Legal Referencer

Part-II

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Prosecutionreplenish

An endeavour to learn and excel

Foreword

It is with great pleasure and profound respect that I introduce the second part of the esteemed legal referencer, a comprehensive compilation of precedents from the constitutional courts of India. This invaluable resource serves as a beacon for legal practitioners seeking insight into the nuanced world of constitutional law, providing a rich tapestry of judgments that have shaped the legal landscape.

I extend my heartfelt gratitude to Sri G. Sivaiah, a distinguished retired Public Prosecutor of Telangana State, whose indefatigable efforts and dedication have brought this compilation to fruition. His meticulous curation of precedents showcases not only a profound understanding of the legal intricacies but also an unwavering commitment to facilitating the work of legal professionals. Sri G. Sivaiah's vast experience and keen insights have undoubtedly enriched the legal fraternity, making this compilation an indispensable tool for practitioners and scholars alike.

This second part builds upon the foundation laid in the initial volume, which is available online at our website, prosecutionreplenish.com. The continuous commitment of Sri G. Sivaiah to share his wealth of knowledge is commendable, and this book stands as a testament to his passion for contributing to the legal community.

As we delve into the precedents within these pages, it is my sincere hope that this compilation becomes an essential reference guide for legal practitioners, scholars, and anyone interested in the evolving landscape of law in India. The significance of this work extends beyond its immediate utility, serving as a lasting tribute to the dedication and expertise of Sri G. Sivaiah.

May this book continue to be a source of enlightenment and inspiration for all those navigating the intricate realms of constitutional jurisprudence.

L.H.Rajeshwer Rao
prosecutionreplenish.com

Acknowledgment

I extend my heartfelt appreciation to Mr. Rajeshwar Rao Garu, the prosecutor, whose remarkable understanding and patience have been instrumental in accommodating numerous changes until the eleventh hour. His invaluable contributions to the legal perspectives have played a pivotal role in shaping this endeavor. I am sincerely grateful for his unwavering commitment, exerting every effort to extract pertinent material from judgments of the Hon'ble Apex Court and High Courts of various states, ensuring the absence of accidental omissions of vital information. Mr. Rajeshwar Rao Garu has been instrumental in preserving the essence of the legal references.

I am profoundly indebted to Mr. L.H. Rajeshwer Rao for his unwavering support and encouragement in navigating the complexities of bringing the second part of the legal reference in the prosecution to fruition. His guidance has been indispensable, and I am truly grateful for his invaluable assistance throughout this process.

G.Sivaiah
Prosecutor (Retd)

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319 CrPc petition maintainable even at the time of judgment
https://indiankanoon.org/doc/174875841/; Sukhpal Singh Khaira vs The State Of Punjab on 5 December, 2022; CRIMINAL APPEAL NO.885 OF 2019

if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319 of CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319 of CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319 of CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273 of CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319 of CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319 of CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319 of CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

Guidelines for getting 164 CrPC statement of Vitim recorded
https://indiankanoon.org/doc/2622362/; State Of Karnataka vs Shivanna @ Tarkari Shivanna on 25 April, 2014; SPECIAL LEAVE PETITION (CRL.) NO. 5073/2011

exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:

(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

(v) Medical Examination of the victim: Section 164 A Cr.P.C.
inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.

CRIMINAL APPEAL NOS. 339-340 OF 2014; February 04, 2022 RAJESH YADAV & ANR. ETC. VERSUS STATE OF U.P; https://www.livelaw.in/pdf_upload/137-rajesh-yadav-v-state-of-up-4-feb-2022-409303.pdf;

Section 3 of the Evidence Act defines “evidence”, broadly divided into oral and documentary. “Evidence” under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an “Adjective Law” highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

The definition of the word “proved” though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the “matters before it”. The importance is to the degree of probability in proving a fact through the

consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.

Matters are necessary, concomitant material factors to prove a fact. All evidence would be “matters” but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court’s sojourn in deciphering the truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence”. However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word “matter”, and for that purpose, the definition of the expression of the words “means and includes”, meant to be applied for evidence, has to be imported to that of a “matter” as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.

What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

The word “prudent” has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent

man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a judge. It is 9 only after undertaking the said exercise can he resume his role as a judge to proceed further in the case.

The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain.

evidence can be divided into three categories broadly namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters

The expression "hostile witness" does not find a place in the Indian Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be

deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.
Even assuming that the investigating officer has not deposed before the court or has not cooperated sufficiently, an accused is not entitled for acquittal solely on that basis, when there are other incriminating evidence available on record.
A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it
The High Court has considered this aspect in the correct perspective. It is very unfortunate that the investigating officer could not be produced despite the best efforts made. The reason is obvious. There are three investigating officers. The other two investigating officers have been examined including for the charge under the Arms Act. PW-13, the first investigating officer, has been examined in extenso during cross examination. It is only for the further examination he turned turtle. That per se would not make the entire case of the prosecution bad is law particularly when the final report itself cannot be termed as a substantive piece of evidence being nothing but a collective opinion of the investigating officer. The trial court as well as the High court considered the evidence threadbare in coming to the right conclusion. Similarly, the contention that there is non-explanation for the existence of some other empty cartridge recovered from the place of occurrence would not facilitate an acquittal for the appellants as there are materials sufficient enough to implicate and prove the offence against them
Long adjournments are being given after the completion of the chief examination, which only helps the defense to win them over at times, with the passage of time. Thus, we deem it appropriate to reiterate that the trial courts shall endeavor to complete the examination of the private witnesses both chief and cross on the same day as far as possible. To further curtail this menace, we would expect the trial courts to take up the examination of 24 the private witnesses first, before proceeding with that of the official witnesses

Interpretation of Section 40 IPC and 141 IPC
https://indiankanoon.org/doc/166657898/#:~:text=The%20appellants%20were%20all%20convicted,imprisonment%20and%20fine%20of%20Rs.; Manga @ Man Singh vs State Of Uttarakhand on 3 May, 2013; CRIMINAL APPEAL NO.1156 OF 2008;
a conspectus reading of Section 40 makes the position abundantly clear that for all offences punishable under the Indian Penal Code, the main clause of Section 40 would straight away apply in which event the expression "other offence" used in Section 141 'third', will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whomsoever is proceeded against for any offence punishable under the provisions of the Indian Penal Code, Section 40 sub-clause 1 would straight away apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of sub-clauses 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against.

FIR-Evidentiary Value
Mehraj Singh vs State Of U.P, 1994 SCC (5) 188; https://indiankanoon.org/doc/105640015/; 21.4.1994;
"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is 32 alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the

copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

Recovery of articles

DALIP RAM vs STATE, 2007 (2) JCC 1587; https://indiankanoon.org/doc/177551/; 26.4.2007

Hon'ble Delhi High Court held that it is highly improbable that the offender would retain the robbed articles with him for about 8 months since in the ordinary course of nature the offender would either dispose of the stolen articles or put the same to use and would not keep the same as ornamental in his house, knowing that the same would be a piece of evidence if he is arrested.

Injuries on accused should be explained

Nand Lal & Ors. v. State of Chhattisgarh 2023 online SCC that "The omission on the part of prosecution to explain the injuries on the person of the accused assumes greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital." As held by this Court, the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved

a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case.

Mansoorali Khan Ahmed Khan & another v/s. State of Maharashtra; CRIMINAL APPEAL NO. 685 OF 2010 WITH INTERIM APPLICATION NO. 1435 OF 2020 INTERIM APPLICATION NO. 1941 OF 2021 (BHC); FEBRUARY 14, 2022.

The Apex Court in the case of Sarwan Singh v.s. State of Punjab{1957 AIR 637}. The prosecution has to travel the distance between 'may be' and 'must be'. It was held as follows : "considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence."

https://indiankanoon.org/doc/40458820/; Pawan Kumar Chourasia vs The State Of Bihar on 14 March, 2023;

As far as extrajudicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extrajudicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extrajudicial confession is corroborated by other evidence on record, it acquires more credibility.

HIGH COURT OF GUJARAT AT AHMEDABAD CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 540 of 2013; 11/09/2013

The Apex Court has specifically determined while dealing with the issue regarding discharge of accused from the charges that scanning and scrutinizing the evidence and materials produced by the prosecution is not permitted at the time of deciding the prayer for discharge and that positive conclusion on material record should be avoided as it may affect the trial.

it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the

accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed.

https://main.sci.gov.in/supremecourt/2018/21899/21899_2018_14_1501_46308_Judgement_23-Aug-2023.pdf; Irfan @ Naka Vs State of U.P; 23.08.2023

There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of t
he dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.
this Court, speaking through Justice Krishna Iyer in Dharm Das Wadhwani v. State of Uttar Pradesh reported in (1974) 4 SCC 267, that the rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-convict in the crime.

2015 9 ADJ(NOC) 21; 2016 93 AllCriC 772; 2016 4 AllLJ 393; 2016 1 JIC 420; 2015 0 Supreme(All) 1245;Allahabad High Court; Ram Raj vs State Of U.P. Criminal Appeal No. 407 of 1982, decided on 13th October,2015)
no doubt in cases of direct evidence, motive looses its value, but in cases of circumstantial evidence it is true that motive does assume great importance although to say that absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance is not due and (to use of cliche), the motive is in mind of the accused and can seldom be fathomed with any degree of accuracy. "Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental deposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."
In some cases, it may not be difficult to establish motive through direct evidence, while in some other cases, inferences from circumstances may help in discerning the mental propensity of the person concerned.
It is true that where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty, but absence of clear proof of motive does not necessarily lead to the contrary conclusion. It should always be borne in mind that different motives may

come into operation in the minds of different persons, for human nature has the potentiality to hide many things and that is the realistic diversity of human nature and it would be well nigh impossible for the prosecution to prove the motive behind every criminal act.
no recovery of weapon of assault does not bear any adverse inference on the prosecution case.
What makes information leading to the discovery of the witness admissible is the discovery from him. All the things shown by him or hidden or kept with him, which the police does not know until the information was furnished to them by the accused. It cannot be said to be discovered if nothing is to be found or recovered from the accused as a consequence of the information furnished by the accused and the information which discloses the identity of the witness will not be the admissibility of the information under Section 27. The conduct of the accused is definitely admissible under Section 8 of the Indian Evidence Act as has been laid down in (1979) 3 SCC Page 90 Prakash Chandra Vs. State (Delhi Administration).

https://indiankanoon.org/doc/188062/; I(2005)DMC753; P. Vasu And Anr. vs State Of A.P. on 2 August, 2004
The crucial aspect which would suggest that there would have been harassment in relation to demand of some additional dowry, i.e., payment of Rs. 15,000/- is the evidence of those witnesses and the Panchayatdars, caste elders would be the proper independent witnesses to speak about the same. Those witnesses were not examined and the other independent witnesses relating to the other events also had not been examined.

https://indiankanoon.org/doc/196199017/; The State Of Jharkhand vs Shailendra Kumar Rai @ Pandav Rai on 31 October, 2022; CrlA 1441/2022
“Per-Vaginum examination commonly referred to by lay persons as 'two-finger test', must not be conducted for establishing rape/sexual violence and the size of the vaginal introitus has no bearing on a case of sexual violence. Per vaginum examination can be done only in adult women when medically indicated.
The status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of

assault (findings such as fresh tears, bleeding, edema etc.) are to be documented."
Any person who conducts the "two-finger test" or per vaginum examination (while examining a person alleged to have been subjected to a sexual assault) in contravention of the directions of this Court shall be guilty of misconduct.

https://indiankanoon.org/doc/95619872/; Kishan Lal @ Champa Yadav vs State Of Chhattisgarh on 22 February, 2023; CRLA 565 of 2022; Chattisgarh High Court

It is necessary for the prosecution as the entire process of collecting the blood samples for DNA profiling is controlled and done by the human agencies i.e. doctors and the investigating officers. Every step to preserve the sample from manipulation/contamination has to be proved, as absence of those steps may cause prejudice to the accused. The prosecution is required to put all the positive evidence CRA-565-2022 regarding the fact that all the precautions have been taken by the doctors as well as by the police officials regarding the preservation of the DNA samples.
The prosecution has to establish that appropriate and proper procedure has been followed for collection of blood sample for DNA profiling by leading evidence/material on record.

https://indiankanoon.org/doc/6678726/; C.Arjunan vs State Represented By on 6 December, 2018; Madras High Court. CRLOP No. 8341 of 2017 and CRLMP Nos. 5988 and 5989 of 2017

Ammonium Nitrate by itself is not an explosive material and that it is not a notified material under the Explosives Act requiring licence for possession thereof.

https://indiankanoon.org/doc/643293/; Abu vs State Of Ekrala on 10 November, 2009;CRLA 1076 of 2003

The word "possession" occurring in almost every penal statutes such as the NDPS Act, 1985, Opium Act, 1878, Arms Act, 1959, Explosive Substances Act, 1908 has been interpreted to mean "conscious possession" (See Moideen Koya v. State of Kerala - 1990(2) KLJ 145; Inder Sain v. State of Punjab - AIR 1973 SC 2309; Superintendent and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja - AIR 1980 SC 52.; State of Bihar v.Amir Hasan - AIR 1951 Patna 638)
When the possession is the core ingredient to be established before the accused can be convicted under Section 9(B)(1)(b) of the Explosives Act,

mere proof of ownership of the house in question does not take the prosecution anywhere. (See Inder Sain v. State of Punjab (1973(2) SCC 372). In Avtar Singh and others v. State of Punjab (AIR 2002 SC 3343), the Apex Court observed as follows:- " The word "possession" no doubt has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together but the minimum requisite element which has to be satisfied is custody or control over the goods "

"**2008 (2) JCC 979", "Rajender Singh Sachdeva V/s State (NCT) of Delhi**" has been pleased to observe as under:

13. If these and other surrounding circumstances are taken into consideration the complaint of the petitioner appears to be well founded. According to the complainant, the incident in which the petitioner was involved occurred some time in April-May 1988, i.e 16 years before the complaint. He was not named in the FIR. That incident is also absent in the first report documented during investigation, i.e a complaint to the Assistant Labour Commissioner. The allegations against the petitioner surfaced only during the statement under section 161. Interestingly, he was named in that. The third statement was recorded on 21.05.2004. In the meanwhile, the petitioner was arrested on 18.05.2004. One does not find any logic as to the recording of the second statement under Section 161 except as a explanation by the complainant regarding identity andknowledge of the petitioner's name. If this is seen in the background of absence of any mention of the petitioner in the FIR, the tenuousness of the link with allegations against him become apparent.

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15. Now, it is well established by series of judgments of the Supreme Court commencing from Union of India V/s Prafulla Kumar Samal, AIR 1979 SC 366 onwards that charges can be framed against an accused if the materials, i.e documentary and oral evidence show his prima facie involvemenet and existence of a grave suspicion in that regard. The materials sought to be pressed into service by the prosecution in this case for the charge under Section 120B do not inspire such confidence as to be termed as disclosing grave suspicion of his involvement. Another principle which has been recognized by the Courts is that if two views arepossible, the one favouring the accused should be preferred at the charge framing stage. In this case, the entirety of evidence are the two Section 161 Cr.P.C statements of the complainant. There are no

objective material or circumstantial evidence supporting the statements in the form of seizure of articles etc. In this background, it is clear that there are two views possible.
Therefore, applying the rule enunciated in “Dilawar Balu Karane V/s State of Maharashtra”, 2002 (2) SCC 135, the interpretation favouring the petitioner has to be accepted.

the Hon’ble Supreme Court in the case of State (NCT of Delhi) vs. Navjot Sandhu@Afsan Guru, 2005(11)SCC 600 wherein it was held that to constitute the offence that of conspiracy, mere knowledge is not sufficient and there should be a meeting of minds of two or more persons for doing an illegal act or an act by illegal means.

