecution fails to prove the case beyond reasonable doubt.

Section 302/34 of the Indian Penal Code, 1860

The Prosecution alleged that the four accused i.e. Momin Khan, with his wife Nazra, along with Jaikam Khan (first cousin) and Sajid (Jaikam Khan's son) came armed with knives and assaulted Mausam Khan (father -85 years), Asgari (mother -80 years), Shaukeen Khan (brother), Shanno (sister-in-law- 30 years), Samad (nephew -8 years) and Muskan (niece-15 years) and killed them brutally.

The Trial Court convicted all the four accused for the offence punishable under Section 302/34 of the IPC and sentenced them to death. Further, Momin, Jaikam and Sajid were also convicted for the offence punishable under

Section 25/4 of the Arms Act and awarded rigorous imprisonment for a term of three years with a fine of Rupees Five Thousand and in case of default, they were to undergo additional imprisonment for a term of three months. While the conviction and sentence imposed on Momin, Jaikam and Sajid was affirmed, Nazra was acquitted by the High Court.

There were various inconsistencies and lacunae in the case of the prosecution and the three judge bench was “shocked” and “amazed” at the findings of the Trial Court and the High Court. It was observed that, “while coming to the conclusion that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt, we are at pains to observe the manner in which the present case has been dealt with by the trial court as well as by the High Court, particularly, when the trial court awarded death penalty to the accused and the High Court confirmed it.

The trial court and the High Court were expected to exercise a greater degree of scrutiny, care and circumspection while directing the accused to be hanged till death”. The Court held that the conviction and death sentences imposed on the accused were entirely unsustainable in law owing to the failure of the prosecution to prove the case beyond reasonable doubt. All the three convicts were thus acquitted.

Vinod Kumar v. Amrit Pal (2021 SCC OnLine SC 1150)

In the Supreme Court of India

Intention to cause death becomes irrelevant to prove an offence under Section 300 “Thirdly” IPC once the existence of all the ingredients is established.

Section 300 of the Indian Penal Code, 1860

One Vijay Singh, along with deceased Balveer Singh were forcibly taken in a vehicle. When the vehicle reached an unmetalled road, it stopped. Thereafter, the accused banged deceased Balveer

Singh flat on the ground. While the accused no.1 was holding Balveer Singh, the accused nos.4 and 5 started assaulting deceased Balveer Singh. There was no scope for Balveer Singh to resist. Thus, he was taken out of the vehicle and was forced to lie down on the ground. Thereafter, the accused started assaulting him.

Apart from the injuries on non-vital parts, there was a fracture of 6th to 10th ribs on the right side and the right lung was ruptured. Even the windpipe and food pipe were ruptured. There was an injury to the liver. The cause of death as certified by the Board was excessive bleeding due to injuries on vital parts like right lung as well as liver and the resultant shock.

The court held that “once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional”.

Furthermore, the Court noticed that the factum of bodily injuries, its nature and the intention to inflict the particular bodily injuries had been established in the case at hand. It was held that once the prosecution establishes the existence of the three ingredients forming a part of “thirdly” in Section 300, it is irrelevant whether there was an intention on the part of the accused to cause death. Further, it does not matter that there was no intention even to cause the injury of a kind that is sufficient to cause death in the ordinary course of nature. Even the knowledge that an act of that kind is likely to cause death is not necessary to attract “thirdly”.

Phool Singh v. State of MP (2021 SCC OnLine SC 1153)

In the Supreme Court of India

SC believes the woman’s sole testimony in case of rape in matrimonial home by a relative, finds acts of female members of the family “unfortunate”.

