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(10) s.482 – Quashing of criminal proceedings – FIR lodged against accused alleging cheating on the ground that the complainant had deposited certain amount in a scheme floated by the company in which accused was one of the directors – Company closed down and amount remained due to the complainant – Petition u/ s.482 for quashing of proceedings – Held: A person cannot be compelled to face criminal prosecution if basic ingredients of the offence alleged against him are altogether absent – There were no allegations in the FIR against the accused – The scheme under which deposit was made was approved by RBI and, therefore, element of

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(ii) Article 226 – Cases relating to recovery of dues of banks, financial institutions and secured creditors – Exercise of power u/Art. 226 – Scope of – Held: Rules of self-imposed restraint to be kept in mind by High Courts – High Courts should not ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction u/Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues – Judicial restraint.

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LAND ACQUISITION ACT, 1894:

(1) (i) ss. 17, 5-A and 48(1) – Invocation of urgency clause and dispensation of enquiry u/s. 5A – Held: Is an exceptional and extra-ordinary power – It should be invoked only when circumstances warrant immediate possession – Government has to apply its mind on the aspect whether urgency justifies elimination of summary enquiry u/s. 5A – Upon challenge being made to the use of power u/s. 17, Government must produce appropriate material before the court on basis of which opinion was formed – Where opinion formed on the considerations is not germane to the purpose, judicial review of such administrative decision may

become necessary – On facts, Invocation of urgency clause and dispensation of enquiry u/s. 5A, not proper since no material placed by State Government for justifying elimination of enquiry u/s. 5-A – However, as majority of other land-owners had received compensation and Development Authority already spent huge amount for development of the acquired land, and more than 60% of work was completed, land-owners not entitled to de-acquisition of land – However, in view of the peculiar facts, appellants granted liberty to make representation to State Authorities u/s. 48(1) for release of their land – Administrative Law – Judicial review.

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ORISSA (STATE) COMMISSION FOR WOMEN ACT,
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s.10 – Extent of power of State Commission for
Women – Discussed – Held: The Act has not
entrusted the State Commission with the power
to take up the role of a court or an adjudicatory
tribunal and determine the rights of the parties –
The State Commission is neither a tribunal
discharging the functions of a judicial character
nor a court – On facts, the State Commission had
no authority, competence or power to order DNA
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alleging torture at the hands of her husband and
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(2) s. 161.
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(3) s.195.
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(4) ss. 148, 324/149 and s. 304(Part-I), 304(Part-
I)/149 – Accused causing injuries to one and death
of another – Conviction by courts below –
Interference with – Held: Each of the accused was
part of unlawful assembly, and armed with deadly
weapons – They together indulged in
indiscriminate beating and freely used weapons
in their hands causing severe injuries to the
deceased – Evidence of injured witness and
parents of deceased was reliable – Medical
evidence not at variance with ocular version –
Minor contradictions in the evidence of
Investigating Officer and injured witness would not
affect the prosecution case – Conviction upheld
but sentence reduced to the period already
undergone – Evidence.

*Debashis Daw & Ors. v. State of West
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(5) s.302 – Bride burning.
(See under: Evidence Act, 1872) 705

(6) s.302 – Murder – Allegation that father and
step mother causing death of 2½ years old child,
by administering her nitric and sulphuric acids –
Both acquitted by trial court – High Court affirming
acquittal of step-mother, however, convicting the
father u/s. 302 – Held: Order of conviction was
justified – Injuries found all over the body of the
child clearly showed that the child tried to save
herself and fought back when the acid was being

administered.

Beere Gowda v. State of Karnataka 211

(7) s.302 – Murder – Conviction – Affirmed by High Court – Held: There is no reason to differ with the findings recorded – In case of evidence recorded after a long period of time, some discrepancies are bound to occur – The eye witness account is fully corroborated by the medical evidence – The very promptitude with which the FIR was registered supports the veracity of prosecution story – Evidence – Recording of evidence after lapse of long time – Effect of – FIR – Promptitude in FIR – Effect of.

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(8) s.302 – Murder – Evidence of a single witness – Held: Where the prosecution story rests only on a single witness, the evidence of such a witness must inspire full confidence – On facts, the conduct of the sole witness was clearly unnatural which made his evidence extremely suspicious – PW.1 was perhaps not an eye-witness and he lodged the FIR only after the dead body was discovered – The other witness was declared hostile which casts a doubt on the prosecution story – On a cumulative reading of these factors, order of conviction set aside – Evidence – Testimony of single witness.