1958 0 AIR(AP) 235; 1958 0 CrLJ 476; 1957 0 Supreme(AP) 131; Chervirala Narayan Vs. State ; Decided On : 07-31-57
THE next question is what is the nature of the offence committed by the accused ? Exception i to section 300 of the Indian Penal Code reads :- "culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or cause the death of any other person by mistake or accident". The above exception is subject to the following proviso : 1. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. To come under this exception the act of causing death should have been done by the offender under the influence of some feeling depriving him of all self-control engendered by a provocation, which is both grave and sudden.
The witnesses who will depose to the prosecution case may be of different categories, viz. , among others:

(i) witnesses who are eye-witnesses to the actual occurrence ;
(ii) witnesses who speak to the facts which afford a motive for the commission of the offffence ;
(iii) witnesses who speak to the investigation and the facts unfurled by the investigation and

(iv) witnesses who speak to circumstances and facts probabilising the commission of the offence, which is technically described as circumstantial evidence.

Out of the said categories of witnesses, sub-section (4) enjoins on the Magistrate to examine witnesses to the actual commission of the offence alleged produced by the prosecution. The word actual qualifying the word commission emphasises the fact that the said witnesses should be those who have seen the commission of the offence. If the word actual is not in the section, it may perhaps be contended that circumstantial evidence of the facts to establish the offence is comprehended by the said words.

IN our view, the section, therefore, by using the words actual commission clearly is meant to indicate evidence which goes directly to prove the fact in issue. But, there may not be eye-witnesses in a case or, if there are, the prosecution may not have produced all of them before the Court. In such a contingency, in the interests of justice, the Magistrate may examine some or all of the other eye-witnesses not produced before him but whose names are disclosed in the report. He may also for the same reasons examine witnesses other than eye-witnesses.

Common Intention basing on res ipsa loquitur

1997 0 AIR(SC) 383; 1996 0 CrLJ 4444; 1996 10 SCC 508; 1996 0 SCC(Cri) 1375; 1996 0 Supreme(SC) 1375; Criminal Appeal No. 456 of 1986; Decided On: 02.09.1996; Krishnan and another Vs. State of Kerala

Question is whether it is obligatory on the part of the prosecution to establish commission of overt act to press into service section 34 of the Penal Code. It is no doubt true that court likes to know about overt act to decide whether the concerned person had shared the common intention in question. Question is whether overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow section 34 to operate inasmuch as this section gels attracted when "a criminal act is done by several persons in furtherance of common intention of all". What has to be, therefore, established by the prosecution is that all the concerned persons had shared the common intention. Courts mind regarding the sharing of common intention gels satisfied when overt act is established qua

each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention: res ipsa loquitur

Can lapses in investigation be a ground for acquittal?
2016 0 AIR(SC) 4745; 2016 2 ALD(Cri)(SC) 910; 2017 1 ALT(Cri)(SC) 15; 2017 0 CrLJ 1143; 2016 16 SCC 701; 2017 4 SCC(Cri) 524; 2016 0 Supreme(SC) 737; Dhal Singh Dewangan Vs. State of Chhattisgarh; Criminal Appeal Nos. 162-163 of 2014; Decided On : 23-09-2016
the fact that the appellant was lying unconscious at the scene of occurrence is accepted by all the prosecution witnesses including the Investigating Officer, who sent the appellant to the Primary Health Centre for medical attention. Since he was sent by the Investigating Officer himself, the prosecution ought to have placed on record the material indicating what made him unconscious, what was the probable period of such unconsciousness and whether the appellant was falsely projecting it. However, nothing was placed on record. Neither any doctor who had examined him was called as witness, nor any case papers of such examination were made available. In the absence of such material, which the prosecution was obliged but failed to place on record, his explanation cannot be termed as false. The explanation that he knew nothing as he was unconscious cannot be called, 'absence of explanation' or 'false explanation'. So the last item in the list of circumstances cannot be taken as a factor against the appellant.
In paragraph 41 of State of W.B. v. Mir Mohammad Omar and others, (2000) 8 SCC 382 this Court has observed as under:-

"…..Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation……."

it is sufficient to say that the General Diary entries are summary entries relating to movement of police, or relating to the fact that some information regarding an offence has been given at the police station.

In Himachal Pradesh Administration v. Shri Om Prakash, (1972) 1 SCC 249 in paragraph 7, this Court has observed as under:-

"……..It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses as are lying or where they are honest and truthful, they are not certain. It is therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt - the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given. Or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard, C.J., in Rox v. Kritz [1950 (1) KB 82 at 90], said that when in explaining to the juries what the prosecution has to establish a Judge begins to use the words "reasonable doubt" and to try to explain what is a reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells

them in plain language. “It is the duty of the prosecution to satisfy you of the prisoner’s guilt”. What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt…..”

Confession of an accused in another case

2013 0 AIR(SC) 1441; 2013 0 AIR(SC)(Cri) 882; 2013 0 CrLJ 2069; 2013 12 SCC 17; 2014 1 SCC(Civ) 242; 2013 4 SCC(Cri) 202; 2013 0 Supreme(SC) 246; State of Maharashtra Vs. Kamal Ahmed Mohammed Vakil Ansari & Ors.; CRIMINAL APPEAL NO. 445 OF 2013; (Arising out of SLP (Crl.) No. 9707 of 2012); Decided On : 14-03-2013

In order to be relevant under Section 11 of the Evidence Act, such statement ought to be “a statement about the existence of a fact”, and not “a statement as to its existence”.

As is evident from a perusal of Section 30 extracted above, a confessional statement can be used even against a co-accused. For such admissibility it is imperative, that the person making the confession besides implicating himself, also implicates others who are being jointly tried with him. In that situation alone, such a confessional statement is relevant even against the others implicated. Insofar as the present controversy is concerned, the substantive provision of Section 30 of the Evidence Act has clearly no applicability because Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah have not implicated any of the accused-respondents herein. The importance of Section 30 of the Evidence Act, insofar as the present controversy is concerned, emerges from illustration (b) thereunder, which substantiates to the hilt one of the conclusions already drawn by us above. Illustration (b) leaves no room for any doubt, that unless the person who has made a confessional statement is an accused in a case, the confessional statement made by him is not relevant.

Dying Declaration: No necessity of direct nexus between Circumstances and death

(1997) 4 SCC 161; Rattan Singh v. State of H.P.

Criminal Courts should not be fastidious with mere omissions in First Information Statement, since such Statements cannot be expected to be a choronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the Police Officer, who takes down the first information, would record what the in formant conveys to him without resorting to any elucidatory exercise. It is the voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all.

The fact spoken by the deceased has subsequently turned out to be a circumstance which intimately related to the transaction which resulted in her death. The collocation of the words in Section 32(1) circumstances of the transaction which resulted in his death is apparently of wider amplitude than saying circumstances which caused his death. There need not necessarily be a direct nexus between "circumstances" and death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also, fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstance can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death.

1996 3 Crimes(SC) 197; 1996 0 CrLJ 4151; 1996 0 SCC(Cri) 1290; 1996(3) Crimes 197 (SC) Gentela Vijayavardhan Rao & Anr. Vs. State of Andhra Pradesh; Criminal Appeal No. 195 of 1996; 28-8-1996

The principle of law embodied in section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue “as to form part of the same transaction” becomes relevant by

itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however, slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae."

Though the statement given to a Magistrate by someone under expectation of death ceases to have evidentiary value under Section 32 of the Evidence Act if the maker thereof, did not die such a statement has, nevertheless, some utility in trials. It can be used to corroborate this testimony in court under Section 157 of the Evidence Act which permits such use, being a statement made by the witness "before any authority legally competent to investigate". The word "investigate" has been used in the section in a broader sense. Similarly the words "legally competent" denote a person vested with the authority by law to collect facts. A Magistrate is legally competent to record dying declaration "in the course of an investigation" as provided in Chapter XII of the Code of Criminal Procedure, 1973. The contours provided in Section 164(1) would cover such a statement also.

https://indiankanoon.org/doc/126970298/; Arjun v. State of Rajasthan ; 14.7.1994

the consistent evidence of eye witnesses cannot be rejected merely on the ground that their evidence has not been accepted with regard to some other accused

2011 0 CrLJ 2025; 2011 0 Supreme(MP) 18; Dilip Takhtani Vs. State of M.P.; Criminal Revision No. 2013 of 2010 (J); Decided on: 6.1.2011

The tape, itself, is primary and direct evidence admissible as to what has been said and picked up by the recorder (N. Sri. Rama Reddy v. V.V. Giri, AIR [971 SC 1162). It is a document as defined in section 3 of the Evidence Act and stands on no different footing than photograph (Ziyauddin

Burhalluddin Bukhari v. Brijmohan Ramdas Mehra, AIR 1975 SC 1788). However, such evidence must be received with caution (Yusufalli Esmail Nagree v. State of Maharashtra, AIR 1968 SC 147). The conditions for admissibility of a tape recorded statement are :-

"(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody. .

(6) The voice of the speaker should be clearly audibel and not lost or distorted by other sounds or disturbances."

(Ram Singh v. Col. Ram Singh, AIR 1986 SC 3)

Sec 145 IEA Explained

1982 0 AIR(SC) 839; 1982 1 SCC 700; 1982 0 SCC(Cri) 334; 1982 0 Supreme(SC) 63; Mohanlal Gangaram Gehani Vs. State of Maharashtra; Criminal Appeal No. 4 of 1976; on 17-2-1982.

It is obvious from a perusal of Section 145 that it applies only to cases where, the same person makes two contradictory, statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement under Section 145. In other words, where the statement made by a person or witness is contradicted not by his own statement but by the statement of Another prosecution witness, the question of the application of S. 145 does not arise. To illustrate, we might give an instance - suppose

A, a prosecution witness, makes a particular statement regarding the part played by an accused but another witness B makes a statement which is inconsistent with the statement made by A, in such a case Section 145 of the Evidence Act is not at all attracted. Indeed, if the interpretation placed by the High Court is accepted, then it will be extremely difficult for an accused or a party to rely on the inter se contradiction of various witnesses and every time when the contradiction is made, the previous witness would have to be recalled for the purpose of contradiction. This was neither the purport nor the object of S. 145 of the Evidence Act.

In Bishwanath Prasad v. Dwarka Prasad, (1974) 2 SCR 124 : (AIR 1974 SC 117), while dwelling upon a distinction between an admission and a statement to which Section 145 would apply, this court observed as follows (at p. 119 of AIR) :

"In the former case an admission by a party is substantive evidence if it fulfills the requirements of S. 21 of the Evidence Act; in the latter case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence proprio vigore, in the latter case the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by S. 145 of the Evidence Act."

1997 0 AIR(SC) 322; 1997 0 CrLJ 362; 1997 1 SCC 283; 1997 0 SCC(Cri) 333; Binay Kumar Singh, Vs. State of Bihar; Criminal Appeals Nos. 277 with 403 and 404, 278, 279 and 280-283 of 1987 and 91 of 1994, D/- 31-10-1996.

none of the injured had identified the assailants (except two or three appellants) but only those witnesses who did not sustain any injury have claimed to have identified a bulk of them. Even if so, it cannot have any adverse impact on the credibility of the witness relied on by the two Courts as it could happen many a times that persons sustaining injuries in a mass of attack might not be in the same position to observe men and events as the non injured persons. It is quite probable that the vision of the injured might get blurred, as their focus of attention would instinctively get diverted

to the injuries sustained by them. They could then be in a less advantageous position to watch or observe the events than the non-injured witnesses.

there is no justification in drawing a hiatus between injured witnesses and non-injured witnesses in this case as for the capacity to identify the assailants while in action. PW-4 (Babanand Bhagt), PW-9 (Doman Bhagat), PW-14 (Krishna Das), PW-27 (Damyanti Devi), PW-33 (Ajay Kumar) are the witnesses who sustained injuries in this episode. Among them PW-14 is a small boy who said he got up from sleep on hearing gun shots and even at the first sight of occurrence he fell under a shock and became unconscious. The other injured witnesses have said that they woke up from sleep and on seeing the surroundings in flames, they ran for life and some sustained gun shots during the fight while the others sustained burns. If this was the position, we cannot find fault with them as to their inability to identify a good number of assailants.

alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in S. 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant.

Arguments were addressed before us for reappreciation of evidence of the eye-witnesses on the strength of some discrepancies highlighted from their testimony. But we are not disposed to disturb the concurrent finding regarding reliability of the evidence of those witnesses, on such discrepancies as they do not appear to us to be material or serious.

In Masalti v. State of Uttar Pradesh, AIR 1965 SC 202, a Bench of four Judges of this Court has adopted such a formula. It is useful to extract it here (Para 16):

"Where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident."

1995 0 AIR(SC) 1601; 1995 2 ALT(Cri)(SC) 201; 1995 3 SCC 367; 1995 0 SCC(Cri) 524; Sukhwant Singh Vs. State of Punjab, Criminal Appeal No. 433 of 1985; Decided on 28-3-1995

The judgment in Jaggos case (AIR 1971 SC 1586) (supra), has in our opinion been misappreciated and that judgment cannot be interpreted as a sanction from the SC to the prosecution to adopt the practice of tendering a witness for cross-examination only, without there being any examination-in-chief, in relation to which the witness has to be cross-examined. All that the judgment in Jaggos case (supra) is emphasised is that the mere ipse dixit of the prosecutor that a particular witnesses has been won over is not conclusive of that allegation and the Court should not accept the same mechanically and relieve the prosecutor of his obligation to examine such a witness. It was for this reason suggested by the Bench that where the prosecution makes such an allegation, it must keep the witness in attendance and produce him to enable the defence to cross-examine such a witness to test his evidence as well as the allegations of the prosecution and bring out the truth on the record. After the coming into force of the Criminal Procedure Code, 1973, which replaced the Code of 1898, recording of evidence in commitment proceedings have been totally dispensed with and Section 288 of that Code has been omitted. Consequently, the course suggested by some of the High Courts in the earlier quoted judgments regarding tendering of a witness for cross-examination who had been examined in the committal Court, is also no more relevant or available. The Jaggos case, which was decided when the Code of 1898 was operating in the field could not, therefore, be pressed into service by the trial Court while dealing with the instant case tried according to the Code of 1973.

2021 0 AIR(SC) 2627; 2021 0 AIR(SC)(Cri) 1302; 2021 2 ALD(Cri)(SC) 360; 2021 3 ALT(Cri)(SC) 196; 2021 0 CrLJ 2609; 2021 6 SCC 1; 2021 2 SCC(Cri) 745; SATBIR SINGH & ANOTHER Vs. STATE OF HARYANA; CRIMINAL APPEAL Nos.1735-1736 OF 2010; Decided on : 28-05-2021

the law under Section 304B, IPC read with Section 113B, Evidence Act can be summarized below:

i. Section 304B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304B, IPC. Once

these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113B, Evidence Act operates against the accused.
iii. The phrase “soon before” as appearing in Section 304B, IPC cannot be construed to mean ‘immediately before’. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.
iv. Section 304B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.
v. Due to the precarious nature of Section 304B, IPC read with 113B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.
vi. It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.
vii. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304B, IPC read with Section 113B, Evidence Act.
viii. Section 232, CrPC provides that, “If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal”. Such discretion must be utilized by the Trial Courts as an obligation of best efforts.

ix. Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on and fix hearings specifically for 'defence evidence', calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.

x. In the same breath, Trial Courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.

xi. Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.

xii. Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court need to be cautious in its approach.