Section 376 of the Indian Penal Code, 1860

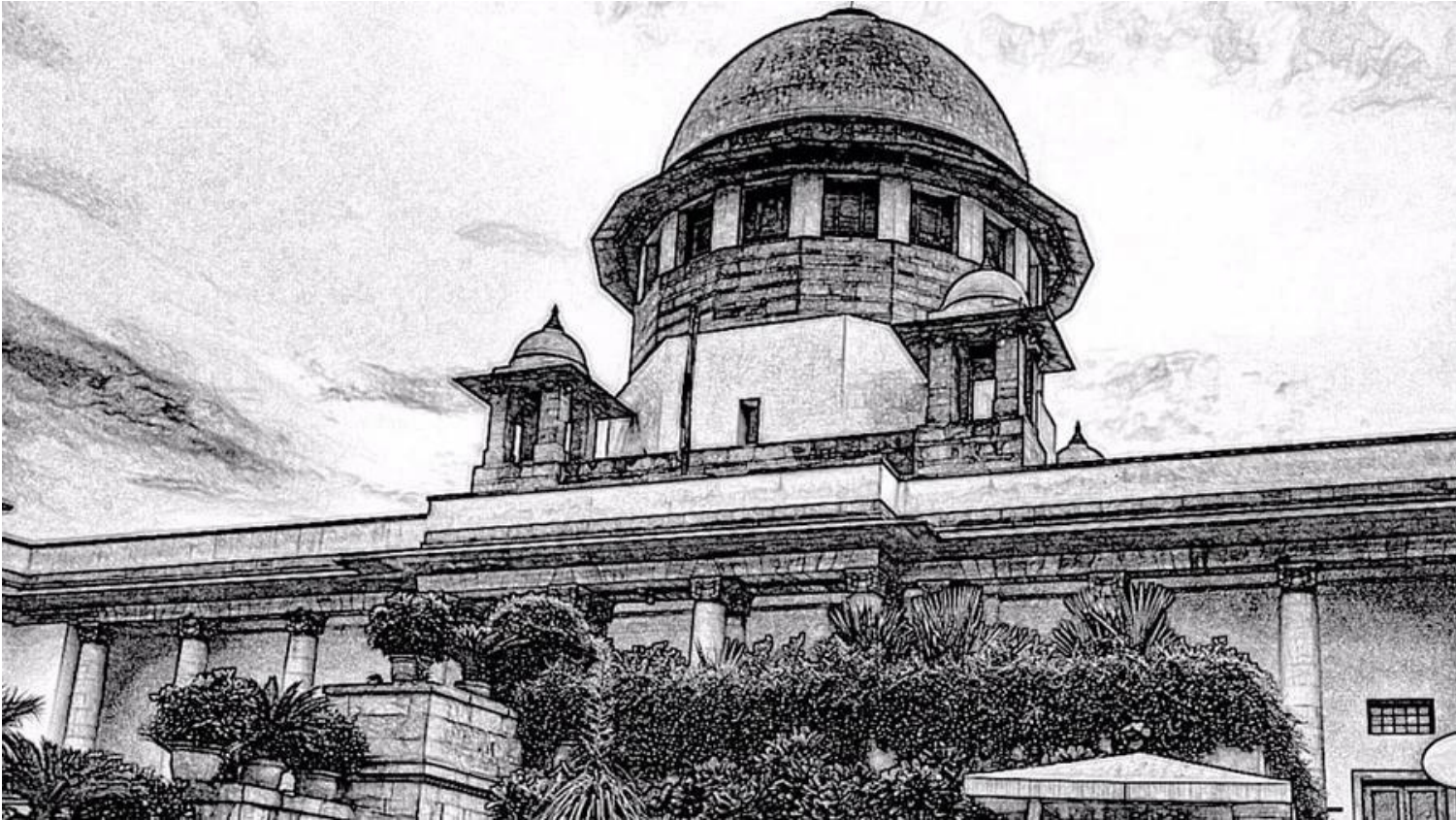
The accused, a relative, jumped the wall and entered into the room of the prosecutrix, pressed her mouth, committed rape and thereafter fled away by jumping the wall. When the prosecutrix narrated the incident to her sister-in-law and mother-in-law, they did not believe her. On the contrary, she was beaten. When none of the other family members of her matrimonial house took any action, she sent the information to her parental house and an FIR was lodged.

The accused took the plea of alibi which was disregarded by the Trial Court and he was convicted for the offence under Section 376 IPC and sentenced to undergo 7 years rigorous imprisonment with fine of Rs.500/- with default stipulation.

The court found it unfortunate that even the sister-in-law and mother-in-law, though being women, did not support the prosecutrix. The Court found no reason to doubt the credibility and/or trustworthiness of the prosecutrix as she had fully supported the case of the prosecution and had been consistent right from the very beginning.