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(9) s.302 – Murder – Son committing murder of step mother – Made extra judicial confession to

his step-sister and, thereafter, to Village Administrative Officer in a short while – Recovery of rope used for strangulation – Conviction and sentence u/s. 302 by courts below – Held: Justified – Medical evidence duly supported the ocular evidence – Evidence of father and brother-in-law of the accused having turned hostile would not affect the prosecution case.

Arumugam v. The State represented by its Inspector of Police 87

(10) s.302 – Prosecution case that husband murdered his wife by giving her sodium cyanide – Conviction by High Court – Held: Prosecution has to prove its case beyond reasonable doubt – No direct evidence regarding taking or administering the poison to deceased – All circumstances raising doubts – In case of circumstantial evidence, motive must be established at least to certain extent – Material contradiction in the prosecution case, thus, motive could not be proved – Conviction set aside – Evidence – Circumstantial Evidence – Burden of proof – Burden on prosecution to prove its case – Criminal Law – Motive – Appeal against acquittal – Scope of – Power of appellate court – Explained.

Babu v. State of Kerala 1039

(11) s.302 – Victim accompanied by two accused – One of them causing the death of the victim by a sharp cutting weapon – Acquittal by trial court of both – Conviction of assailant-accused by High Court, upheld – The view taken by trial court was

not justified – Code of Criminal Procedure – Appeal against acquittal.

Jayanta Sil v. State of Assam 615

(12) s.302/34 – Multiple murders – Conviction u/ s. 302/34 and imposition of death sentence by trial court – Acquittal by High Court – Held: Evidence of two eye-witnesses as well as the doctor, supporting prosecution case – FIR was lodged promptly – Motive established by prosecution – Oral declaration by one of the deceased implicating the accused – Acquittal by High Court set aside and judgment of trial court restored – Accused sentenced to rigorous imprisonment for life – Evidence – Criminal Law – Motive – Sentence/sentencing.

State of U.P. v. Krishna Master & Ors. 563

(13) s.302/34 – Murder – Conviction by courts below based on dying declaration and ocular testimony of witnesses – Held: Conviction justified – Dying declaration and ocular evidence reliable – Evidence – Dying Declaration.

Amit Kumar & Anr. v. State of Punjab 1088

(14) (i) s.302/34 – Murder – Vicarious liability – Appellant along with his father and brother armed with weapons went to the house of the deceased – After verbal altercation, appellant and his father started beating the son of the deceased – When deceased intervened, the brother of the appellant on exhortation of his father, fired at the deceased which resulted in his death – Conviction of all the

three accused by courts below by invoking of s.34 – Held: All the three accused in consonance with a prearranged plan had gone to the house of the deceased – They all were armed with weapons so there was prior meeting of minds – Appellant rightly convicted under ss.302/34 by courts below by invoking the principle of vicarious liability.

(ii) s.34 and s.149 – Resemblance with and distinction between – Discussed.

Virendra Singh v. State of Madhya Pradesh 772

(15) s.302/34 – Triple Murder – Conviction by courts below on the basis of dying declaration and the motive for murder – One accused sentenced to death while the other sentenced to life imprisonment – Held: Dying declaration of one of the deceased is reliable and admissible in evidence – The prosecution has also proved motive – Conviction imposed is justified – As regards the accused who inflicted the injuries, death sentence is just as his act was barbaric and inhuman – It is a gravest case of extreme culpability and rarest of rare case – Sentence/ Sentencing – Death sentence – Evidence Act, 1872 – s.32 – Dying Declaration – Criminal Law – Motive.

Atbir v. Govt. of N.C.T. of Delhi 993

(16) s.302/149 – Double murder – Plea of false implication of one of the accused- appellant – Held: Animosity between parties is admitted, political rivalries going back for years together, a case of false implication is also a clear possibility

– The injury report not supporting prosecution case as regards appellant – Therefore, it cannot be said with complete certainty that the appellant was one of those who had been involved in the incident – The appellant acquitted giving him benefit of doubt.