2021 0 AIR(SC) 5747; 2021 2 ALD(Cri)(SC) 949; 2022 1 ALT(Cri)(SC) 90; SADAKAT KOTWAR AND ANR Vs. THE STATE OF JHARKHAND; CRIMINAL APPEAL NO. 1316 OF 2021; DECIDED ON : 12-11-2021

In the case of Mahesh Balmiki vs. State of M.P., (2000) 1 SCC 319 in paragraph 9 it is held as under:

"9 . ... there is **no** principle that in all cases of a single blow Section 302 Indian Penal Code is not attracted. A single blow may, in some cases, entail conviction Under Section 302 Indian Penal Code, in some cases Under Section 304 Indian Penal Code and in some other cases Under Section 326 Indian Penal Code. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the

Appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the Appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused.

Dying Declaration

2023 0 INSC 924; 2023 0 Supreme(SC) 1059; Abhishek Sharma Vs. State (Govt. Of NCT of Delhi) ; Criminal Appeal No. 1473 of 2011; Decided on : 18-10-2023

Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

1. The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;
2. All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;
3. When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.
4. The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.
5. Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.
6. When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

7. In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.

Last Seen theory & Circumstantial Evidence

2023 0 AIR(SC) 488; 2023 0 INSC 48; Jabir & Ors. Vs. State of Uttarakhand; Criminal Appeal No(s). 972 of 2013; 17-01-2023

A basic principle of criminal jurisprudence is that in circumstantial evidence cases, the prosecution is obliged to prove each circumstance, beyond reasonable doubt, as well the as the links between all circumstances; such circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; further, the facts so proved should unerringly point towards the guilt of the accused. The circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused, and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

It has been repeatedly emphasized by this court, that the “last seen” doctrine has limited application, where the time lag between the time the deceased was seen last with the accused, and the time of murder, is narrow; furthermore, the court should not convict an accused only on the basis of the “last seen” circumstance.

Appeal procedure to be followed by court

2023 5 KLT 872; 2023 0 Supreme(Ker) 674; Jyothi, D/o.Ambujam Vs. State Of Kerala; Crl. Rev. Pet No. 1703 of 2013; 06-10-2023

Appeals filed under Secs. 372, 373, 374, 377, 378, 379 and 380 of the Code are to be dealt with by the Court of Session under Secs.381 to 383 of the Code. If the appeal is not summarily dismissed under Sec.384 of the Code, then the same is to proceed to the next stage under Sec.385 and be decided under Sec.393 of the Code.

Recently in Dhananjay Rai @ Guddu Rai vs. State of Bihar [2022 KHC 6710], the Honourable Supreme Court while dealing with a matter under Section

374 (2) of the Code has categorically held that it is not proper to dismiss an appeal for default/non-prosecution. Instead, an appeal should always be disposed of on its merits after perusal of the records.

1957 0 AIR(SC) 614; 1957 0 CrLJ 1000; Vadivelu Thevar Vs. State of Madras; Chinniah Servai Vs State of Madras; 12th April 1957

It is not necessary specifically to notice the other decisions of the different High Courts in Indian in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely sated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized on S. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted." Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness

only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases

of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.

Differences between presumption under section 114 IEA and Section (4)(1) of PC Act

1964 0 AIR(SC) 575; 1964 0 CrLJ 437; Dhanvantrai Balwantrai Desai, Vs. State of Maharashtra; Criminal Appeal No. 218 of 1960.; 28th September, 1962

He referred us to the decision in Otto George Gfeller v. The King, AIR 1943 PC 211 and contended that whether a presumption arises from the common course of human affairs or from a statute there is no difference as to the manner in which that presumption could be rebutted. In the decision referred to above the Privy Council, when dealing with a case from Nigeria, held that if an explanation was given which the jury think might reasonably be true and which is consistent with innocence, although they were not convinced of its truth, the accused person would be entitled to acquittal inasmuch as the prosecution would have failed to discharge to duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused. That, however, was a case where the question before the jury was whether a presumption of the kind which in India may be raised under S. 114 of the Evidence Act could be raised from the fact of possession of goods recently, stolen, that the possessor of the goods was either a thief or receiver of stolen property. In the case before us, however, the presumption arises not under S. 114 of the Evidence Act but under S. 4(1) of the Prevention of Corruption Act. It is well to bear in mind that whereas under S. 114 of the Evidence Act it is open to the Court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under sub-sec. (1) of S. 4, however, if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person

the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in S. 161, I. P. C. Therefore, the Court has no choice in the matter, once it is established that the accused person had received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S. 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words unless the contrary is proved which occur in this provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

"Shall Presume" Explained

1958 0 AIR(SC) 61; 1958 0 CrLJ 232; State of T.N. Vs. A. Vaidyanatha Iyer; Criminal Appeal No. 5 of 1957.; 26th September 1957.

"Where in any trial of an offence punishable under S. 161.....it is proved that an accused person has accepted..... any gratification (other than legal remuneration) ....from any person, it shall be presumed unless the contrary is proved that he accepted ..... that gratification ..... as a motive or reward such as is mentioned in the said S. 161....." Therefore, where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words shall presume and not may presume , the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence

Act, no doubt for the purpose of that Act, but S. 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of law of evidence e.g., presumptions, and therefore should have the same meaning. "Shall presume" has been defined in the Evidence Act as follows :

"Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under S. 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a branch of jurisprudence. While giving the finding quoted above the learned judge seems to have disregarded the special rule of burden of proof under S. 4 and therefore his approach in this case has been on erroneous lines.

Motive; Contradiction

2013 81 AllCriC 714; 2013 0 Supreme(All) 741; ALLAHABAD HIGH COURT; NANHA AND ANOTHER Vs. STATE OF U.P.; (Criminal Appeal No. 845 of 2003, decided on 8th March, 2013)

It is settled law that where ocular witnesses of the incident are available, motive pales into insignificance.

The contradiction emphasised in the aforesaid statement of P.W. 1 and P.W. 3 by the learned counsel for the appellant is that according to P.W. 1, the accused are said to have got down from Tonga, chased and killed Raku whereas P.W. 3 stated that Raku was chased and fired upon by the accused appellants, he fell down due to injuries and succumbed to them in the hospital andthere is no mention of Tonga in his statement.

Both ocular witnesses have stood firm in their cross-examination with regard to the identity of the accused, time, place and manner of assault.

Not only the post-mortem report supports the statements of these two witnesses P.W. 1 and 3 but F.I.R. also has been lodged promptly erasing any doubt of manipulation in it. The contradictions pointed out by the learned counsel for appellant, are not material or fatal to the prosecution case.

non procurement of the public witness for the alleged recovery, creates a doubt about the veracity of the prosecution on this score.

It is also pertinent to note here that the recovery is joint and single recovery memo was prepared which too is not legal.

2023 0 CrLJ 2579; 2023 0 INSC 411; 2023 0 Supreme(SC) 397; Dakkata Balaram Reddy and Another Vs. State of Andhra Pradesh and Another; Criminal Appeal No. 1295 of 2019;Decided On : 21-04-2023

Undeniably, there are some discrepancies and contradictions in the prosecution's case. There is no clarity as to the sequence of events at the scene of offence on the fateful night. Witnesses gave differing versions of the time of the arrival of the police and as to what they saw and said. There is no corroboration of PW-1's statement that it was PW-7 who informed him of the accused entering and exiting his house, as PW-7 said nothing to that effect. Further, recovery of the clothes worn by the accused at that time is also shrouded in doubt. One version is that they were still wearing them at the police station and they were seized there by the police, after providing them other clothes, while the other is that A1 handed over blood-stained clothes to PW-26 along with the bag of ornaments at his house. However, some differences in the testimonies of witnesses as to what they saw and said are to expected given the passage of time. Be it noted that the subject incident occurred on the night of 21.08.2008 and the depositions of the witnesses were recorded by the Trial Court in the later part of 2015. In any event, as already noted hereinbefore, this Court would not undertake a roving inquiry on factual issues or re-appreciate the evidence, unless it is brought out that there is some perversity in appreciation of evidence by the Trial Court or the High Court, leading to manifest miscarriage of justice. Trivial defects in investigation or process are not enough, in themselves, to disbelieve the prosecution's case. To acquit solely on the ground of defective investigation would be adding insult to injury [See: Karnel Singh vs. State of M.P. (1995) 5 SCC 518]

it may also be noted that A2 was found in possession of a bag carrying some of the stolen ornaments and, therefore, such possession itself speaks against him, in terms of Section 114 (a) of the Indian Evidence Act, 1872. Being a fact especially within his knowledge, it was for A2 to explain as to how he came to be in possession of those stolen ornaments, under Section 106 of the Indian Evidence Act, 1872. However, no explanation was offered

by him. As regards A1, it is the prosecution's case that he confessed to commission of the crime and upon being questioned as to the stolen gold ornaments, he himself went into the other room in his house and brought out a bag containing the gold ornaments. This part of his confession would, therefore, be admissible under Section 27 of the Indian Evidence Act, 1872, as it led to the recovery of the stolen gold ornaments.

No doubt, recovery of this stolen property from the accused would not be sufficient in itself to convict them for murder. However, the weight of the evidence on record, taken cumulatively, unerringly points to the guilt of the accused, leaving no room for second thoughts. The inescapable fact remains that PWs. 4, 6, and 10, who were witnesses independent of each other and who had no animosity or enmity with the accused, spoke in unison about seeing them running away from the house of PW-1 of the fateful night with bags in their possession. No explanation is forthcoming as to why three separate witnesses would choose to implicate the accused falsely.

2011 0 AIR(SC)(Cri) 1505; 2011 2 ALD(Cri)(SC) 911; 2010 9 SCC 747; 2010 3 SCC(Cri) 1469; 2010 (7) Supreme 281; Santosh Kumar Singh Vs. State thr. CBI ;Criminal Appeal No. 87 of 2007: 6-10-2010

A false plea taken by an accused in a case of circumstantial evidence is another link in the chain.

DNA report has been recognized as being scientifically accurate and an exact science

The CBI had fairly secured the documents which could prove the appellant's case and they were put on record and it was for the defence to use them to its advantage. No such effort was made. Moreover, we are unable to see as to how these documents could have been exhibited as no one has come forward to prove them.

The onus to prove his defence and the circumstances relating to his injury and treatment were within the special knowledge of the appellant. He could, therefore, not keep silent and say that the obligation rested on the prosecution to prove its case.

The Doctor was also questioned as to whether the hymen would always be torn and ruptured during the first sexual encounter and he explained that though this would be the normal case but it was not always so and that the

hymen could remain unruptured even after repeated sexual intercourse for certain reasons which he then spelt out.

The only argument against PW-2 is that his statement under Section 161 of the Code of Criminal Procedure had been recorded after three days. We find nothing adverse in this matter as there was utter confusion in the investigation at the initial stage. Moreover, PW-2 was a next neighbour and a perfectly respectable witness with no bias against the appellant.

The trial court has referred to a large number of text books and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court had not been put to the expert witnesses. In Bhagwan Das & Anr. vs. State of Rajasthan,3 AIR 1957 SC 589 it has been held that it would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert.

We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Smt. Kamti Devi v. Poshi Ram,5 AIR 2001 SC 2226.

We see that the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso-facto result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him. We see from the case in hand that not only were the questions pertaining to the helmet and the ligature marks on the neck put to the Doctor and even in a way to the appellant but the defence counsel had raised comprehensive arguments on these core issues not only before the trial court and the High Court but before us as well. The defence was, therefore, alive to the circumstances against the appellant. No prejudice or miscarriage of justice has, thus, been occasioned.

Discharge of accused

2023 0 INSC 894; 2023 0 Supreme(SC) 1052; State of Gujarat Vs. Dilipsinh Kishorsinh Rao; Criminal Appeal No.2504 of 2023;09-10-2023

The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

Hence, raising reasonable suspicion cannot be held or construed at the primary stage for discharging the accused.

The plea or the defence when requiring to be proved during course of trial is itself sufficient for framing the charge.

2022 0 AIR(SC) 5661; 2023 0 CrLJ 1; 2023 1 SCC 83; 2023 1 SCC(Cri) 305; 2022 0 Supreme(SC) 1136; Rahul Vs. State of Delhi Ministry of Home Affairs and Another ; Criminal Appeal No. 611 of 2022 WITH Ravi Kumar Vs State of NCT of Delhi; Criminal Appeal Nos. 612-613 of 2022 WITH Vinod @ Chhotu Vs The State Govt. of NCT of Delhi Home Affairs; Criminal Appeal Nos. 614-615 of 2022; Decided On : 07-11-2022

the information furnished to the Investigating Officer leading to the discovery of the place of the offence would be admissible to the extent indicated in

Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.

The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.

Neither the Trial Court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.

It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the Courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise.

It may be reminded that Section 165 of the Indian Evidence Act confers unbridled powers upon the trial courts to put any question at any stage to the witnesses to elicit the truth. As observed in several decisions, the Judge is not expected to be a passive umpire but is supposed to actively participate in the trial, and to question the witnesses to reach to a correct conclusion

The following areas may be considered specifically:

2017 2 Crimes(SC) 53; 2017 0 Supreme(SC) 294; IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INADEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS SUO MOTU WRIT(CRL.) NO.1 OF 2017 Decided On : 30-03-2017

1. The pernicious practice of the Trial Judge leaving the recording of deposition to the clerk concerned and recording of evidence going on in more than one case in the same Court room, at the same time, under the presence

and general supervision of the presiding officer has to be disapproved strongly and discontinued forthwith. A visit to Delhi Trial Courts any day will reveal this sad state of affairs, I am given to understand.

2. The depositions of witnesses must be recorded, in typed format, using computers, in Court, to the dictation of the presiding officers (in English wherever possible) so that readable true copies will be available straightaway and can be issued to both sides on the date of examination itself.

3. The deposition of each witness must be recorded dividing it into separate paragraphs assigning para numbers to facilitate easy reference to specific portions later in the course of arguments and in Judgments.

4. Witnesses/documents/material objects be assigned specific nomenclature and numbers like PWs/DWs/CWs (1 onwards); Ext. P/Ext. D/Ext. C (1 onwards); MOs (1 onwards) etc., so that reference later becomes easy and less time-consuming. Kindly see the Relevant Rules Kerala Criminal Rules of Practice 1982 “Rule 62 – Marking of exhibits.-

(1) Exhibits admitted in evidence shall be marked as follows:

(i) If filed by the prosecution, with capital letter P followed by a numeral P1, P2, P3 etc

(ii) If filed by defence, with capital letter D followed by a numeral D1, D2, D3 etc

(iii) If Court exhibits, with capital letter C followed by a numeral C1, C2, C3 etc.

(2) All exhibits marked by several accused shall be marked consecutively.

(3) All material objects shall be marked in Arabic numbers in continuous series, whether exhibited for the prosecution or the defence or the Court as M.O.1, M.O.2, M.O.3, etc”

Andhra Pradesh Criminal rules of Practice and Circular Orders, 1990

“Rule 66 – How witness shall be referred to Witnesses shall be referred by their names or ranks as P.W.s., or D.Ws., and if the witnesses are not examined, but cited in the charge-sheet, they should be referred by their names and not by numbers allotted to them in the charge-sheet.”