Moreover, the court disregarded the argument that as there were no external or internal injuries found on the body of the prosecutrix, it may be a case of consent. The Court held that the submission had no substance at all. Even though there was a delay of three days in lodging the FIR, in a situation where the prosecutrix was not only disbelieved but beaten up at her matrimonial home after she narrated the incident and had to wait to be taken to her parental home, the Court found that the benefit of such delay cannot be given to the accused who as such was the relative.

Furthermore, the Court held that in the present case, no exceptional and/or special reasons were made out to impose the sentence of imprisonment for a term of less than seven years and. On the contrary and in the facts and circumstances of the case, the Court said that the accused has been dealt with lightly by imposing the minimum sentence of seven years rigorous imprisonment only.



Source: Bar & Bench



Source: Juris Centre

JOSEPH SHINE V. UNION OF INDIA (2018 SC 1676)

A Case Comment by: BHANUPRATAP SINGH RATHORE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. 194 OF
2017

JOSEPH SHINE....Petitioner

VERSUS

UNION OF INDIA...Respondent

BENCH – (5)Then Chief Justice Dipak Misra,
Justice A.M. Khanwilkar, Justice Rohinton
Fali Nariman, Justice D.Y. Chandrachud and
Justice Indu Malhotra

NUMBER OF OPINION – 4

NATURE AND DATE OF JUDGMENT –
Unanimous and 27-09-2018 respectively.

COUNSEL FOR PETITIONERS –
Kaleeswaram Raj and M.S. Suvidutt

COUNSEL FOR RESPONDENT – K.K.
Venugopal and B.V.Balaram Das

CASE STATUS – Disposed and not overruled.

INTRODUCTION:

There have been some laws in India that have gotten so outdated that they have lost their significance over time. One of these laws was the one regarding adultery. Section 497 of the Indian Penal Code (IPC) defines adultery. The said section states: “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual

intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such a case, the wife shall not be punishable as an abettor.” This section was brought before the courts several times and was also contested, but the Honourable Supreme Court upheld it.

Together, Section 497 IPC and Section 198(2) Code of Criminal Procedure (CrPc), which covers the definition of "person aggrieved" and addresses the woman's husband as presumed to be aggrieved by an offence committed under Section 497 IPC (and, in the absence of the husband, some individual who was in care of the woman on husband's behalf at the time such crime was committed, with the court's permission), form a legislative package to handle adultery. While section 497 had previously been challenged in cases such as Yusuf Abdul Aziz vs. State of Bombay, Sowmithri Vishnu vs. Union of India, etc, it had not been declared unconstitutional, it was eventually declared unconstitutional and stricken down by the Supreme Court in the case of Joseph Shine v. Union of India.

FACTS OF THE CASE:

The present case was a case of public interest litigation filed by Joseph Shine in Supreme Court of India under article 32 of the constitution in October, 2017. In this petition, he challenged constitutionality of the section 497 of IPC read with section 198(2) of CrPC. It was petitioner's case that the said provision read with section 198(2) of CrPC is unconstitutional as it was discriminatory both against man and woman, and it did not stand the test of

fundamental rights.

The petition was first placed before a three judge-bench headed by CJI but it was later transferred to a five-judge-bench.

ISSUES RAISED

Broadly two issues were raised:

- 1) What is the constitutional validity of the impugned section of IPC?
- 2) Whether the impugned section is gender neutral or it treats women as the chattel of men?

ARGUMENTS ON BEHALF OF PETITIONER:

1) Article 14 of the Constitution is violated by the section 497 of the Indian Penal Code and the 198(2) of the Criminal Procedure Code. Discrimination on the grounds of gender has no reasonable connection to the goal that the law is attempting to achieve. Women have no legal right to make a complaint if they discovered their husband having sexual relations with another woman. Also, in order to demonstrate that women are shielded in this section as she is not even regarded an abettor, depicts the male chauvinistic attitudes of society, that women do not usually know what they're doing and don't have full knowledge of it. Also, petitioner's stated that this law is also violative of Article 21 of the constitution in which two adults having sexual intercourse with each other come under Right to Privacy.