Deo Narain v. State of U.P. 349

(17) s.302/149, 307/149,148 and 201 – Prosecution under – Of five accused – Two eye-witnesses to the incident – One of the eye-witnesses related to the deceased while the other was the injured witness – Non-recovery of dead body – Conviction by courts below – On appeal by appellant-accused, held: Conviction justified – It is not essential to establish ‘*corpus delicti*’ – The prosecution evidence has established the commission of crime – Both the eye-witnesses are reliable witnesses.

Prithi v. State of Haryana 33

(18) s. 302 IPC and s.3(2)(v) of SC and ST (Prevention of Atrocities) Act – Death of a married Scheduled Caste woman by burn injuries – Three dying declarations recorded by Magistrate, the police official and the husband of the victim, respectively – Acquittal by trial court – Conviction by High Court relying upon the dying declaration recorded by husband of deceased – Held: High Court erred in holding that the first two dying declarations had no evidentiary value – The first dying declaration made to the Magistrate would, in fact, be the First Information Report – The first two dying declarations completely exonerated the

accused from wrong doing, and attributed the burn injuries to an accident – On the contrary, the third dying declaration is obviously suspicious – There is absolutely no evidence of homicide – The trial court correctly recorded the findings of accidental death – The judgment of High Court set aside – Appeal against acquittal – The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s.3(2)(v).

Mukeshbhai Gopalbhai Barot v. State of Gujarat 632

(19) ss. 302 and 302 r/w 109 – Multiple murders – Accused who fired at victims, convicted by trial court u/s 302 and sentenced to death – Other four convicted u/s 302/109 and sentenced to life imprisonment – High Court declining death reference and also acquitting the others – Appeals by State and complainant – Held: On facts, there was no charge for the offence u/s 109 – It must, therefore, be held that as two of the accused had claimed the right of private defence and had also produced defence evidence in accordance with the plea, non-framing of a charge u/s 109 against the four acquitted accused had clearly caused prejudice to them – However, in the circumstances of the case, it would not be in the interest of justice to remand the case, more particularly, as it is the admitted position that the only role attributed to the four accused who have been acquitted by High Court is exhorting the other accused to kill the enemy.

Chandrawati v. Ramji Tiwari & Anr. Etc. 897

(20) ss. 302 and 307 – Prosecution of five accused for murder and attempt to murder – Conviction of one – Held: Courts below rightly assessed the evidence and held that the convict and another accused who died during trial, had committed the offences – Courts below, being cognizant of the strained relations between the parties and the possibility of false implication of others, gave the benefit of doubt to two of the accused – No interference with the conviction and the sentence called for – Criminal Law – Motive.

Ram Niwas v. State of Haryana 112

(21) (i) s.302 and 120-B – Murder – Criminal conspiracy – Various accused – Statement of one accused while in police custody – Circumstantial evidence – Challenge to – Held: On facts, the chain of events did not establish a clear motive for the appellant to commit the offence of murder – Prosecution failed to substantiate the allegation of conspiracy against the appellant – The statement of co-accused did not constitute a valid dying declaration nor a confession nor an evidence in any manner to implicate the appellant, nor did it fall within the ambit of s.10 of the Evidence Act – Appellant given benefit of doubt and acquitted – Code of Criminal Procedure, 1973 – s.164 – Evidence Act, 1872 – s.10.

(ii) s.120-B – Criminal conspiracy – Ingredients of – Discussed.

S. Arul Raja v. State of Tamil Nadu 356

(22) (i) s.304-B – Dowry death – Appellant-

husband and other accused allegedly poured kerosene on deceased and lit fire, which resulted in her death – Conviction of appellant u/s.304-B – Held: Appellant was rightly held guilty u/s.304-B – Evidence of witness that the demands were made on account of dowry and deceased was subjected to cruelty and harassment by her in-laws soon before her death – Presumption u/s.113B of Evidence Act also fully established – Necessary ingredients of s.304B – Discussed – Evidence Act, 1872 – s.113B – Crime against women.

(ii) s.201 – Unnatural death of wife of appellant – Hurried cremation – Neither police nor the parents of the deceased informed – Offence u/s.201 made out.