5. Every judgment must mandatorily have a preface showing the name of the parties and an appendix showing the list of Prosecutions Witnesses,

Prosecution Exhibits, Defence Witnesses, Defence Exhibits, Court witnesses, Court Exhibits and Material Objects. Kindly see inter alia the Relevant rules in the Kerala Criminal Rules of Practice, 1982.

"Rule 132 – Judgment to contain certain particulars.-The Judgment in original decision shall, apart from the particulars prescribed by Section 354 of the Code also contain a statement in Tabular Form giving the following particulars, namely:-

1.	Serial Number	
2.	Name of the Police Station and the Crime No. of the offence	
3.	Name	Description of the Accused
4.	Father's name	
5.	Occupation	
6.	Residence	
7.	Age	
8.	Occurrence	Date of
9.	Complaint	
10.	Apprehension	
11.	Release on bail	
12.	Commitment	
13.	Commencement of **trial**	
14.	Close of **trial**	
15.	Sentence or order	
16.	Service of copy of judgment or finding on accused	
17.	Explanation of delay	

Note.-(1) Date of complaint in column 9 shall be the date of the filing of the charge-sheet in respect of case instituted on police report and the date of filing of the complaint in respect of other case.

(2) Date of apprehension in column 10 shall be the date of arrest.

(3) Date of commencement of **trial** in column 13 shall be :

(a) In summons cases, the date on which the particulars of the offence are stated to the accused under section 251 of the Code.

(b) In warrant cases instituted on police report, the date on which the documents under section 207 of the Code are furnished to the accused and the Magistrate satisfied himself of the same under section 238 of the Code.

(c) In other warrant cases, when the recording of evidence is commenced under section 244 of the Code.

(d) In Sessions **trials**, when the charge is read out and explained to the accused under section 228 of the Code.

"**Rule 134 –**List of witnesses etc. to be Appended to Judgement.

There shall be appended to every judgment a list of the witnesses examined by the prosecution and for the defence and by the Court and also a list of exhibits and material objects marked."

6. Once numbers are assigned to the accused, witnesses and exhibits, they be referred to, subsequently in the proceedings and in the judgments with the help of such numbers only. The practice of referring to the names of the accused/witnesses and documents descriptively in the proceedings paper and judgments creates a lot of confusion. Whenever there is need to refer to them by name their rank as Accused/Witness must be shown in brackets.

7. Repetition of pleadings, evidence, and arguments in the judgments and orders of the **Trial** Court, Appellate and Revisional Courts be avoided. Repetition of facts, evidence, and contentions before lower Courts make the judgments cumbersome, and takes away the precious time of the Court unnecessarily. The Appellate/Revisional Court judgment/order is the continuation of the lower court judgment and must ideally start with " in this appeal/revision, the impugned judgment is assailed on the following grounds" or "the points that arise for consideration in this appeal/revision are". This does not of course, take away the option/jurisdiction of the Appellate/Revisional Courts to re-narrate facts and contentions if they be inadequately or insufficiently narrated in the judgment. Mechanical re narration to be avoided at any rate.

8. In every case file, a judgment folder to be maintained, and the first para in the appellate/revisional judgment to be numbered as the next paragraph after the last para in the impugned judgment. This would cater to a better culture of judgment writing saving precious court time.

9. The healthy practice in some states of the Investigating Officer obtaining and producing (or the wound certificate/ post mortem certificate showing) the front and rear sketch of the human torso showing the injuries listed in the medical documents specifically, may be uniformly insisted. This would help the judges to have a clearer and surer understanding of the situs of the injuries.

10. Marking of contradictions – A healthy practice of marking the contradictions/Omissions properly does not appear to exist in several States. Ideally the relevant portions of case diary statement used for contradicting a witness must be extracted fully in the deposition. If the same is cumbersome at least the opening and closing words of the contradiction in the case diary statement must be referred to in the deposition and marked separately as a Prosecution/Defence exhibit.

11. The practice of omnibus marking of S. 164 statement of witness deserves to be deprecated. The relevant portion of such prior statements of living persons used for contradiction or corroboration U/s. 145/157 of the Evidence Act deserves to be marked separately and specifically.

12. The practice of whole sale marking of confession statement of accused persons for introduction of the relevant statement admissible under S. 27 of Evidence Act deserves to be deprecated. Ideally the admissible portion and that portion alone, must be extracted in the recovery memos (Mahazar or Panch – different nomenclature used in different parts of the land) within inverted commas. Otherwise the relevant portion alone written separately must be proved by the Investigating Officer. Back door access to inadmissible evidence by marking the entire confession statement in the attempt to prove the admissible portion under S. 27 of Evidence Act should be strictly avoided.

13. The **Trial** Courts must be mandatorily obliged to specify in the Judgment the period of set off under Section 428 Cr.P.C specifying date and not leave it to be resolved later by jail authorities or successor presiding officers. The Judgements and the consequent warrant of committal must specify the period of set off clearly.

3. In the circumstances, we direct that notices be issued to the Registrars General of all the High Courts, and the Chief Secretaries/the Administrators and the Advocates-General/Senior Standing Counsel of all

the States/Union Territories, so that general consensus can be arrived at on the need to amend the relevant Rules of Practice/ **Criminal** Manuals to bring about uniform best practices across the country. This Court may also consider issuance of directions under Article 142 of the Constitution. They can be given the option to give suggestions also on other areas of concern.

2023 0 AIR(SC) 1736; 2023 2 ALT(Cri)(SC) 25; 2023 0 INSC 314; 2023 0 Supreme(SC) 295; *Balu Sudam* Khalde And Another Vs The State Of Maharashtra; Criminal Appeal No. 1910 of 2010; Decided on : 29-03-2023

54. At this stage, it will also be profitable to refer to the following observations of this Court in the case of State of Andhra Pradesh v. Rayavarapu Punnayya and Another reported in (1976) 4 SCC 382 where this Court laid down the distinction between murder and the culpable homicide not amounting to murder in the following way:

> "12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.
>
> 13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutiae abstractions. The safest way of

approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which the death caused is done -
INTENTION	
(a) with the intention of casing death; or (b) with the intention of causing such bodily injury as is likely to cause death; or	(i) with the intention of causing death; or (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death,	(3) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such to cause death bodily injury as is likely and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

14. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the “intention to cause death” is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b)

of Section 299 conveys the sense of "probable" as distinguished from a mere possibility. The words "bodily injury … sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant v. State of Kerala [AIR 1966 SC 1874 : 1966 Supp SCR 230 : 1966 Cri LJ 1509.] is an apt illustration of this point.

18. In Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 SCR 1495 : 1958 Cri LJ 818.] Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):

"The prosecution must prove the following facts before it can bring a case under Section 300, 'thirdly'. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

19. Thus according to the rule laid down in Virsa Singh case of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be "murder". Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as

to the probability of death of a person or persons in general - as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code."

1974 0 AIR(SC) 463; 1974 0 CrLJ 453; 1974 4 SCC 186; 1974 0 SCC(Cri) 355; 1974 0 Supreme(SC) 7; In Cri. A. No. 10 of 1973.In Crl. A. No. 11 of 1973. Ganga Sahai and others Vs State of U.P.; Criminal Appeals Nos. 10 and 11 of 1973, D/- 10-1-1974.

We also find that the Trial Court as well as the High Court had brushed aside the objection that the blood recovered from the place of occurrence was not

sent for chemical examination. We think that a failure of the police to send the blood for chemical examination in a serious case of murder such as the one before us, is to be deprecated. In such cases, the place of occurrence is often disputed. In the instant case, it was actually disputed. However, such an omission need not jeopardise the success of the prosecution case where there is other reliable evidence to fix the scene of occurrence.

2023 0 INSC 879; 2023 0 Supreme(SC) 1016; Balvir Singh Vs. State Of Uttarakhand; Criminal Appeal No. 301 of 2015 With Criminal Appeal No. 2430 of 2014; Decided on : 06-10-2023

46. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence which if believed by the court would convince them of the accused's guilt beyond a reasonable doubt, the accused is in a position where he should go forward with counter-vailing evidence if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might have been rebutted. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution (Wharton's Criminal Evidence, 12th Edn. 1955, Vol. 1, Ch. 2 p. 37 and foil). Leland v. State reported in 343 U.S. 790=96 L.Ed. 1302, Raffel v. U.S. reported in 271 U.S. 294=70 L.Ed. 1054.

56. Even where there are facts especially within the knowledge of the accused, which could throw a light upon his guilt or innocence, as the case may be, the accused is not bound to allege them or to prove them. But it is

not as if the section is automatically inapplicable to the criminal trials, for, if that had been the case, the Legislature would certainly have so enacted. We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation, in consonance with the principle of the passage in Deonandan Mishra (supra), which we have already set forth. The matter has been put in this form, with reference to Section 106 of the Evidence Act, in Smith v. R. reported in 1918 A.I.R. Mad. 111, namely, that if the accused is in a position to explain the only alternative theory to his guilt, the absence of explanation could be taken into account.

These appeals remind us of what this Court observed in the case of Dharam Das Wadhwani v. State of Uttar Pradesh: "The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct." The role of courts in such circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.

Sole Testimony of Solitary Witness

2009 0 CrLJ 1141; 2009 3 SCC 391; 2009 2 SCC(Cri) 115; 2009 0 Supreme(SC) 58; Jarnail Singh Vs. State of Punjab; Criminal Appeal No. 62 of 2009; (Arising out of S.L.P. (Crl.) No. 2872 of 2008); Decided on : 15-01-2009

It is no doubt true that conviction could be based on the sole testimony of a solitary eye witness but in order to be the basis of conviction his presence at the place of occurrence has to be natural and his testimony should be strong and reliable and free from any blemish.

2023 0 AIR(SC) 634; 2023 1 ALT(Cri)(SC) 278; 2023 0 CrLJ 1726; 2023 1 Supreme 499; 2023 0 Supreme(SC) 71; Munna Lal Vs. The State of Uttar Pradesh; Criminal Appeal No. 490 of 2017; WITH Sheo Lal Vs. The State of Uttar Pradesh; Criminal Appeal No. 491 of 2017; Decided On : 24-01-2023

it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into settled principles of law. These are:

(a) Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b) Generally speaking, oral testimony may be classified into three categories:

(i) Wholly reliable.

(ii) Wholly unreliable.

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusions. However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c) A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d) Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e) Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time and if such discrepancies are

comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case.

42. Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, this Court has examined the evidence led by the prosecution threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him. The endeavour of this Court has been to reach the root of the matter by analysing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigours of law.

1999 0 AIR(SC) 3255; 1999 2 ALD(Cri)(SC) 648; 1999 0 CrLJ 4287; 1999 7 SCC 69; 1999 0 SCC(Cri) 1176; 1999 7 Supreme 354; Dandu Lakshmi Reddy Vs. State of A.P.; Criminal Appeal No. 1110 of 1997; Decided on 17-8-1999

16. Section 162 of the Code of Criminal Procedure (for short “the Code”) interdicts the use of any statement recorded under Section 161 of the Code except for the limited purpose of contradicting the witness examined in the trial to whom such statement is attributed. Of course, this Court has said in Raghunandan v. State of U.P.3 that power of the court to put questions to the witness as envisaged in Section 165 of the Evidence Act would be untrammeled by the interdict contained in Section 162 of the Code. The following observations in the aforesaid decision, in recognition of the aforesaid power of the court, would be useful in this context:

"We are inclined to accept the argument of the appellant that the language of Section 162 Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. .... Therefore, we hold that Section 162 Criminal Procedure Code does not impair the special powers of the Court under Section 165 Indian Evidence Act."

17. It must now be remembered that the said procedure can be followed only when a witness is in the box. Barring the above two modes, a statement recorded under Section 161 of the Code can only remain fastened up at all stages of the trial in respect of that offence. In other words, if the court has not put any question to the witness with reference to his statement recorded under Section 161 of the Code, it is impermissible for the court to use that statement later even for drawing any adverse impression regarding the evidence of that witness. What is interdicted by the Parliament in direct terms cannot be obviated in any indirect manner.

2023 3 Crimes(SC) 373; 2023 0 INSC 793; 2023 6 Supreme 360; 2023 0 Supreme(SC) 822; Munna Pandey Vs State Of Bihar; Criminal Appeal Nos. 1271-1272 of 2018; Decided On : 04-09-2023

medical examination of an accused assumes great importance in cases where the victim of rape is dead and the offence is sought to be established only by circumstantial evidence.

40. Neither the defence counsel nor the public prosecutor nor the presiding officer of the Trial Court and unfortunately even the High Court thought fit to look into the aforesaid aspect of the matter and try to reach to the truth.

41. It was the duty of the defence counsel to confront the witnesses with their police statements so as to prove the contradictions in the form of material omissions and bring them on record. We are sorry to say that the learned defence counsel had no idea how to contradict a witness with his or her police statements in accordance with Section 145 of the Evidence Act, 1872 (for short, 'Evidence Act').

42. The lapse on the part of public prosecutor is also something very unfortunate. The public prosecutor knew that the witnesses were deposing something contrary to what they had stated before the police in their statements recorded under Section 161 of the CrPC. It was his duty to bring to the notice of the witnesses and confront them with the same even without declaring them as hostile.

43. The presiding officer of the Trial Court also remained a mute spectator. It was the duty of the presiding officer to put relevant questions to these witnesses in exercise of his powers under Section 165 of the Evidence Act. Section 162 of the CrPC does not prevent a Judge from looking into the record of the police investigation. Being a case of rape and murder and as the evidence was not free from doubt, the Trial Judge ought to have acquainted himself, in the interest of justice, with the important material and also with what the only important witnesses of the prosecution had said during the police investigation. Had he done so, he could without any impropriety have caught the discrepancies between the statements made by these witnesses to the investigating officer and their evidence at the trial, to be brought on the record by himself putting questions to the witnesses under Section 165 of the Evidence Act. There is, in our opinion, nothing in Section 162 CrPC to prevent a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. In the present case, we are strongly of the opinion that is what, in the interests of justice, the Trial Judge should have done but he did not look at the record of the police investigation until after the investigating officer had been examined and discharged as a witness. Even at this stage, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act. It is regrettable that he did not do so.

45. Section 162 of the CrPC reads thus:-

> **"Section 162. Statements to police not to be signed : Use of statements in evidence.**-(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or

any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.--An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

47. There is in our opinion nothing in Section 162 of the CrPC which prevents a Trial Judge from looking into the papers of the chargesheet suo motu and himself using the statement of a person examined by the police recorded therein for the purpose of contradicting such person when he gives evidence in favour of the State as a prosecution witness. The Judge may do this or he may make over the recorded statement to the lawyer for the accused so that he may use it for this purpose. We also wish to emphasise that in many sessions cases when an advocate appointed by the Court appears and particularly when a junior advocate, who has not much experience of the procedure of the Court, has been appointed to conduct the defence of an accused person, it is the duty of the Presiding Judge to draw his attention to the statutory provisions of Section 145 of the Evidence Act, as explained in Tara Singh v. State reported in AIR 1951 SC 441 and no Court should allow

a witness to be contradicted by reference to the previous statement in writing or reduced to writing unless the procedure set out in Section 145 of the Evidence Act has been followed. It is possible that if the attention of the witness is drawn to these portions with reference to which it is proposed to contradict him, he may be able to give a perfectly satisfactory explanation and in that event the portion in the previous statement which would otherwise be contradictory would no longer go to contradict or challenge the testimony of the witness.