2) The petitioner further contended that under this section, an offence is only constituted if the husband has an issue with the woman having

Source: Hindustan Times



Source: Light of Truth

sexual relations with some other men; if the husband agrees, no offence is committed. This suggests that women are property and that they do not have full authority over their bodies.

3) The petitioner also contended from historical perspective, stating that this section was enacted during the British era and is no longer relevant.

ARGUMENTS ON BEHALF OF RESPONDENTS:

1) The impugned section is lawful and constitutional since it is justifiable under Article 15(3) of the Indian Constitution because it is specifically designed to benefit women and the state has all necessary authority to do so.

2) The right to privacy is not absolute and is subject to some reasonable limitations. Furthermore, Article 21 does not provide privacy to a person having sexual relations with a married individual outside of the marital relationship.

3) Adultery as an offence is an ethically repugnant act in today's society. Its offenders are liable to incur consequences. This offense desecrates "the institution of marriage and family."

4) Section 497 serves as a safeguard for society against immoral behaviour that insults the "institution of marriage." Therefore, as a result, it should not be annulled.

FINAL VERDICT:

1) In its decision in this case, the Honourable Supreme Court ruled Section 497 of the IPC unconstitutional, noting that it is in violation of Articles 14, 15, and 21 of the Indian Constitution. Section 198(2) of the CrPC is likewise unconstitutional to the degree that it applies to Section 497 of the IPC, according to the judgement of the court.

2) All earlier cases on the impugned section and present subject matter were overruled.

3) Adultery is no longer a criminal offence as it does not fit into the ambit of crime.

JUDGMENT ANALYSIS:

On issue 1 – Section 497 takes away a woman's independence, dignity, and privacy. Section 497 is seen as the wife infringing on her right to personal liberty and life by embracing the concept of marriage, which undermines real equality. By applying penal code penalties to a gender-based method to man-woman relationships, equality is defeated. According to Article 21 of the Indian Constitution, sexual independence is a form of personal liberty. As the Supreme Court recognised in the Puttaswamy case, the right to intimate relationship is a characteristic of privacy that is safeguarded under the Constitution.

On issue 2 – The husband does not have Master kind of authority over his wife. This provision violates substantive equality by stating that women are unable to freely give consent to activities in a lawful system that

deems them to be their husband's sexual property. As a result, Section 497 breaches Article 14 of the Indian Constitution, as well as Article 15 of the Indian Constitution's non-discrimination clause. This provision places a significant focus on the husband's permission, which leads to women's subjugation. As a result, it clearly breaches Article 21 of the Indian Constitution.

SOME IMPORTANT OBSERVATIONS FROM JUDGMENT:

1) The Honourable Supreme Court stated that the said section is premised on a "societal presumption." By prejudicing against married women and perpetuating gender stereotypes, Section 497 infringes on their right to privacy and liberty.

2) While adultery is ethically incorrect, it does not meet the necessary criteria for criminalization. There are three components to the harm principle. 1) wrongdoing 2) harm 3) public factor. To designate an unlawful conduct as a criminal offence, all of these factors must be proven. Conclusively, a crime when happens, it happens against the entire society, while sexual infidelity is a private matter.

3) Generally, criminal law is based on gender neutrality, however this concept is missing in this section.

4) The law is extremely discriminatory and is obsolete in context of the modern times.

5) Section 497 is irrational in character. As a husband, you can consent to your wife having an affair with someone else, as a result, "the sanctity of marriage" is not protected by this provision. Furthermore, the said provision doesn't permits the wife to register a case against her husband, and it lacks any provisions dealing with a married man having an immoral relationship with an unmarried woman which makes it furthermore arbitrary.



Source: iPleaders Blog

CASE COMMENT:

The court in this landmark case has struck down the section 497 of the IPC making it an Indian Legal History's landmark step bring India at par with globally followed laws. Global data shows that only a few countries still treat adultery as a crime, yet most countries keep adultery as a legal basis for divorce.

The Supreme Court correctly recognised equality and the dignity of women. And, once again, it has attempted to ameliorate the status of women in a male-dominated culture, with its decision. It obviously indicates a favourable trend and paves the road for women's empowerment. The concept of transformative justice is also preached in this decision. Though the decision is progressive, it completely removes the offense of adultery from the legal system, leaving the safeguard of a spouse's rights in a marriage unprotected. It degrades the concept of marriage by granting unlimited freedom to adults who commit adultery. As a result, this law is attacked, based on its socio-cultural implications. As a result, the notion of adultery grinds to a halt in this circumstance.