Dasrath v. State of M.P. 266

(23) s.304-B – Dowry death – Held: An offence is made out u/s.304B, if the woman was subjected to cruelty or harassment in connection with dowry demand soon before her death – Mere demand of dowry would not attract provision of s.304B – On facts, prosecution proved beyond reasonable doubt that the deceased was tortured by her husband on account of dowry demand, two months prior to her death – Prosecution led sufficient evidence to raise presumption u/s.113-B – Husband rightly convicted by courts below – However, sentence of life imprisonment reduced to ten years – Evidence Act, 1872 – ss.32, 113B – Crime against women – Dowry death – Sentence/Sentencing.

(Also See under: Evidence Act, 1872)

Amar Singh v. State of Rajasthan 526

(24) ss. 304-B and 201 – Dowry death – Conviction of husband, mother-in-law and father-in-law of deceased by trial court affirmed by High Court – Held: The mother-in-law and the father-in-law had no role in the demand made by the husband soon before the death – Nor is there any evidence making out a case against them u/s 201 – They are, therefore, acquitted.

Rakesh Chand & Anr. v. State of Punjab 894

(25) s.306 – Abetment of suicide – Essential ingredients – Dispute between two students over theft of mobile – Suicide by complainant's son – Complaint filed against Enquiry Officer of the university alleging abetment of suicide – Trial court framing charge u/s. 306 against Enquiry Officer – Held: There should be a clear mens rea to commit the offence – It also requires an active act or a direct act which led the deceased to commit suicide – Statement of deceased against Enquiry Officer in the suicide note, does not attract the ingredients of abetment – Order of framing charge u/s. 306 against Enquiry Officer is palpably erroneous, unsustainable, and is quashed – Criminal Law–Mens rea.

S.S. Chheena v. Vijay Kumar Mahajan & Anr. 1111

(26) ss. 306 and 498-A – A married woman causing her death by burning herself – Husband

convicted u/ss 306 and 498-A and sentenced to four years and one year's RI respectively – High Court enhancing sentence u/s 306 to six years – Held: In the light of the dying declaration made by the deceased that she had quarrelled with her husband on the date of occurrence, High Court was not justified in enhancing the sentence – Further, interference of the appellate court on the quantum of sentence should be rare and only in exceptional cases – The sentence awarded by High Court is quashed and the judgment of trial court confirmed – Criminal Law – Interference with quantum of sentence by appellate court – Propriety of – Sentence/Sentencing.

Ravindra Tukaram Hiwale v. State of Maharashtra 454

(27) s.307/34 – Conviction by trial court of two out of three accused – High Court acquitting one of the appellants before it and reducing the sentence of the other to the period already undergone – Held: The Court is not inclined to interfere with the acquittal order, keeping in view the propensity to false implications – However, reduction in the sentence of the convict is not approved, though keeping in view the fact that prosecution had been initiated in 1988, the term of imprisonment is not interfered with – But, the fine is increased – Appeal against acquittal.

State of U.P. v. Siya Ram & Anr. 687

(28) s.326 – Victim died fourteen days after sustaining gun-shot injuries – Conviction by High Court u/s 302 – Held: No fault could be found with

the finding of guilt against accused recorded by High Court – There is on record the eye witness account of several persons and four dying declarations one of them having been recorded by an Executive Magistrate – However, there is the categorical medical evidence that the victim died due to lack of care by his attendants as he had not been properly treated in the hospital – In this view of the matter, a case u/s 302 cannot be spelt out – Accused convicted u/s 326 with a sentence of 5 years RI and a fine of Rs.5,000 – Evidence – Dying declaration.

Jabar Singh v. State of M.P. 1144

(29) s.326 – Injuries by sickle caused to victim – Death of victim – Medical evidence stating that victim died due to complications arising out of heart disease and that there was no suggestion that the death was a result of the injuries – Conviction by trial court u/ss.302, 506(II) and 341 affirmed by High Court – Held: There is no evidence to show that the injuries could have independently caused the death of the deceased even if the deceased had not been suffering from a heart problem – The case would fall within s.326 and not u/s 302– As there was no intention on the part of appellant to cause the death of the deceased nor could he be attributed with the knowledge that death would be caused, the case would not fall u/s.304 (part-I) – Conviction of the accused for the offence u/s.302 is altered to one u/s.326 with a sentence of 10 years R.I. and a fine of Rs.5,000/- – The sentence under the other

provisions is maintained.