71. If the Courts are to impart justice in a free, fair and effective manner, then the presiding judge cannot afford to remain a mute spectator totally oblivious to the various happenings taking place around him, more particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes active interest and elicit all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both the parties.

74. If anyone would ask us the question, "What is the ratio of this Judgment?" The answer to the same would be very simple and plain, in the words of Clarence Darrow;

> "Justice has nothing to do with what goes on in the courtroom; Justice is what comes out of a courtroom."

38. Echoing the same sentiment in its Report No.239 in March, 2012, the Law Commission of India observed that the principal causes of low rate of conviction in our country, inter alia, included inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery. Despite passage of considerable time since these gloomy insights, we are dismayed to say that they remain sadly true even to this day. This is a case in point. A young boy in the first flush of youth was cruelly done to death and the wrongdoers necessarily had to be brought to book for the injustice done to him and his family. However, the manner in which the police tailored their investigation, with complete indifference to the essential norms in proceeding against the accused and in gathering evidence; leaving important leads unchecked and glossing over other leads that did not suit

the story that they had conceived; and, ultimately, in failing to present a cogent, conceivable and fool-proof chain of events pointing to the guilt of the appellants, with no possibility of any other hypothesis, leaves us with no option but to extend the benefit of doubt to the appellants. The higher principle of 'proof beyond reasonable doubt' and more so, in a case built on circumstantial evidence, would have to prevail and be given priority. It is high time, perhaps, that a consistent and dependable code of investigation is devised with a mandatory and detailed procedure for the police to implement and abide by during the course of their investigation so that the guilty do not walk free on technicalities, as they do in most cases in our country. We need say no more.

https://indiankanoon.org/doc/36294925/; Rajesh vs The State Of Madhya Pradesh on 21 September, 2023; Criminal Appeal No(s). 793-794 of 2022

28. That apart, the manner in which the Investigating Officer (PW-16) went about drawing up the proceedings forms an important issue in itself and it is equally debilitative to the prosecution's case. In Yakub Abdul Razak Memon vs. State of Maharashtra through CBI, Bombay 12, this Court noted that the primary intention behind the 'panchnama' is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an article. It was pointed out that a panchnama can be used as corroborative evidence in the Court when (2013) 13 SCC 1 the respectable person who is a witness thereto gives evidence in the Court of law under Section 157 of the Evidence Act. This Court noted that Section 100(4) to Section 100(8) Cr.P.C. stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the

public. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchnama:

(a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

(b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

(c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

(d) The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

(e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

(f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.

(g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.

(h) If a search is conducted without warrant of court Under Section 165 of the Code, the I.O. must record reasons and a search memo should be issued.

It was held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C. This Court concluded, by stating that the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer

so as to enable him to answer during the time of his examination as a witness in the Court of law.

29. Recently, in Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh13, a 3-Judge Bench of this Court observed that the requirement of law that needs to be fulfilled before accepting the evidence of discovery is by proving the contents of the panchnama and the Investigating Officer, in his deposition, is obliged in law to prove the contents of the panchnama. It was further observed that it is only if the Investigating Officer has successfully proved the contents of the discovery panchnama in accordance with law that the prosecution would be justified in relying upon such evidence and the Trial Criminal Appeal Nos. 64-65 of 2022, decided on 13.10.2022 = 2022 SCC OnLine SC 1396 Court may also accept the same. It was held that, in order to enable the Court to safely rely upon the evidence of the Investigating Officer, it is necessary that the exact words attributed to the accused, as the statement made by him, be brought on record and, for this purpose, the Investigating Officer is obliged to depose in his evidence the exact statement and not merely say that the discovery panchnama of the weapon of the offence was drawn up as the accused was willing to take it out from a particular place.

30. In Khet Singh vs. Union of India 14, this Court held that even if there is a procedural illegality in conducting the search and seizure, the evidence collected thereby would not become inadmissible and the Court would consider all the circumstances to find out whether any serious prejudice has been caused to the accused. However, this Court pointed out that if the search and seizure were in complete defiance of the law and procedure and there was any possibility of the evidence collected having been tampered with or interpolated during the course of such search and seizure, then that evidence could not be admitted. Though these observations were made in the context of a search and seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985, they would have relevance generally.

31. Tested against this backdrop, the manner and method in which the panchnamas and memos were prepared in the case on hand leave the (2002) 4 SCC 380 prosecution high and dry. For instance, the Naksha Panchnama (Ex. P3) dated 29.03.2013 records the names of five witnesses,

including PW-2 and PW-8, and states that the witnesses inspected the body of deceased Ajit Pal @ Bobby; that there was a big wound on the right side of the neck of the deceased; that, in the opinion of the panch witnesses, the deceased was murdered by Rajesh Yadav and Raja Yadav by cutting his throat with a knife; that his body was stuffed in a sack; and that the sack was thrown in a well. It then goes on to record the opinion of the Investigating Officer (PW-16) wherein, after noting the factual aspects, he stated that Ajit Pal was murdered by Rajesh Yadav and Raja Yadav by cutting his throat with a knife. Notably, the narrative is not that of the panch witnesses but mostly of PW-16 himself and the panch witnesses merely signed the panchnama. Akin thereto, the Crime Details Form (Ex. P13) notes that the scene of the crime was visited on 29.03.2013 at 15:15 hours and records that, 15 metres from the Khandari Canal, an old well is situated; that there are bushes growing around the well; that there was a body inside a white sack which was floating in the water in the well; that the width of the well was 2 metres 70 cms.; that the well was 6 metres deep; and that there was 1 metre water in the well and 5 metres was empty. Significantly, though the Crime Details Form notes that two panch witnesses were present, there is no narrative by them and they simply signed the form. The same is the position with the Crime Details Form (Ex. P14), relating to the finding of blood on the walls of the washing area and the floor; black plastic slippers; and an empty bottle of liquor. The same panch witnesses find mention in this Crime Detail Form and they affixed their signatures but again, it is not their narrative and there is no recording of how they went about finding these objects. Further, the form straightaway records the opinion that Rajesh Yadav and Raja Yadav had murdered Ajit Pal, put his body in a plastic sack and threw it into the well.

32. Property Seizure Memos (Ex. P18 and Ex. P23), relating to the seizure of the blood-stained clothes of Rajesh Yadav and Raja Yadav respectively, are drafted likewise wherein the witnesses, Bambam (PW-9) and Surjeet Singh, are named but there is no narrative on their part as to how they were led and assisted by someone to find these objects. On the same lines, Property Seizure Memo (Ex. P9), relating to the seizure of the blood-stained soil, controlled soil and the plastic slippers; Property Seizure Memo (Ex. P10), relating to seizure of the liquor bottle; Property Seizure Memo (Ex.

P12), relating to seizure of the body of the deceased and his clothes along with the hair found in his right fist; Property Seizure Memo (Ex. P11), relating to seizure of the murder weapon; and Property Seizure Memo (Ex. P19) relating to seizure of the two mobile phones; also reflect the same style of recording. Witnesses to the panchnamas and the seizures acted as mere attestors to the documents and did not disclose in their own words as to how these objects were discovered, i.e., at whose instance and how. Ergo, no lawful validity attaches to these proceedings recorded by the police in the context of collection of all this evidence.

Javed Shaukat Ali Qureshi vs The State Of Gujarat on 13 September, 2023; CRIMINAL APPEAL NO. 1012 OF 2022;

we may refer to a three judge Bench decision of this Court in the case of Harbans Singh v. State of U.P. & Ors. (1982) 2 SCC 101 . In paragraph 18, this Court held thus:

"18.To my mind, it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and pay the extreme penalty of death whereas the death sentence imposed on his co-accused for the very same offence is commuted to one of life imprisonment and the life of the co-accused is shared (sic spared). The case of the petitioner Harbans Singh appears, indeed, to be unfortunate, as neither in his special leave petition and the review petition in this Court nor in his mercy petition to the President of India, this all important and significant fact that the life sentence imposed on his co accused in respect of the very same offence has been commuted to one of life imprisonment has been mentioned. Had this fact been brought to the notice of this Court at the time when the Court dealt with the special leave petition of the petitioner or even his review petition, I have no doubt in my mind that this Court would have commuted his death sentence to one of life imprisonment. For the same offence and for the same kind of involvement, responsibility and complicity, capital punishment on one and life imprisonment on the other would never have been just. I also feel that had the petitioner in his mercy petition to the President of India made any mention of this fact of commutation of death sentence to one of life imprisonment on his co accused in respect of the very same offence, the President might have been inclined to take a different view on his petition." (emphasis added)

Kothuri Kishtaiah vs. State of A.P; CRIMINAL APPEAL NO.31 OF 2014; 29.08.2023

the accused bet the deceased with sticks which are normally used in the villages and they cannot be termed as deadly weapon.

Nirmala Devi vs State of Himachal Pradesh | 2023 LiveLaw (SC) 585 | 2023 INSC 662; AUGUST 01, 2023. CRIMINAL APPEAL NO. 2232 OF 2023 [Arising out of SLP (Crl.) No. 9777 Of 2022];

It is to be noted that the weapon used in the crime is a stick which was lying in the house, and which, by no means, can be called a deadly weapon.

Namdeo vs State Of Maharashtra on 13 March, 2007; Appeal (crl.) 914 of 2006; https://indiankanoon.org/doc/1379924/;

In Vadivelu Thevar v. State of Madras, 1957 SCR 981 : AIR 1957 SC 614, referring to Mahomed Sugal, this Court stated;

On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established : (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

Quoting Section 134 of the Evidence Act, their Lordships stated that "we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated."

The Court proceeded to state;

It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.

The Court also stated;

There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

Before more than half a century in Dalip Singh v. State of Punjab, 1954 SCR 145 : AIR 1953 SC 364, a similar question came up for consideration before this Court. In that case, the High Court observed that testimony of two eye

witnesses required corroboration since they were closely related to the deceased. Commenting on the approach of the High Court, this Court held that it was 'unable to concur' with the said view. Referring to an earlier decision in Rameshwar Kalyan Singh v. State of Rajasthan, 1952 SCR 377 : AIR 1952 SC 54, their Lordships observed that it was a fallacy common to many criminal cases and in spite of endeavours to dispel, "it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel".

Speaking for the Court, Vivian Bose, J. stated: "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth".

From the above case-law, it is clear that a close relative cannot be characterised as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy,conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

1995 0 CrLJ 3559; Amulya Kumar Behera Vs. Nabaghana Behera Alias Nabina; Cri. Misc. 2073 Of 1992; 05/02/1995

SUB-SECTION (4) of Section 378 of the Code deals with appeal by complainant, against an order of acquittal passed in case instituted on a complaint. Appeal by private party not being as a matter of right, strong prima facie case must be made out before a special leave is granted by High Court. It has therefore to be seen whether any material irregularity has been

committed by the learned JMFC while directing acquittal. The fate of the case depends upon the question whether ingredients necessary to constitute an offence under Section 506 IPC are present and have been established.
SECTION 506 IPC deals with punishment for criminal intimidation. Section 503 defines the said offence. It has following essentials. (1) Threatening a person with any injury. (a) to his person, reputation or property or; (b) to the person or reputation of any one in whom that person is interested. (2) The threat must be with intent; (a) to cause alram to that person, or (b) to cause that person to do any Act which he is not legally bound to do as means of avoiding execution of such threat; or (c) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding execution of such threat. Therefore, intention must be to cause alarm to the victim and whether he is alarmed or not is really of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in application of Section 506 IPC. The gist of the offence is the effect which the threat is intended to have upon mind of person threatened. It is clear that before it can have effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The Section has undergone a complete transformation since its first draft which, after enumerating certain offences such as murder, hurt, mischief, house breaking, unnatural offence and rape, made the offence inter alia, depend upon the causing of distress or terror to the person intimidated. (Clause 432). The word "distress" was naturally objected to, though the Law Commission defended its retention. (2nd Report, Section 417). The original clause was apparently taken from Russel's Work on Crimes and it was both disjointed and incomplete. The present Section is practically new, and the substitute of the word "alarm" for distress and terror is intended to confine the offence only to cases where the effect thereof is to cause more pain than is covered by those words. The anxiety and mental anguish caused by an injury threatened may often be as or even greater than the actual injury. Lord Ellenborough said"to make it indictable, the threat must be of such a nature as is calculated to overcome a firm and prudent man. . . . The law distinguishes between threads of actual violence against the person. Or such other threats as a man of common firmness cannot

stand against and other sorts of threats". Intention is a mental condition which has to be gathered from the circumstances of the case. The threat must be intended to cause alarm from which it follows that, ordinarily, it would be sufficient for that purpose. The degree of such alarm may very in different cases, but the essential matter is that it is of a nature and extent to unsettle the mind of the person on whom it operates and take away from his acts that element of free voluntary action which alone constitutes consent. The case where the threat produces an alarm is comparatively a simple one, for all that has then to be proved is that threat was given and that the alarm was due to the threat; but where the threat has not that effect, it involves a question whether it was sufficient to overcome a man of ordinary nerves. The Court may hold it to be an empty boast, too insignificant to call for penal visitation of Section 506. "intimidate" according to Webstar's Dictionary mean" (1) to make timid, make afraid, overawe; (2) force or deter with threats or violence, cow". Threat referred to in the Section must be a threat communicated or uttered with intention of its being communicated to the person threatened for the purpose of influencing his mind. Question whether threat amounts to a criminal intimidation or not does not depend on norms of individual threatened if it is such a threat as may overcome ordinary free will of a man of common firmness. "threat" is derived from Anglo-sexam word "threotou to life", (harass). It is the dicleration of an intention to inflict punishment, loss or pain on another. "injury" is defined in Section 44. It involves doing of an llegal act. If it is made with intention mentioned in the Section, it is an offence. Whether threat was given with intention to cause alarm to the person threatened has to be established by evidence to be brought on record. Material in that regard is totally lacking in the case at hand. Though learned JMFC has erroneously held that the complainant having not got terrified the Section has no application, yet he is light in his conclusion that no evidence was there to show that the accused persons intended to cause alarm to the complainant.

AIR 1995 SUPREME COURT 1748; Shamshul Kanwar vs State Of U.P on 4 May, 1995; CRLA 887/1994;

Therefore it is clear that the diary referred to in Section 172 and which the court may call for and which can be used to the limited extent mentioned

therein obviously refers to the first part and to the copies of which the accused is not entitled to and the entries of which can be used to the limited extent by the court as well as by the accused as contained in Section 172 Cr.P.C. If by virtue of such police standing orders, the second part also forms compendiously part of the diary as a whole and if that also is before the court, the use of the entries in such second part which contains the statements of the witnesses recorded, would be of different nature. In some States for instance Uttar Pradesh there are regulations regarding the maintenance of general and case diaries. Section 161 Cr.P.C. provides for examination of witnesses by police. It further lays down that the police officer during investigation may examine the witnesses and may reduce into writing any statement made to him in the course of such examination and if he does so he shall "make a separate and true record" of the statement of each such person. Section 162 lays down that no such statement made by any person to a police officer shall if reduced to writing be signed "nor shall any such statement or any record thereof whether in a "police diary" or otherwise" be used for any purpose at any inquiry or trial save as provided under that Section. The words "police diary or otherwise" used in this Section have perhaps been the basis for dividing the diary into two parts. Section 167, an important provision, deals with the procedure when investigation is not completed within 24 hours and provides for production of the accused before a magistrate for seeking remand. This provision also lays down that the officer in charge of a police station or the police officer making the investigation "shall forthwith transmit to the nearest judicial magistrate a copy of the entries in the diary hereinafter prescribed relating to the case" and at the same time forward the accused to such magistrate. Likewise sub-section (2a) of Section 167 which provides for production of the accused before an executive magistrate lays down that the copy of the entry in the diary "hereinafter" prescribed relating to the case shall be transmitted while forwarding the accused. The object underlying is that the magistrate before remanding the accused to custody should satisfy himself that there is a prima facie case for doing so after a perusal of the copies of the entries "in the diary". We are referring to this aspect only to point out that some vagueness or confusion is there in respect of the meaning of the word "diary" used in Section 172 and other Sections of Cr.P.C. and we suggest that a legislative

change is necessary providing for framing of appropriate and uniform regulations regarding the maintenance of the diaries by the police for the purpose contemplated by Section 172 Cr.P.C. vis-a-vis the other sections referred to above.
We are constrained to go into this aspect in an elaborate manner as even on today we are coming across a number of cases where there has been a patent misuse of the case diaries to be maintained as per Section 172 Cr.P.C.