It's essential to mention that the abolition of these laws doesn't mean there aren't any legal repercussions for adultery. These repercussions do not have to be criminal, and a redressal could be found under civil law, which already recognises adultery. In personal law, it is a cause of divorce. This option is also in line with the right to privacy and doesn't need the government to spend more assets.



Source: Outlook India

LAWS AGAINST SHARING OBSCENE PICTURES

VAIBHAV KESARWANI

Section 354 C of IPC:

This section punishes voyeurism, it includes viewing and/or capturing the image of a girl or woman going about her private acts, where she thinks that no one is watching her. It is an act that blatantly intrudes a person's privacy and personal space. This act includes act where the woman is using washroom, is undressed or is engaged in any sexual act.

If a man is convicted under this section, he will be punished with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Section 67 of IT Act 2000, discusses laws against sharing obscene pictures.

According to Section 67 of the Information Technology Act of 2000, anybody who distributes, transmits, or causes to be transmitted or circulated obscene photographs or communications in the form of electronic medium faces a maximum sentence of three years in jail and a fine of up to five lakh rupees. If he does the same crime again, he will be sentenced to five years in jail and a fine of up to ten lakh rupees.

Section 67A says that whoever publishes or sends or transfers any obscene material like photos, videos or texts in the electronic form shall be punished with imprisonment of up to 5 years and a fine of up to 5 lakh rupees. If he



Source: iPleaders Blog

repeats this act for a second time, he shall be punished for up to 7 years and a fine of up to 10 lakh rupees.

Section 67B says that whoever publishes or shares or distributes any digital text or image that depicts children obscenely or indecently or in a sexually explicit manner shall be punished with imprisonment of up to five years with a fine of up to 10 lakh rupees. And if the person is sending you obscene photos and pictures of children then he will be punished under the sections of the Protection of Children from Sexual Offence (POCSO) Act 2012 as well.

CHANDRAKANT JHA AND THE STORY OF SEVEN BRUTAL KILLINGS

NIYUSHA BHESANIA

The city of Delhi was alarmed and devastated by serial killings in the years 2006 and 2007. In these crimes, the perpetrator followed a certain pattern in which he beheaded the victims' heads and then sliced their different body parts before throwing their mutilated bodies outside the Central Jail Tihar and scattering their body parts around Delhi.

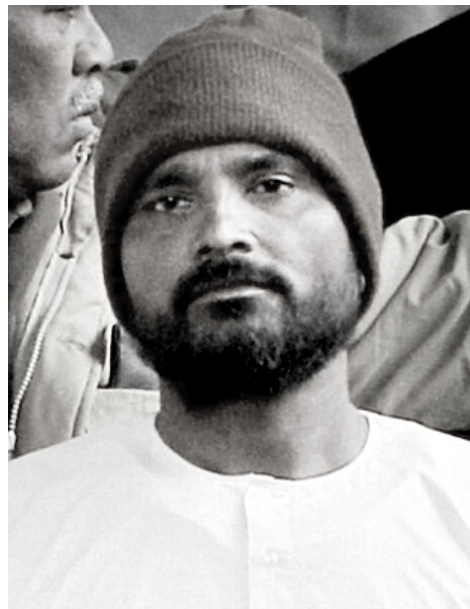
The man behind these murders, Chandrakant Jha was born and raised in Maghderapura, a

district in Bihar, India. In 1986, he migrated to New Delhi at the age of nineteen. Jha began his career as a vegetable vendor in Delhi. Even then he was frequently held by police for minor theft and bribes, however he executed his first felony at the age of 46.

Jha, being a migrant from Bihar, frequently aided other young men who had relocated from Bihar and Uttar Pradesh in pursuit of better opportunities. Jha used to identify such individuals in West Delhi and take them to his home. He treated these young men as if they were his own family, and assisted them in finding part-time work. However, he also utilised many of these men to vent his frustrations about the police, whom he felt hounded him.