Mayandi v. State Rep. By Insp. of Police 127

(30) s.364-A – Abduction for ransom – Victim killed – Ransom calls made even after the death of the victim – Held: Offence u/s. 364-A does not stand abrogated upon death of the victim – Continuation of ransom calls made even after the death of victim, converts the offence into a continuing offence u/s. 472 Cr.P.C. – Code of Criminal Procedure, 1973 – s. 472.

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**REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S.H. KAPADIA
IN THE MEMORY OF
LATE SHRI MILON KUMAR BANERJI
FORMER ATTORNEY GENERAL FOR INDIA
ON 11TH AUGUST, 2010**

Mr. Attorney General, Mr. Solicitor General, Shri Ram Jethmalani, President of the Supreme Court Bar Association, Shri D.K. Garg, President of AOR Association, Ladies and Gentlemen.

The Attorney General and President of Supreme Court Bar Association have spoken with great feeling about Shri Milon Kumar Banerji, whose death, a few days ago, was mourned all over the country by friends of law.

Tributes to Shri Banerji has been paid from all parts of the country, but it seems to me that those tributes were incomplete without a tribute in this Court which he loved so deeply and to which he brought such distinction.

My brethren and I share the sentiments expressed by you today. I feel that I must add a few words to yours to complete the record, as best as mortals can.

Shri Banerji was born on 27th September, 1929 into a distinguished Brahmo Samaj family. His father Prof. A.C. Banerji, I.E.S., was an eminent mathematician and educationist, a Wrangler and Owst prize holder at Clare College Cambridge and later Vice Chancellor of Allahabad University and President of Indian Science Congress. His mother Smt. Probha Banerji was India's first Honorary Lady Magistrate and the only lady member of the forty member Allahabad Municipal Board which included Jawaharlal Nehru, Lal Bahadur Shastri and Dr. Kailash Nath Katju.

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Shri Banerji studied at Boys High School, Allahabad winning a scholarship in the Senior Cambridge's examination from what was then the United Provinces. He followed it up by being awarded the Sanjeeva Rao Gold Medal for his B.Sc. from Allahabad University. Interest and love for mathematics runs in the family. Prof. A.C. Banerji was at Cambridge where he read for the mathematics tripos and was declared Senior Wrangler (1st Class First). Even Shri Milon Banerji had a keen interest in mathematics. He studied B.Sc. with Mathematics at Allahabad University. He topped the University in mathematics before turning to law. His elder son also holds the record with 95% average in his Masters in mathematics from Allahabad University.

Shri Milon Banerji often used to say that mathematics was a very good ground for the practice of law. His mathematical ability was reflected in his precise drafting. Incidentally, Lord Denning also read mathematics at Oxford. Shri Milon Banerji's love of mathematics was such that he founded a mathematics prize in his father's name at Cambridge and he sponsored a hall in the mathematics department of the Allahabad University.

During his time in Cambridge, Shri Milon Banerji specialized in Public International Law. In 1950s Cambridge was the world centre for International Law. Shri Milon Banerji was a student of Prof. Lauterpacht who later became a Judge in the International Court of Justice at Hague.

Choosing a career in Law after obtaining a LL.B. from Allahabad University, he went on to Cambridge. At Cambridge he obtained the post graduate LL.B. degree as well as the Research Diploma in International Law. At Cambridge, he interacted with Robert Jennings who became his life long friend.

Shri Banerji excelled in badminton which he played for both Allahabad University and Cambridge University. His interest in political life continued at Cambridge where he was the President of the famous Cambridge University Majlis in 1952.

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After being called to the Bar from Lincoln's Inn, he returned to India and married Anita Chakravarty whom he met at Cambridge where she was a student at Girton College.

Shri Banerji started his law practice in the Allahabad High Court in 1955. He joined the chambers of the famous lawyer Jagdish Swarup. Soon thereafter, Anita and Shri Banerji left Allahabad to practice on the Original Side of the Calcutta High Court where opportunities for a young lawyer came up. Shri Banerji joined the chamber of Subimal Roy, a leading Barrister of the Calcutta High Court, the only one from Calcutta to be directly elevated to the Supreme Court of India from the Bar. Shri Banerji's practice prospered after 1967 through several years mainly in commercial and arbitration law.