Age Determination of Minor Sec 94 JJ Act, 2015
P. Yuvaprakash vs State Rep. By Inspector Of Police on 18 July, 2023; CRLA. 1898 of 2023; https://indiankanoon.org/doc/40473110/;
a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim.

https://indiankanoon.org/doc/34137319/; Penukula Sadaiah Sadi vs The State Of Telangana on 30 April, 2021; CRLA 2965 of 2018
Section 25 of the Evidence Act postulates that the confession made by an accused before a police officer cannot be proved against him. Section 26 of the Evidence Act stipulates that a confession made by an accused while in police custody cannot be proved against him. However, there is an exception to the rule provided for in by the aforesaid two Sections i.e., 25 and 26 of the GSD, J Crla_2965_2018 Evidence Act; under Section 27 of the Evidence Act, according to which, a confessional statement made before a police officer or while an accused is in police custody, can be proved against him, if the same leads to discovery of an unknown fact or a new fact. In order to apply the exception postulated in Section 27 of the Evidence Act, to the facts of the present case, it is to be seen, whether the confessional statement made by the accused can be said to have led to the discovery of an unknown fact

In the adversarial system every person accused of an offence is always presumed to be innocent so that burden lies upon the prosecution to establish beyond reasonable doubt and all ingredients of the offence with which the accused is charged are made out. The accused enjoys the right to silence and cannot be compelled to reply. In a criminal trial requirement of proof does not lie in the realms of surmises and conjectures. The doubt must be of reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter. Doubt must be actual and substantial doubts as to the guilt of accused arising from the evidence or lack of it, as opposed to mere apprehensions. In case Shivani V State of Maharashtra, AIR 1973 SC 2662 the Supreme Court emphasized that our jurisprudential enthusiasm for presumed innocent must be moderated by the pragmatic need to make criminal justice potent and realistic. In State of U.P V Shankar, AIR 1981 SC 897 it was observed that it is function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. In Gurbachan Singh V Sat Pal Singh, AIR 1990 SC 209 it was observed that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and there by destroy social defence. In Krishna Mochi V State of Bihar, 2002 Crl LJ 2645 it was observed that there is sharp decline in ethical values in public life and in present days when crime is looming large and humanity is suffering and society is so much affected thereby duties and responsibilities of the courts have become much more. It was observed as under:-

Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice changing world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals"

https://indiankanoon.org/doc/187185726/; Suresh @ Sureshkumar vs State Rep. By on 3 August, 2021; CRLA(MD) No. 195/2016(TN)

It is pertinent to note that the reverse burden contemplated under Section 29 of POCSO Act must not only be required to be strictly complied with, but also may be subject to proof of some basic facts as envisaged under the statute. The subject of reverse burden of proof can only be made applicable

in a case, where prosecution has already let substantial evidence with regard to the offence complained. The prosecution has to establish a prima facie case beyond reasonable doubt and only when the foundational facts are established by the prosecution, the accused will be under an obligation to rebut the presumption that arise, by adducing evidence with the standard of proof of preponderance of probability.

It is pertinent to mention that foundational facts in a POCSO case include the proof that the victim is a child, that alleged incident has taken place, that the accused has committed the offence and whenever physical injury is caused, to establish it with supporting medical evidence. If the basic and foundational facts of the prosecution case is laid by adducing legally admissible evidence, then burden gets shifted to the accused to rebut it, by establishing from the evidence on record that he has not committed the offence or that no such incident was occurred or that the victim is not a child.

State of Rajasthan vs Rajaram{ 2003) Cr. L. J. 3901} , wherein the Supreme Court has held as follows: “It is not open to any court to start with the presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstance, the time when the confession was made and the credibility of witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded there on if the evidence about the confession comes from the mouth of witnesses who appeared to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken by the witness are clear unambiguous and unmistakably convey that the accused is the perpetrator and nothing is omitted by the witness which may militate against it. If the evidence relating to extra judicial confession is found credible after being tested on the touch stone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law. It is improbable that the accused would repose confidence on a person who is inimically deposed towards him and confess his guilt.”

CRIMINAL APPEAL NO. 685 OF 2010 WITH INTERIM APPLICATION NO. 1435 OF 2020 INTERIM APPLICATION NO. 1941 OF 2021; Mansoorali Khan Ahmed Khan & another v/s. State of Maharashtra; https://www.livelaw.in/pdf_upload/mansoorali-khan-ahmed-khan-vs-state-of-maharashtra--410149.pdf

It is rather very difficult to accept that the accused would make an extra judicial confession to a stranger, passing by the road, who is only acquainted.

Kalu Ram vs State Of Rajasthan on 28 July, 1999; AIR2000SC3630, (2000)10SCC324, 2000 SCC(CRI) 86

It is true that all those witnesses have said that the deceased told her that she herself committed the act of lighting the match-stick but all those witnesses were confronted with their earlier version recorded by the Investigating Officer under Section 161 of the CrPC. The version of those witnesses in Court stands discredited by such earlier statements and the two Courts below have rightly declined to place any reliance on the testimony of those witnesses. Out of those witnesses PW-5 Indu was not declared hostile formally. But that does not matter because she too was confronted with her first version recorded by the police and thereby her testimony in Court was contradicted by the prosecution.

We find no good reason to discard the two dying declarations given by the deceased regarding the actual occurrence. The Courts below have rightly acted on such dying declarations.

But then, what is the nature of the offence proved against him. It is an admitted case that appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to lit the match-stick. When she failed to do so he collected the match box and ignited one match-stick but when flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all what the accused thought of was

to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder.

https://indiankanoon.org/doc/36425733/; Imran vs Mohammed Bhava on 22 April, 2022;CrlA 658/2022

Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in Vipan Kumar Dhir Vs. State of Punjab and Anr.{ AIR 2021 SUPREME COURT 4865, AIRONLINE 2021 SC 839 } has also reiterated, that while conventionally, certain supervening circumstances impeding fair trial must develop after granting bail to an accused, for its cancellation by a superior court, bail, can also be revoked by a superior court, when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact.

V.K.Mishra & Anr vs State Of Uttarakhand & Anr on 28 July, 2015;CRLA 1247 of 2012;

In Sher Singh @ Partapa vs. State of Haryana, (2015) 1 SCR 29, it had been held therein that the use of word 'shown' instead of 'proved' in Section 304B IPC indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, 'shown' will have to be read up to mean 'proved' but only to the extent of preponderance of probability. Thereafter, the word 'deemed' used in that Section is to be read down to require an accused to prove his innocence, but beyond reasonable doubt. The 'deemed' culpability of the accused leaving no room for the accused to prove innocence was, accordingly, read down to a strong 'presumption' of his culpability. The accused is required to rebut this presumption by proving his innocence. The same view was reiterated in Ramakant Mishra @ Lalu etc. vs. State of U.P., 2015 (3) SCALE 186.

For the offence under Section 304B IPC, the punishment is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Section 304B IPC thus prescribes statutory minimum

of seven years. In Kulwant Singh & Ors. vs. State of Punjab, (2013) 4 SCC 177, while dealing with dowry death Sections 304B and 498A IPC in which death was caused by poisoning within seven years of marriage conviction was affirmed. In the said case, the father-in-law was about eighty years and his legs had been amputated because of severe diabetes and mother-in-law was seventy eight years of age and the Supreme Court held impermissibility of reduction of sentence on the ground of sympathy below the statutory minimum.

https://indiankanoon.org/doc/78442566/; Naini Rajender Reddy vs The State Of Telangana on 3 September, 2021; CRLRC 58 of 2021

the confession of a co- accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

P. Ramesh vs State Rep. By Inspector Of Police on 9 July, 2019; CRLA 1013 of 2019;

if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation. The rule was stated in Dattu Ramrao Sakhare v State of Maharashtra

In order to determine the competency of a child witness, the judge has to form her or his opinion. The judge is at the liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capability to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand

questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner. 10 If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.

In the judgment reported in 1994-1-LW (Crl) 208 in the matter of **P.Pragasam Vs. State rep.by the Inspector of Police, Karaikal Town Police, Pondicherry,** it has been held that when the confession does not lead to recovery, the confession is inadmissible in law and the charge sheet based on the confession which does not lead to recovery has no legal basis and is liable to be quashed.

In **Vikram Johar vs. State of Uttar Pradesh, (2019) 14 SCC 207,** Hon'ble Supreme Court of India emphasized need of application of judicial mind to determine the potentiality of the case for a trial, as under: "18. It is, thus clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence."

State Of U.P. vs Sahib Singh on 19 July, 2022; Govt. appeal no. 2580 of 1985:

All the accused-respondents were named in the FIR, who were carrying weapons in their hand. The medical evidence connect the injuries with weapons alleged. The occurrence is of day-light, which has been witnessed by eye witnesses including injured witness. The accused persons had constituted the unlawful assembly and attacked on Satya Pal with their common intention as well as knowledge about severity of injuries. The evidence of prosecution witness, so far as the role of accused persons is concerned, have no contradiction or discrepancy. No evidence is on record, which may bifurcate the role of any of the accused persons. The trial Court

has not rightly appreciated the evidence on record and reached to a wrong conclusion holding the accused-respondents to be not guilty for committing the murder of deceased Satya Pal. The impugned judgment and order being against the settled law is unreasonable, based upon surmises and conjunctures, unreasonable and it is found that the relevant and convincing materials have been unjustifiably eliminated. The conclusion/findings recorded by learned trial Court in the impugned judgment and order are perverse and the same are not sustainable in the eye of law.

Raj Kumar @ Raju vs State Of Uttaranchal on 7 April, 2008;Appeal(Crl) 855 of 2007

It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons or even one- can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.

A similar situation arises in dealing with cases of 'unlawful assembly' as defined in Section 141, IPC and the liability of every member of such unlawful assembly for an offence committed in prosecution of common object under Section 149, IPC. Section 141 indicates that an assembly of five or more persons can be said to be 'unlawful assembly', if common object of the persons comprising such assembly is as mentioned in the said section. Section 149 declares that if an offence is committed by any member of unlawful assembly in prosecution of common object of that assembly, every member of such assembly is guilty of that offence.

Sunil Ganpat Suryavanshi vs The State Of Maharashtra And Anr on 7 January, 2021; AIRONLINE 2021 BOM 175; Appeal.366.2017.doc

The Trial Court has observed that when prosecution has established act of accused, presumption under Section 29 of POO Act comes into play. Section 30 of POCSO Act refers to presumption of culpable mental state. The Trial Court convicted the appellant under Section 376 IPC and Section 6 r/w 5(m) of POCSO Act. It was, however, held that prosecution failed to prove the guilt of accused under Section 10 r/w 9(m) of POCSO Act on the ground that there is no other distinct act than the attempt of inserting private part committed by accused.

The Trial Court has failed to appreciate that the sexual assault was related to one act. It is either penetration or sexual assault. Since the victim was below 12 years of age, it was either aggravated penetrative sexual assault or aggravated sexual assault. The Trial Court had framed the charge under Section 6 r/w 5(m) of POCSO Act, Section 376 of IPC and Section 10 r/w 9(m) of POCSO Act. Section 3 relates to penetrative sexual assault. Section 4 provides punishment for penetrative sexual assault. Section 5 provides for aggravated penetrative sexual assault. Section 6 provides punishment for aggravated penetrative sexual assault. Section 7 defines sexual assault. Section 8 provides punishment for sexual assault and Section 9 defines aggravated sexual assault, whereas Section 10 provides punishment for aggravated sexual assault.

There is non-application of mind by Trial Court. Since the charge was also framed under Section 10 r/w 9(m), it was observed that the said charge has not been proved. The prosecution case was based on one act of alleged aggravated penetrative sexual assault. It is not established that the accused had committed act of penetrative sexual assault. It is a case of sexual assault. The appellant could be convicted for the offence u/s 9 r/w Section 10 of POCSO Act. Although the first charge was framed u/s 6 r/w Section 5(m) of POCSO Act, the accused can be convicted for lesser offence in the light of evidence on record. The accused was also charged and convicted under Section 376 of IPC and in accordance with Section 42 of POCSO Act. No separate punishment was imposed. In view of Section 386 of Cr.P.C, the Appellate Court can alter the finding, maintaining the sentence, with or without altering the finding, alter the nature or the extent or the nature and extent of sentence.

The punishment provided under Section 10 of POCSO Act is imprisonment for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine. The appellant is in custody for five years and six months approximately. The medical examination report shows his age around 20 years at the time of incident. Hence, the appellant can be sentenced to period of imprisonment undergone by him. The fine and order of payment of compensation is required to be maintained.

As it is well settled by the Hon'ble Supreme Court in the case of **Sheila Sebastian vs. R. Jawaharaj** ((2018) 7 SCC 581) that mere being a beneficiary of the documents will not be prosecute unless it is found that he himself was the manufacture of the documents.

Jayaprakash vs The State on 15 October, 2014;Crl.O.P. No. 16109 of 2010

Section 406 IPC and 420 IPC cannot go together, because, Section 406 IPC essentially requires mutual trust, whereas, Section 420 IPC requires an element of deception. It is for these reasons, I have to say that these two provisions cannot be simultaneously invoked in this case. In order to invoke Section 406 IPC, absolutely there is no material to show that the shares were entrusted by way of trust by the second respondent to the petitioner. .

Turning to Section 420 IPC, it requires three basic elements prima facie, namely, deception, inducement by means of fraud or dis-honesty. The averments in the FIR do not satisfy any of these requirements. Though it is stated in the complaint that the shares were transferred in the name of the petitioner on the promise that Rs.60 lakhs would be paid by the petitioner to the second respondent in consideration, in the reply notice sent, the second respondent has asserted that he still continues to hold 3,350 shares. Whether the shares were really transferred and whether money is due or not from the petitioner are all matters to be gone into only by the appropriate civil forum.