His first murder was committed in 1998, in connection to which he was imprisoned for more than three years before being freed in 2002 due to a lack of evidence. That after, he murdered and mutilated at least six more people.

Despite being caught in connection with these six deaths, he was able to avoid the noose in four of them owing to a lack of evidence. Jha constantly eluded the investigators by dismembering his victims and dispersing their body parts over the city, making it difficult for



Source: Daily Mail

the police to identify both the victims and the perpetrator of the murders.

Jha would reason his crimes as the sheer excitement of defying law enforcement officers, and as a method of retaliating against the Delhi Police for their "atrocities" against him.

In two incidents, a message was discovered alongside the dismembered body parts discovered outside Tihar Jail. Petty things like drinking, smoking, lying, and being a non-vegetarian could sometimes be enough to provoke a murder. He would start the "death rite" at 8 p.m. by tying his victim's hands under the guise of punishing him. He'd then strangle him with a nunchaku. He even preferred to have dinner in the same room where his victims lay lifeless.

He would describe himself as a body chopper. Following his detention, after the final murder in 2007, he admitted that he had perfected the skill of cutting bodies in such a way that there was little blood oozing out after mutilation. Considering the ferocity with which the crimes were perpetrated, additional sessions judge Kamini Lau refused to offer any mercy, stating that he could not be reformed.

At the end of the day, Jha was awarded with a death penalty for the heinous atrocities he committed. This was later changed to a life sentence.

ON THE BUTCHER'S TRAIL

1998: Chandrakant Jha's first victim was Mangal in Adarsh Nagar. Jha was arrested and kept in jail till 2002 but was later let off for want of evidence

2003: Jha's aide Shekhar was the first associate to be killed by him as Jha did not like his drinking and lying habits. Jha went on to kill at least five more associates.
Case status: acquittal

2003: Murdered Umesh for being a liar and betraying him. He threw the body near gate number 1 of Tihar Jail. From here began the series of throwing headless bodies outside Tihar Jail.
Case status: acquittal

2005: Killed another associ-

ate, Guddu, because he did not like the latter's extravagant lifestyle and the fact that he smoked ganja.
Case status: acquittal

2006: Amit was the fourth associate to be killed; Jha said he killed Amit for being a womaniser.
Case status: death penalty

2007: The fifth associate to be murdered was Upender, 19, allegedly for having an affair with the daughter of one his friends.
Case status: death penalty

2007: Dalip, whose body still stands unidentified, was the last person whom Jha killed. Jha didn't like that he was non-vegetarian. Case status: life term till death

Source: India Today

A HOLIDAY SPECIAL: MURDERS OF THE HOLIDAY SEASON

ANYA DENISE ARANHA

The Yuletide season is supposed to be about laughing, cheery faces around the fireplace cracking chestnuts and drinking Christmas punch after a warm, hearty meal. However, all is not calm and all is not bright. This season has also seen incidents of cold blooded killers roaming the streets thirsting for blood.

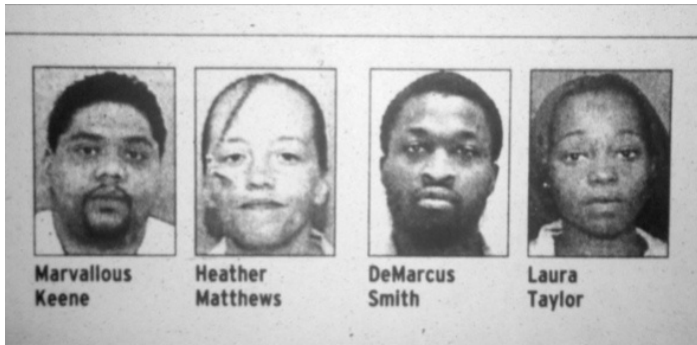
Here are six incidents that will send chills down your spine and make the holiday season not so very merry.

Disclaimer: it is advisable to make sure you're warm and bundled up before reading the following.

1. On the 2nd of December, 2011 in Jacksonville, Florida, Michele O'Dowd was found strangled and cold among the presents under the Christmas tree, her bloodied face covered with a terry cloth towel. Although it was made to look like a house break-in, it was investigated that the real culprit was Patty White, the victim's nephew's ex-girlfriend. In addition to the dead body, \$1000 was found withdrawn from O'Dowd's bank account using two debit cards.