The call to public life came for Shri Banerji in 1979 when he moved as Additional Solicitor General of India to Delhi where he spent the rest of his life. He had the unique privilege of being a law officer during the times of five different Prime Ministers as Additional Solicitor General [1979-1986], Solicitor General [1986-1989], Attorney General [1992-1996] and again as Attorney General [2004-2009] being the only person to be ever appointed four times to the post.

In his fifty year career, Shri Banerji appeared in many leading cases before this Court.

In the case of *Rameshwar Prasad (VI) v. Union of India* [(2006) 2 SCC 1] relating to the constitutional validity of the Presidential Proclamation under Article 356(1) dated 23rd May, 2005 ordering dissolution of the Legislative Assembly of the State of Bihar, while arguing in favour of the validity of the Presidential Proclamation, he submitted before this Court that there is always a strong presumption of validity in favour of such Proclamation and in such cases there is always a further check of Parliamentary approval, which has a bearing of limits on judicial review. In this case, this Court placed on record its appreciation for the excellent and very able assistance rendered

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by Sri Banerji as Attorney General of India and his team of advocates who appeared on behalf of Union of India.

As Attorney general of India, Shri Banerji appeared in one of the most noted cases in *S.R. Bommai v. Union of India* [(1994) 3 SCC 1] in which the question arose as to whether under Article 356 of the Constitution the power to impose President's Rule was not unfettered or unlimited. Shri Banerji submitted that there cannot be any limitations, per se, on the Court's power of judicial review. However, he submitted that while exercising the power of judicial review, it is for the Court to determine in each case the question of justiciability and the limits of justiciability.

In *Supreme Court Advocates-on-Record Association v. Union of India* [(1993) 4 SCC 441], Shri Banerji as Attorney General, while emphasizing the independence of judiciary in the Indian Constitution, submitted that "every system depends upon its successful working on the quality of human material involved in working the system".

Shri Banerji was, in the true sense, a renaissance man. He combined in him the finest virtues of the East and West. As a man, he was simplicity and unassumingness personified, notwithstanding his learning and knowledge. In many respects, he was the embodiment of courtesy and friendliness. His greatest quality was that of humility. He was a charming man. He enjoyed company. He was a lively conversationalist. He won the hearts of all who came in contact with him.

A long and glorious innings at the Bar has ended. The Great Reaper has taken away Shri Milon Banerji from his mundane abode.

My brethren and I wish to convey to the family of the bereaved our deep felt condolences in this hour of mourning death of Shri Milon Banerji.

May his soul rest in peace.

**REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI G.E. VAHANVATI
IN THE MEMORY OF
LATE SHRI MILON KUMAR BANERJI,
FORMER ATTORNEY GENERAL FOR INDIA
ON 11TH AUGUST 2010**

My Lord, the Hon'ble Justice Kapadia, Chief Justice of India, Hon'ble Judges of the Supreme Court, Mr. Jethmalani, President of the Supreme Court Bar Association, Office Bearers of the Supreme Court Bar Association, the Solicitor General and other Law Officers, Members of the Bar, Ladies and Gentlemen.

When I came to Delhi in June 2004, after being appointed Solicitor General, the first thing I did was to call on the recently appointed Attorney General for India, Milon Banerji at his residence. I wanted to assure him that as Solicitor General, I was happy to work under him, and would give him all due respect, not as a Senior but also as a person who had such a distinguished career. Last year, after I was appointed Attorney General, I once again went to his residence, this time to seek his blessings. With tears in his eyes, he told me that he was very grateful for the fact that I had given with him due respect and reverence. It is in that spirit that I stand here before the full Court, to pay a respectful tribute to Mr Milon K Banerji, a towering Attorney General who passed away on 20 July 2010.

It is perhaps for the first time that a reference is being made for a former Attorney General by a person who had the privilege to have worked as Solicitor General under him. Therefore, for me, this is not just a dry recital of events from his life. It is something more; a tribute from the inner recesses of my heart and emotions.

So much has already been said about Milon Banerji. Remarkably, the Times, London, also carried a detailed obituary on Milon on 26 July 2010. They described him as a distinguished jurist involved in several landmark cases who rose to hold a senior post and twice served as Attorney General of India. If there was ever a person who was born into culture and sophistication, it was Milon Banerji.