N. Raghavender vs State of Andhra Pradesh, CBI, Criminal Appeal No. 5 of 2010, https://indiankanoon.org/doc/141947399/;

based on the aforesaid grounds, the Apex Court held that the standard of proof required to establish a misconduct in a domestic enquiry i.e. preponderance of evidence, is drastically different to those of proving a 'criminal charge' beyond any reasonable doubt. Thus, the Supreme Court held that although the Appellant is deemed to be guilty of gross departmental misconduct, for which the Apex Court upheld the Dismissal Order, but as there is no conclusive proof to establish criminal offence against the Appellant, the criminal charges were held to be unsustainable. As a result, the Appeal was disposed of.

https://indiankanoon.org/doc/224238/; Rajababu S/O Buchayya Adluri And Anr. vs State Of Maharashtra on 8 December, 1999; 2000CRILJ4072

As the prosecution had come up with a specific case that there were in all five persons who had entered the house of Vyankati and robbed them by using the deadly weapons, merely because one of the persons is not identified, would not defeat the prosecution case that the dacoity was committed by not less than five persons, at the house of complainant Vyankati. While filing the charge-sheet, the prosecution has specifically mentioned that one of the cultprits in the case by name Anjayya is found to be absconding and that is why the charge-sheet came to be filed only against seven accused persons before the trial Court out of which four are convicted for having committed offence under Section 395 read with Section 398 of I.P.C. and two accused persons are convicted for having committed offence under Section 411 of I.P.C.

2023 LiveLaw SC 283; CRIMINAL APPEAL NO. 957 OF 2023; APRIL 10, 2023 Central Bureau of Investigation versus Vikas Mishra @ Vikash Mishra

No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the

investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process.

1997 0 CrLJ 35; High Court Of Delhi; SHYAM SUNDER Vs. STATE OF DELHI; Decided On : 04/18/1996

it is now a well established principle of law that where the eye witnesses are available and their statements are worthy of placing reliance, the question of motive loses much of its importance and the Courts need not insist upon the same as the motive for commission of a particular crime remains a mystery known to the accused alone. We are fortified in our above view by the observations of their Lordships of the Supreme Court as reported in AIR 1975 SC 118, Nachhittar Singh v. . The State of Punjab, ". . . . Be that as it may, the failure of the prosecution to establish the motive for the crime does not mean that the entire prosecution case has to be thrown over-board. It only casts a duty on the court to scrutinize the other evidence, particularly of the eye-witnesses, with greater care. The High Court was fully conscious of the need for such caution, and rightly observed: The absence of proof of motive has this effect only that the other evidence bearing on the guilt of the accused has to he very carefully examined. "

In the case titled as Abdul Subhan vs. State (NCT of Delhi), 2006 (4) LRC 472 (Del), it was held by the Hon'ble High Court of Delhi as below, "7. .....What is meant by high speed? Were the traffic lights working or not? Why was the investigating officer not examined? Why were photographs not taken? Why is there no evidence with regard to tyre skid marks? Why was the site plan not exhibited? There are questions which remain unanswered pertaining to the motorcyclist who unfortunately lost his life in this accident. Was the motorcyclist on Mathura Road? What was his direction of movement? Was he coming from Sher Shah Road and turning towards Mathura Road? Or was he on Mathura Road turning towards Sher Shah Road? What was the speed of the motorcyclist? Did the motorcyclist suddenly curve into the path of the petitioner's truck? A host of other

questions remain unanswered purely because the degree of investigation carried out is quite unsatisfactory."

"Bhanwar Singh & Ors. vs. State (Govt of NCT) Delhi" [(2018) SCC OnLine Del 10975] and more particularly para 13 and 14 which read as under:-

"13. The MLC shows that the nature of injuries sustained is simple. The injuries sustained by the victim, as mentioned in the MLC, are, inter alia, laceration on the forehead right side, laceration on the central part of upper lip, multiple abrasions and contusion, injuries to upper arm and forearm, both chest and back.

14. The medical report does not substantiate the contentions of the learned APP for the State and does not show that the injuries sustained are of nature as would satisfy the requirements of Section 300 IPC. Merely because wooden sticks and iron rods are alleged to have been used, would not in itself, be sufficient for framing of charge under Section 307 IPC. Merely because injuries are caused on the forehead would not in itself be sufficient to frame a charge under Section 307 IPC. Trial Court, while framing charge is also to examine as to what are the nature of injuries sustained and/or attempted to be inflicted."

https://indiankanoon.org/doc/53636217/; Sayeed Aleem vs The State Of Telangana on 17 August, 2021

it is clear that if offence of sexual assault is punishable in relevant provision of POCSO Act and also in relevant provision of I.P.C., like 376 I.P.C., the trial Court is bound to punish the accused either in the relevant provision of POCSO Act, or under I.P.C. which is greater in degree. In view of Section 42 of the POCSO Act, no separate sentence was imposed by the trial Court for the offence punishable under Section 376 (2) (i) of I.P.C.

Choppari Kumar vs The State Of Telangana on 22 April, 2022; CRLA 111/2021;

The proof of age of P.W.2 is the certificate provided by the Principal of the college, P.W.3. The date of birth given vide certificate Ex.P4 cannot be conclusive proof of the exact date 2011 CRI.L.J 2591 (2013) 3 SCC 791 (2016) 1 Supreme Court Cases 696 of birth of P.W.2 as the same is

based upon a declaration given by the parents at the time of admission of P.W.2. If the certificate issued at the time of actual birth by the competent authorities like MRO, Sub-Registrar or hospital authorities is produced, it can be safely concluded that the date of birth is correct. There is a general tendency by the parents either to increase or decrease the date of birth depending upon the circumstances. When the father-P.w.1 was examined, he stated that P.W.2 was aged 13 years when the incident took place. That itself shows that the father-P.W.1 was not giving the correct details. In the said circumstances, when the exact age of P.W.2 could not be determined and the only basis for conviction is that P.W.2 was below 18 years, though her evidence on record would prove that she consented for going with the appellant to all the places and also for sexual intercourse with the appellant, the benefit of doubt has to be extended to the appellant.
In the said facts and circumstances, when the prosecution is not able to prove exact age of P.w.2, admittedly, p.W.2 had voluntarily on her consent, proceeded with the appellant, to all the places including Hyderabad, the appellant is entitled to be acquitted of all the charges under Sections 376(2)(n) of IPC and Section 366 of IPC.

In **Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230,** the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed:
"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to:

(i) voluntariness of the confession; (ii) truthfulness of the confession; and (iii) corroboration.

1996 0 AIR(SC) 2184; 1996 2 ALD(Cri)(SC) 926; 1996 0 CrLJ 3237; 1996 4 SCC 596; 1996 0 SCC(Cri) 792; S. Gopal Reddy Vs. State of Andhra Pradesh; Criminal Appeal No. 231 of 1994; Decided on 11-7-1996
That the marriage between the parties did not take place is not in dispute but there is no satisfactory evidence on the record to show that the appellant

cancelled the marriage on account of nonfulfilment of dowry demand allegedly made by him. The letter which PW1 claims to have himself received from the appellant regarding cancellation of marriage prior to Varapuja ceremony has not been produced.

The bald assertion of PW1 that he was "familiar" with the handwriting of the appellant and fully "acquainted" with the contets of the letters, admittedly not addressed to him, without disclosing how he was familiar with the handwritng of the appellant, is difficult to accept. Section 67 of the Evidence Act enjoins that before a document can be looked into, it has to be proved. Section 67, of course, does not prescribe any particular mode of proof. Section 47 of the Evidence Act which occurs in the chapter relating to relevancy of facts` provides that the opinion of a person who is acquainted with the handwriting of a particular person is a relevant fact. Similarly, opinion of a handwriting expert is also a relevant fact for identifying any handwriting. The oridinary method or proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or is otherwise qualified and competent to express his opinion as to the handwriting. There are some other modes of proof of documents also as by comparison of the handwriting as envisaged under Section 73 of the Evidence Act or through the evidence of a handwriting expert under Section 45 of the Act, besides by the admission of the person against whom the document is intended to be used. The receiver of the document, on establishing his acquaintance with the handwriting of the person and competence to identify the writing with which he is familiar, may also prove a document. These modes are legitimate methods of proving documents but before they can be accepted they must bear sufficient strength to carry conviction. Keeping in view the in-conclusive and indefinite nature of the evidence of the handwriting expert PW3 and the lack of competence on the part of PW1 to be familiar with the handwriting of the appellant, the approach adopted by the courts below to arrive at the conclusion that the disputed letters were written by the appellant to Ms. Vani on the basis of the evidence of PW1 and PW3 was not proper. The doubtful evidence of PW1 could neither offer any corroboration to the inconclusive and indefinite opinion of the handwriting expert PW3 nor could it receive any corroboration from the opinion of PW3. We are not satisfied, in the established facts and circumstances of this case, that the prosecution has

established either the genuineness or the authorship of the disputed letters allegedly written by the appellant from the evidence of PW1 or PW3. The courts below appear to have taken a rather superficial view of the matter while relying upon the evidence of PW1 and PW3 to hold the appellant guilty. We find it unsafe to base the conviction of the appellant on the basis of the evidence of PW1 or PW3 in the absence of substantial independent corroboration, internally or externally, of their evidence, which in this case is totally wanting.

2007 2 OLR 742; 2007 0 Supreme(Ori) 528; Danda Naik & three others. Vs. State of Orissa.; Jail Criminal Appeal No. 188 of 1993; Decided on 12th July, 2007.

This is an old and accepted principle of criminal jurisprudence that the case and the counter case should be tried together by the same Judge for the ends of justice. Reference in this connection may be made to a decision of the Madras High Court in the case of Thota Ramakrishnayya and others v. The State reported in AIR 1954 Madras 442. In that case the learned Judge after examining various decisions of different High Courts held that where there is a fight between two rival factions which gives rise to complaint and counter complaint it is a generally recognized rule that both the cases should be tried by the same Judge in quick succession. This salutary principle of criminal law has been laid down by the learned Judge in paragraph 39 of the said judgment. The principles which have been laid down in paragraph 39 are set out below :

"Therefore, the following four tests have been laid down by all the High Courts in innumerable cases to fix the culpability of the accused viz, whether they had a motive to share the common object and be present at the unlawful assembly and participate in the acts of violence therein; secondly, whether they committed the acts proved by well corroborated evidence and which would establish affirmatively their common object, presence and partic¬ipation; thirdly, whether the names of these persons have been mentioned at the earliest instance; and finally the exonerating pleas of these persons and how far they can be acted upon ...."

In Ram Swarup it has been further held that unlike a civil case in a criminal trial an accused need not plead that he acted in private defence. Yet the

Court may find from the evidence of the witnesses examined in the case either that what would other¬wise be an offence is not one because the accused has acted within the strict confines of his right of private defence or that the offence is mitigated because the right of private de¬fence has been exceeded. The learned Judges have also held that under Section 105 of the Evidence Act when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, is upon him. Sections 96 to 106 of the Penal Code define the limit of the right of private defence and that consti¬tutes a general exception to the offences defined in the Code. But the burden rests on the accused only to prove that any of the general exceptions is attracted. This, however, does not absolve the prosecution from discharging its initial burden which never shifts unless the statute displaces the same. The learned Judges have held that an accused may fail to establish affirmatively the existence of circumstances which would bring the case within the general exception. While discharging the burden under Section 105 of the Evidence Act, it may be enough to cast a reasonable doubt on the case of the prosecution and in that event the accused may be entitled to acquittal. The learned Judges very clearly pointed out that the burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecu¬tion to prove the charge beyond any reasonable doubt. The burden on the accused in such a circumstance, as in a civil case, can be discharged on the preponderance of probabilities.

2006 0 AIR(SC) 951; 2006 1 ALD(Cri)(SC) 414; 2006 2 ALT(Cri)(SC) 93; 2006 2 SCC 450; 2006 1 SCC(Cri) 661; Radha Mohan Singh @ Lal Sahed & Ors. Vs. State of U.P.; Criminal Appeal Nos. 1183-1185 of 2004 With Criminal Appeal No. 1186 of 2004 Decided on 20-1-2006

There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye witnesses or the gist of their statement in the inquest report nor it is required to be signed by any eye witness.

Bombay High Court in a case **Ganpat Kondiba Chavan v State of Maharasthra 1997 (2) Crimes 38** argued that where the witness claiming to

be a eye witness of incident of murder had remained silent, did not narrate incident to anybody and his 161 Cr.P.C statement was recorded after 5 days of the incident, testimony of such a witness could not be stated to be reliable one and his claiming to be the eye witness of occurrence could not be stated to be believable.

2014 1 MhLJ(Cri) 613; 2014 0 Supreme(Bom) 119; Anwar Musa Sayyed Vs. The State of Maharashtra; Criminal Appeal No. 818 of 2008; Decided On: 21-01-2014

In respect of injuries sustained by original accused no.2 and original accused no.5 (who have been acquitted), the prosecution witnesses when confronted in cross-examination have stated that these injuries were sustained by the accused during the incident and at the hands of the other accused. The appellants in their statements under Section 313 have also not specifically taken any defence that the accused were attacked by the complainant party or that the complainant party was aggressor and had inflicted any injuries, and in their exercise of private defence they had caused any injuries. It is equally true that right of private defence need not be specifically pleaded. However, in order to enable the Court to determine if the accused had exercised their right of private defence, it is necessary that there should be some evidence on record to indicate that complainant party was aggressor and that accused had felt some apprehension of injuries being caused to them and therefore the accused had exercised their right of private defence. Though the prosecution witnesses have not explained the injuries sustained by accused nos.2 and 5, according to us it is apparent in the light of the explanation of the witnesses that the accused had sustained injuries while assaulting the complainant party and in the absence of any other evidence to contradict that, according to us failure of the prosecution to explain the aforesaid injuries would not be fatal the prosecution case. The other overwhelming evidence which the prosecution has adduced would not stand affected by failure to explain injuries sustained acquitted accused.

2008 2 ALT(Cri) 229; 2008 0 Supreme(AP) 296; Dasarigalla Chandraiah Vs State of Andhra Pradesh; Criminal Appeal No. 897 of 2006; Decided on : 23-04-2008

Under Section 118 of the Indian Evidence Act, a child is a competent witness, provided the said witness is able to understand the questions properly and is also able to give rationale answers to such questions. In the strict sense the testimony of a child witness can be relied upon without corroboration, but as a rule of prudence it is desirable to have corroboration from independent witnesses or from the circumstances.

there is a judgment of High Court of Andhra Pradesh relied upon by the learned counsel for the petitioners reported between **Erlapalli Prakasham v. State of Andhra Pradesh { 2002 (1) ALD (Crl.) 621 (AP)}**, in which there was an observation by the Coordinate Bench of this Court that "the Radiologist has not produced the X-ray films and in the absence of the same, it cannot be said that there are grievous injuries and it must be taken that the injured have sustained simple injuries."

2007 2 RCR(Cri) 537; 2007 0 Supreme(P&H) 300;State of Haryana Vs Prem Singh; Crl. Appeal No. 444-DBA of 1997. Decided On : 22 February, 2007

Irrespective of the fact that the nature of injuries is not necessarily to be examined while holding the respondent guilty under Section 307 Indian Penal Code but it requires that the act must be done with such an intention or knowledge or under such circumstances that if the death be caused by that act, the offence of murder will emerge. In the present case, the necessary contributes to constitute the offence under Section 307 Indian Penal Code are not made. No evidence has been led in order to establish if the accused had requisite intention to commit murder of the injured.

2010 1 Crimes(HC) 385; 2010(1) Crimes 385 (A.P.); Adapa Gangadhara Rama Rao and Ors. Vs. State of A.P.; Criminal Appeal No. 241 of 2008; Decided on 25.9.2009

The law is well settle that when there are case and counter case, Doth must be tried by one and the same judge and must be disposed of simultaneously by him otherwise, it is not possible to arrive at a definite conclusion as to the genesis of the incident and also fix up the aggressor.