Source: Grunge



Source: Dayton Daily News

2. In a cold-blooded crime that the judge described as “savage, needless and cowardly”, Danielle Kerr and Darren Lewis were sentenced to prison for murdering William 'Bill' Stevenson with a rock, a large hunting knife and a tree branch on Christmas Day in 2013. After gruesomely murdering him in a bushland in Australia, the meth addicts set his body alight in a car and casually walked away.

3. In December 1992 in Dayton, Ohio, between Christmas Day and Boxing Day, 4 bloodthirsty teenagers who called themselves “The Downtown Posse” went on a killing spree. The gang consisted of 19 year old Marvallous Keene, his 16 year old girlfriend Laura Taylor, 19 year old DeMarcus Maurice Smith and his 20 year old girlfriend Heather Nicole Matthews.

Because of the gang’s thirst for blood, 6 individuals died, 2 were injured and many others were severely impacted. The killings were described as “joy killings” because the gang had no motive per say but shot people purely for the fun of it.

4. Joanna Yeates, a young, promising architect, was found strangled and dead in the snow days after she went missing on the 17th of December, 2010 in Bristol. Although the police initially suspected her eccentric landlord, a former English teacher, it was found that her murderer was her Dutch neighbour, Vincent Tabak. While it is believed that her murder was sexually motivated, her perpetrator refuses to divulge what exactly happened that night.

5. Sometime between Christmas Day and

Boxing Day in 1996, American child beauty queen, JonBenét Ramsey was murdered in her house in Boulder, Colorado. Hailing from an affluent family with a mother who was former Miss West Virginia, the 6 year old lived with her parents and 9 year old brother. Two theories have surfaced - the family theory and the intruder theory. Although plenty of physical evidence can corroborate the intruder theory, there are many reasons to believe that her family could’ve been responsible for the murder. Till date, her murder has remained unsolved.

6. The Covina massacre, that took place on Christmas Eve in 2008 in Covina, saw the deaths of 9 people along with 3 people injured. The perpetrator, Bruce Jeffrey Pardo was the ex husband of one of the partygoers. He dressed up as Santa Claus and shot the eight year old girl who excitedly answered the door. He then proceeded to shoot as many people in sight and set the house on fire. After exiting the party, he had planned to flee for Canada. Unfortunately for him, the fire melted his Santa suit causing third degree burns. He ended up shooting himself in the head.

Trust you did not lose your whole appetite for those mince pies hot from the oven. Yuletide Greetings and a Happy New Year!



Source: Funky Pigeons

MOVIE REVIEW: THE SHAWSHANK REDEMPTION

VAIBHAV KESARWANI

A 1994 Prison Drama directed by Frank Darabont is a masterpiece that is based on a novel by Stephen King. The movie stars Tim Robbins (Andy Dufresne) and Morgan Freeman (Ellis Boyd "Red" Redding) as two prisoners who eventually form a friendship bond in the prison. It is not an ordinary prison break movie but an emotional rollercoaster of friendship, hope, sadness, frustration, wit, wiles and most importantly wisdom.

The story starts with Andy Dufresne, a banker, being convicted of killing his wife and her lover and is given two consecutive life imprisonment. However only Andy knows, he has not committed the crime. When he arrives at the Shawshank Prison, he encounters the brutality of prison life; this is where the movie gracefully unfolds.

Andy Dufresne gradually overcomes the hellfire tortures of the prison system - an unblinking gamut of beatings, raping, and brutal humiliations - while inspiring his fellow convicts to raise their degraded horizons and don't lose hope. Among them is Red (Morgan Freeman), with whom Andy forms a simple sweet friendship bond. Red sees hope as a dangerous thing that can drive a man insane, but Andy believes it is fuel that keeps one going against all odds. Andy told him one day that he was interested in carving stones and therefore asked Red to arrange for a Rock Hammer which he surprisingly did.

Andy was a remarkable character with a calm and reserved attitude and had an inward resolve in him to make the best of his bad situations. He, being good with taxes and accounting, began doing the taxes for the guards and helped the corrupt warden to launder his money. By way of helping the guards and the warden, he lands a job as the

librarian of the prison and eventually by writing letters for money from state officials for many years, made one of the best prison libraries in Shawshank prison.