Milon was born on 27 September 1929 into a well known Brahmo Samaj family. His father, Professor A.C. Banerji, was an eminent mathematician and educationist. His mother, Smt. Probha Banerji, was India's first Honorary Lady Magistrate. It may come as a surprise to learn that during his stint in the Allahabad University, Milon Banerji was an active participant in student politics. He was the Secretary of the Allahabad University Students Union in 1948. As Secretary, he interacted with persons who later achieved great eminence in their lives including, Mr. H N Bahuguna, who was then involved in the Freedom Struggle, and Mr. Chandrashekhar, who rose to become Prime Minister of this country.

His tenure in Cambridge was perhaps the most pleasurable and formative part of his life, where he came in touch with a remarkable range of people. He developed contacts which endured for the rest of his life. In Cambridge, he was the President of the 'Majlis' a society comprising students from India and Pakistan. The Majlis membership included various distinguished persons such as Somnath Chatterjee, Brijesh Mishra and M.S. Swaminathan.

Somnath Chatterjee was a particularly close friend. Somnathji wrote a letter to Milon suggesting what books he should buy on his return from England to practice law. These included Atkins on pleadings, Phipson on Evidence and select volumes of Halsbury. On such stuff are laid the foundations of solid legal principles.

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He started his practice in Allahabad in 1955, joining the Chambers of the famous Jagdish Swarup. Thereafter, Milon and his wife, Anita, shifted to Calcutta where he wanted to start a practice on the Original Side of the Calcutta High Court. Anita played a great role in Milon's life. They had met when she was in Cambridge where she was a student at Girton College. They were married in Allahabad at a time when Milon's father was Vice Chancellor. Anita had been born in Allahabad.

Shifting to Calcutta was not an easy move. They lived in a one-room flat with a verandah whose monthly rent was substantially paid out of the salary of Anita who had been appointed a Lecturer. Then Milon's practice prospered. He made his name in commercial and arbitration matters. They proudly built a house in Ballygunge to which they shifted in May 1970. In the meanwhile, they had two sons. The elder son, Debal in 1956 and later on, Gourab in 1967.

Milon was a man of great principles. During his student days, one of his close friends was C.S.P. Singh, the elder brother of the famous V.P. Singh. C.S.P. Singh became a High Court Judge. After Milon had shifted to Calcutta, he was briefed in a matter to appear in Allahabad before C.S.P. Singh. During the course of the hearing of the case, C.S.P. Singh announced in Court that Milon was the man who had prevented him from coming first in class. He invited him for a cup of tea. This incident impressed various clients and Milon was offered many cases to appear before Justice C.S.P. Singh. Milon Banerji never took up a single case in that Court again.

In 1979, the then Law Minister, Mr SN Kacker personally selected Law Officers. He chose Mr Lal Narayan Sinha from the North as Attorney General, Mr Soli Sorabjee from the West as Solicitor General, Mr K K Venugopal from the South as Additional Solicitor General and Milon Banerji from the East as Additional Solicitor General. Milon continued as Additional Solicitor General even after the change of Government in 1980.

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Initially he served as Additional Solicitor General and then as Solicitor General for a long time.

There was a period during which he had to go to Calcutta every Friday and come back every Sunday evening. This was because his mother was unwell. He used to carry all the SLPs with him and would come back ready to argue all the cases. He impishly said that he got ready by reading the counter affidavits of the private respondents because the drafting in the Central Government Panel was appalling. Things have not changed much since those days.

Only two Law Officers have had the distinction of having been Appointed Attorneys General twice. One is Soli Sorabjee and the other was Milon Banerji. Milon Banerji succeeded Soli on both occasions. Interestingly, on the other hand Ashok Desai succeeded Milon Banerjee to the office of the Solicitor General and Attorney General. I am told that Ashok wryly told him that since he was lucky to succeed to the offices held by Milon Banerji, Milon should get himself appointed as the President of India so that he could move to Rashtrapati Bhawan.

I am not going to burden the reference by merely enumerating the various cases in which Milon Banerji appeared. However, I would like to strike a personal note and record how educational it was for me to have assisted him in some major matters. He led the arguments in Kuldip Nayyar's case before the Constitution Bench. We both prepared the case separately. In the final conference before the matter started we were happy to note that both of us were on the same wavelength.

Milon Banerji was not an aggressive person, but I have seen on occasion a flash of temper when he was unduly provoked or hustled. On one such occasion, I smiled and told him that I had not seen this aspect of his personality. He had a hearty laugh and said that he got upset very rarely, but even then it did not last long.

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If I was fortunate to have worked under Milon Banerji, I am equally fortunate to have Gourab Banerji with me as Additional Solicitor General. Milon was justifiably proud of both his sons who have done so well at the Bar. During his long illness his family has gone through trying times. The manner in which Milon battled his illnesses, exemplifies his indomitable spirit. He was silent but courageous, quiet but strong, courteous and yet firm. We can say with pride that he was a complete man. We are all fortunate that our lives have been touched by him in some way or the other.

May God bless him and all the members of the family.

**REFERENCE MADE BY
SHRI RAM JETHMALANI, PRESEIDENT
SUPREME COURT BAR ASSOCIATION
IN THE MEMORY OF
LATE SHRI MILON KUMAR BANERJI,
FORMER ATTORNEY GENREAL FOR INDIA
ON 11TH AUGUST 2010**

My Lords,

I do not know the protocol of references like this. Most of the dear ones I have lost during my undeserved 86 year and more were not so exalted as to invite such a reference in the presence of all the exalted Judges of this Court.

Milon was a friend of long standing but he was either absorbed in his work or he was wrapped in his own thoughts seemingly relaxing or even dosing away. I do not claim that degree of social intimacy with him that I can share with your Lordships knowledge of some not so well known facets of his personality or memorable events in his life which escaped the attention of all except me.

I observed him usually from a respectable distance and only occassionally managed to penetrate the barrier of his dignified reserve. Even so I had a fair and accurate glimpse of a heart full of love compassion and charity, qualities which are becoming rarer and rarer, making survival in this cruel world increasingly difficult if not almost unwelcome.

He was never rude to any one not even to some abrasive trespassers into his mood of 'Leave Me Alone' or his calm enjoyment of solitude.

I am sure that he must have made an ideal father and a more ideal husband.

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He did not take much interest in politics except in his student days. I fully understand his reticence. He studiously kept away from that stinking sewer of corruption that has nearly made a mockery of our Republic. I tried to draw him into a discussion of the decline of the bar, the bad quality of legal education and the diminishing confidence of the public in our system of litigation and administration of justice. He had no readymade solution but had a profound faith that some how, some day our Supreme Court will find the solution. He never disputed the tragic diagnosis but he was not very clear about the prescription.

Legal scholarship was in his genes. He had a spectacular record as a brilliant student and no wonder he easily rose to be our Attorney General. He never experienced what one Judge Soliloquized on the day of his appointment: when I assumed the judgment chair I almost heard all declare, How the hell did he get there?

We rarely appeared in Court on the same side but he never took advantage of the faults of the adversarial system. He could have, but consciously did not. He did not foment litigation, encouraged alternative dispute resolution, favoured settlements and was always helpful to the youngsters at the Bar. He was polite to his opponents and respectful to the Bench. No wonder that he was a Member of the Permanent Court of Arbitration.

Not Very long ago we appeared for once on the same side in opposing a frivolous and foolish PIL. A lawyer Petitioner wanted the word 'Sindh' to be dropped from our national Anthem on the ground that Sindh was no longer a part of India.

Milon appeared for the Union of India and I for a large number of Sindhi organizations which were rightly angry with the Petitioner. He did a wonderful job got the PIL dismissed and the foolish petitioner reprimanded by Justice Lahoti, who spoke for the Court. Millon's industry and scholarship are reflected in the Judgment the reading of which I commend to every one.

(xii)

His family of illustrious Sons and other members young and not so old are here. The incised wound of sad loss and resulting pathos can not easily be healed. Only time can work the miracle. But it may well be a somewhat soothing balm for you all to know that Milon was also a loved member of an extended family of friends and admirers only a few of whom are present in this room this morning. These coparceners all share your loss and to some extent make it more bearable.

With this thought outside and a prayer for the departed soul inside, I with your Lordship's, permission to bring my reference to an end.

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THE

SUPREME COURT REPORTS

Containing Cases Determined by the Supreme Court of India

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ERRATA

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