Everything was going calmly for him, until he met a new prisoner Tommy (Gil Bellows) from whom he learned the name of the person who killed his wife and her lover. With hope he set an appointment with the warden who refused to look into the matter and sentenced him to a month of solitary confinement. Here the villain of the story is finally revealed i.e. the warden who gets Tommy, the only person to testify in favour of Andy, killed and therefore make Andy work for him and embezzle his money forever.

However to everyone's surprise, when the viewers think the movie is at a sad end, it takes a shocking turn which led to the win of Andy's hope and made Red realize the true power of the emotion which he never believed in i.e. Hope.

Many films provide us with fictitious sensations and fleeting, shallow feelings but "The Shawshank Redemption" slows down and looks. The thinking behind the characters and the story line is remarkable which will keep you engaged throughout the film. It is a must watch film and is a joyful tribute to "hope" as a necessary aspect of the spirit.



Source: The Hollywood Reporter

KNOW THE TERMS!

LEGAL TERMINOLOGY CRISS-CROSS

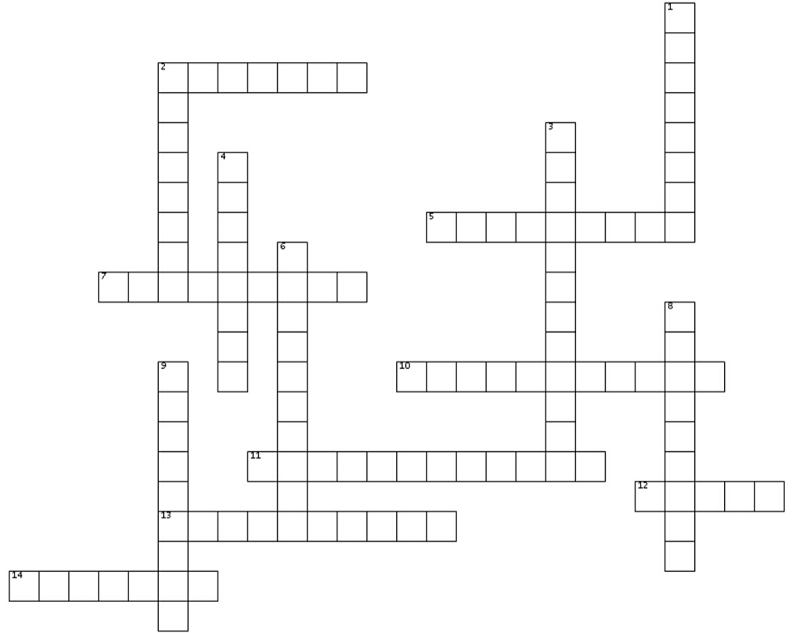
NIYUSHA BHESANIA

ACROSS

2. Lying in court, while under oath.
5. Spying, to obtain political or military information.
7. Any person who takes the law into his or her own hands, as by avenging a crime.
10. A fingerprint made of the sweat and oil from one's skin.
11. A criminal offense defined as less serious than a felony.
12. A written defamation.
13. A detention home for juvenile offenders aged 8-16 years.
14. Attacking someone with a plan to rob them.

DOWN

1. A crime that remains unsolved, but isn't being actively investigated due to lack of evidence.
2. Hunting illegally.
3. The pattern of bloodstains left at a violent crime scene.
4. Breaking into a house in order to steal something.
6. A violation of a law or rule.
8. Destroying private or public property purposely.
9. Stealing small quantities of goods over time.



Use the clues to fill in the words above.

Words can go across or down.

Letters are shared when the words intersect

ANSWER

CRIME RIDDLES

FOR THE DETECTIVE IN YOU (ISSUE 2)

A young lady lived alone in a huge mansion. On Friday, when her best friend went to visit, she found her murdered by a stab wound. She immediately informed the police. When the police arrived at the mansion, they found some unopened fashion magazines, Tuesday's newspaper, stale milk and bread.

Ultimately, they manage to find the suspect. Who is the suspect?

ANSWER: The newspaper man, as Wednesday's and Thursday's newspapers were not delivered.



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