A grave miscarriage of justice has been done on account of the trial of the present case and S.C.No.516 of 2006 by two different judges, since both the cases arise out of the same incident during the course of which the deceased, PW1 and A1 to A3 received injuries. Both the cases ought to have been tried and disposed of simultaneously by one and the same Court.

K. Ashok Kumar Reddy vs State Of A.P. Rep. By The P.P. on 18 April, 2008

In the definition of cheating there are set forth two separate classes of acts, which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the section is the doing or omitting to do anything, which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution under Section 420 IPC, unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

In Pulla Bhaskar v. Superintendent of Police, Warangal and others reported in 1999 (5) ALD 155, the petitioner therein was acquitted in a criminal case in the year 1994 and from 1994 to 1997, there was no criminal case registered against him. In such circumstances, the High Court of Andhra Pradesh, held that the petitioner cannot be treated as an habitual offender and consequently directed the respondents therein to delete his name from the rowdy list.

https://indiankanoon.org/doc/101482639/; **Chitra @ Bebi vs State Of Up And Another on 16 July, 2021**

This Court must still again remark that cases where the charge is about abetment to commit suicide, there are very subtle features of evidence that may show the necessary mens rea and the relevant persistent conduct of the accused in driving the deceased to commit suicide. There could be cases where on the material collected during investigation, there is hardly anything to show that the accused or one of them ex facie committed an act proximate in point of time that could drive the deceased to take his life. Again, there could be cases where the role of one of the accused is overt and proximate in point of time, by the standard of a man similarly circumstanced and a sensible man at that, that could lead him to commit suicide. The proximate and immediate conduct of one of the accused rendering the deceased option-less to commit suicide, may not be an impromptu action, provoked by the action of the accused on occasion. It could be the precipitating event behind which stand a long trail of instigation or aid, driven by persistent conduct of one or more of the accused acting together. This is in particular true of a matrimonial relationship, which comes as it does, with abiding social obligations and much legal consequences. A spouse at the receiving end of matrimonial cruelty - mental and physical or both, cannot be compared to a person placed in a different situation of harassment, like an employee perceiving or being actually harassed by his employer, or a student by his teacher. It is for this reason that special laws have been made for women where they commit suicide, within seven years of marriage in the matrimonial home.

23. No doubt, social realities have not yet arisen in the perception of law makers and others as well in similar terms for the other partner in marriage, but the reality remains that in the nature of relationship in matrimony, social and legal obligation arise, which when inter-laid with persistent cruel conduct by the wife, may lead a man to find himself optionless. Of course, it depends on the circumstances of a man, his financial and social status and his general outlook towards life. But, what cannot be ignored is the fact that in the matrimonial relationship both spouses, in sometime, become aware of the others general outlook and the threshold of toleration beyond which the other may not be driven, and if persistently harassed, may adopt fatal options.

24. There is yet another angle to the matter, which holds stronger in case of a matrimonial alliance. The person actually involved in doing an act proximate in point of time to the deceased taking his life, may have others participating with him/her leading to the 'build-up', where the fatal event occurs. These could be those persons who have conspired with the instigator or the one who actively aids the deceased through a proximate act. The role of such persons in the shadows who have conspired would in no measure be less culpable and certainly relevant under Section 107 IPC. No doubt, the evidence about their role would have to be more carefully sifted at the trial, than the person who has acted as the agent provocateur, proximate in point of time.

25. In the present case, this Court finds that whatever evidence has been collected is not one simply about a hair trigger fatal response from an over sensitive man. The parties were together for some four years and had a son. The suicide note, which comprises two parts, the one physically scripted and the other sent by WhatsApp messages, shows definitive allegations against wife and the in-laws. The scripted suicide note shows that the wife, who was staying back at her parents' place at Muzaffarnagar, was carrying on there and forcing the deceased to stay in a house close to her place. The note also says that the wife abuses him and snatches away food from him (मुझे गाली देती है, खाना तक छीन लेती है). He has blamed his wife and named the other in-laws, who along with her threatened and harassed him. The scripted suicide note goes to the extent of showing that the son is not begotten of him.

1967 0 AIR(All) 64; 1967 0 CrLJ 134; 1964 0 Supreme(All) 153; Devi Prasad Vs. State; Decided On : 09/10/1964

In other words, the method contemplated by Section 73 of the Evidence Act can and ought to be employed by courts in order to test and find corroboration or contradiction of the opinion of the expert. The court does not, in such a case, function as a handwriting expert itself, but it acts as the authority charged with the duty of arriving at a conclusion with the aid of all the data upon the record by all legally permissible means at its commands

The existence of disguise certainly makes the task of the expert and of the court more difficult. The obstacles placed by it are, however, not

insurmountable. Certain rules have been formulated and discussed by Dr. Harrison, the Director of the Home Office Forensic Science Laboratory in Britain in his book on "Suspect Documents" (1958), as guides for piercing the disguise. These are as follows:

1. "Most Disguise is Relatively Simple in Nature.
2. "Disguised Handwriting Exhibits less Fluency and Poorer Rythm than the Normal Hand.
3. "Any Change in Slope Introduced as Disguised is Rarely Constant."
4. "Disguised Handwriting often Contains Altered Letters."
5. "The Internal Consistency of Handwriting is Disturbed by the Introduction of Disguise."
6. "Originality in Disguise is Rare."
7. "Disguise is Rarely Consistent."
8. "Certain Features are Rarely Disguised."

The worth of the expert's opinions with regard to the handwriting of each appellant can only be judged by examining his reasons and comparing the admitted and the disputed writings about which the opinion was given. As I have already indicated, I propose to adopt this method of judging the reliability of the evidence of the handwriting expert with reference to each accused person. Another test which I propose to employ is to see whether the effect of the expert evidence is corroborated by other kinds of evidence in the case from other sources such as the approver's evidence about handwritings, the confession, and the evidence of other witnesses.

the Bombay High Court in the case of **BHARGAV KUNDALIK SALUNKHE v. STATE OF MAHARASHTRA reported in 1996 CRI.L.J 1228,** wherein it is held that the evidence of handwriting expert must be received with great caution when there is consistent dissimilarities in the general features of disputed writing and admitted signature and handwriting opinion of expert that disputed handwriting tallied with specimen handwriting could not be sustained.

Virsa Singh vs The State Of Punjab on 11 March, 1958; AIR 1958 SUPREME COURT 465,

The court granted a four-point test, which the prosecution must do to look into and prove the case so that the case can be brought under Sec. They are:

1. First, it should establish, fairly objectively, that a physical injury exists.
2. Second, the nature of the injury has to be proved. These are purely objective investigations.
3. Third, it must be proved that that particular bodily injury was intended to inflame, that is to say, it was not accidental or unintentional, or that any other type of injury was intended. Once these three elements are proven to exist, the investigation proceeds.
4. Fourth, it must be proved that the type of inquiry made by the above three elements stated above is enough to cause death in the normal course of nature. This part of the investigation is purely objective and impractical and has nothing to do with the intent of the criminal.

Once all these four elements are established by the prosecution, the offence is then said to be murder under Section 300 (thirdly).

https://indiankanoon.org/doc/605891/; State Of Andhra Pradesh vs Rayavarapu Punnayya & Another on 15 September, 1976; AIR 1977 SUPREME COURT 45, (1976) 4 SCC 382, 1976 SCC (CRI) 659,

Question arose whether in such a case when no signifi- cant injury had been inflicted on a vital art of the body, and the weapons used were ordinary lathis, and the accused could not be said to have the intention of causing death, the offence would be 'murder' or merely 'culpable homicide not amounting to murder'. This Court speaking through Hidayatullah J. (as he then was), after explaining the comparative scope of and the distinction between ss. 299 and 300, answered the question in these terms:

"The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous. Only lathis were used. It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of s. 300. At the same time, it is obvious that his hands and legs were smashed and numerous bruises and

lacerated wounds were caused. The number of injuries shows that every one joined in beating him. It is also clear that the assailants aimed at breaking his arms and legs. Looking at the injuries caused to Bherun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause death in the ordinary course of nature, even if it cannot be said that his death was intended. This is suffi- cient to bring the, case within 3rdly of s. 300."

2009 1 ALD(Cri) 720; 2009 2 ALT(Cri) 135; Thummala Lovaraju Vs. The State of A.P., rep.by Public Prosecutor; Criminal Appeal No.1252 of 2006; Decided on : 13-03-2009

In case of shifting of scene of offence, the prosecution case has to be thrown out, the same being highly doubtful.

2004 2 ALD(Cri) 241; 2003 0 Supreme(AP) 1233; Ediga Jagannadha Gowd Vs. State; Decided On : 10-17-03

FIR is only used for the purpose of corroborating or contradicting if the person who has complained is examined. In a case where the first informant died before he could depose before the Court at best the purpose of corroborating or contradicting its contents by the person would not be possible. Keeping that in view, that the accused could not cross-examine the first informant, the other evidence produced can be looked into. As the FIR is not a substantial piece of evidence it should not have any effect on the prosecution case if its contents were not proved by the person who gave it because of his death. In view of the judgment of the Supreme Court, we feel that non- examination of the complainant on account of his death would not be factal on its own to the prosecution case and it will depend upon facts of each case. If the prosecution story as revealed by the witnesses in the Court is directly contradictory to the contents of the FIR it may have one effect and on the other hand if the contents of FIR are in conformity with the evidence adduced during the trial it may have altogether a different effect.

2008 2 ALD(Cri)(SC) 605; 2008 10 SCC 450; 2009 1 SCC(Cri) 60; Ghurey Lal Vs. State of U.P.; Criminal Appeal No. 155 of 2006; Decided on : 30-07-2008

72.The following principles emerge from the cases above :

1.The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2.The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3.Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73.In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of Judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1.The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

i)The trial court's conclusion with regard to the facts is palpably wrong;

ii)The trial court's decision was based on an erroneous view of law;

iii)The trial court's Judgment is likely to result in "grave miscarriage of justice";

iv)The entire approach of the trial court in dealing with the evidence was patently illegal;

v)The trial court's Judgment was manifestly unjust and unreasonable;

vi)The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

vii)This list is intended to be illustrative, not exhaustive.

2.The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3.If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

State of Rajasthan v. Rajaram, 2003 Crl. L.J. 1210 : (2003) 8 SCC 180 : 2003 SCC (Crl.) 1965

Confessions may be divided into two classes, i.e. judicial and extra-judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? And (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and

circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See R. v. Warwickshall; (1783) Lesch 263)]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence, 9th Edn. Page 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is

measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words appear to him in the last part of the section refer to the mentality of the accused.

An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

1997 2 Crimes(HC) 78; 1997 0 CrLJ 2204; Narasingh Challan Vs. State; Jail Criminal Appeal No, 151 of 1993; Decided on 7-1-1997

In the scheme of the I.P.C., culpable homicide' is genus, and 'murder' is the specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally 'culpable homicide' sans special characteristics of murder is 'culpable homicide' not amounting to 'murder'. For the purpose of fixing pun ishment, proportionate to the gravity of this generic offence, I.P.C. practically recognises three degrees of, culpable homicide. The first '-is, what may be called culpable of the first degree. This is the gravest form of culpable homicide, which is defined as 'murder' in Sec. 300. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the First Part of Sec. 304. Then there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under Second Part of Sec. 304. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the Courts for long. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Sec 299	Sec 300
A person commits culpable homicide if the act by which the death is done	Subject to certain exceptions homicide is murder if the act by which the death is caused
INTENTION	
(a) with the intention of causing death; or (b)with the intention of causing such bodily injury as is likely to cause death; or	(1)with the intention of causing death; or (2) with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused; or (3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted

	is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge, that the act is so imminently dangerous that it must tri all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

(emphasis supplied).

2012 2 ALT(Cri)(SC) 318; 2010 9 SCC 567; 2010 3 SCC(Cri) 1402;C. Muniappan & Others Vs State of Tamil Nadu; CRIMINAL APPEAL NOS. 127-130 OF 2008 WITH CRIMINAL APPEAL NOS.1632-1634 OF 2010 (Arising out of SLP(Crl.) Nos. 1482-1484 of 2008) Decided on : 30-08-2010

Section 195(a)(i) CrPC – Exception to section 190 – Bars cognizance of any offence punishable under section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order – Similarly sections 196 and 198 also bar cognizance unless some requirements are complied with.

Section 188 IPC r/w section 195 CrPC being mandatory, cognizance cannot be taken u/s 188 unless the public servant whose orders have not been complied with files a complaint in writing – Non-compliance of section 195 would render trial and conviction void ab initio – Instantly no such complaint filed – Charge could not be framed u/s 188 IPC – Even if charges u/s 188 are quashed, charges for other offences will remain unaffected.

Clubbing of cases – One occurrence fall out of the other – They would be one and the same occurrence – Damage caused to the public transport vehicles and consequential burning of the University bus – Part of one and the same incident – Merely lodging of two separate complaints will not bar clubbing together of these cases – No infirmity in filing one charge sheet.

Section 9 IEA – TI Parade – Part of the investigation – Very useful where the accused are not known before-hand to the witnesses – Used only to corroborate the evidence recorded in the court – Therefore not substantive evidence – Accused should not be shown to any of the witnesses after arrest, and before holding the Test Identification Parade, he is required to be kept "baparda" – Witnesses identifying accused in jail as well as in court – No infirmity.

One witness turning hostile – In view of consistent evidence of other witnesses, on witness turning hostile does not affect the prosecution case. Evidence of a hostile witness cannot be discarded as a whole – Relevant parts thereof, admissible in law, can be used by the prosecution or the defence.

Defective investigation – Occurrence ugly and awful – Investigation in highly charges atmosphere – Some irregularities bound to occur – Investigation transferred to CBCID – Irregularities committed in investigation lose relevance – However, defect in investigation by itself cannot be a ground for acquittal.

Extra judicial confession – Only admissible part of such statement can be exhibited – Instantly, full statement exhibited in court – Not permissible – However in view of sufficiency of other materials on record it did not prejudice the accused.

Appreciation of evidence – Discrepancies – Minor or trivial omissions or discrepancies – Ought to be ignored.

1999 0 AIR(SC) 1293; 1999 1 ALD(Cri)(SC) 715; 1999 0 CrLJ 2025; 1999 4 SCC 370; 1999 0 SCC(Cri) 539; State of Himachal Pradesh Vs. Jeet Singh; Criminal Appeal No. 263 of 1991; Decided on 15-3-1999

No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is

almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disintered its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it.

2010 0 AIR(SC) 3071; 2010 2 ALD(Cri)(SC) 617; 2010 3 ALT(Cri)(SC) 74; 2010 12 SCC 324; 2011 1 SCC(Cri) 381; State of U.P. Vs. Krishna Master & Ors.; Criminal Appeal No. 1180 of 2004; Decided on : 3-8-2010

Appreciation of oral evidence – While appreciating the evidence of a witness, the approach must be to find out whether the evidence of witness read as a whole appears to have a ring of truth

Minor discrepancies in the evidence are not fatal.

A rustic witness is not expected to always have an alert mind and so have an idea of direction, area and distance with precision from which he had witnessed the incident

Non-examination of all witnesses is not always fatal.

High Court erred in taking the view that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago.

Section 134 IEA– No particular number of witnesses shall be required for the proof of any fact – Reliance can be placed on the solitary statement of a witness if it is reliable and correct version of the occurrence.
Section 32(1) IEA – Dying declaration – High Court erred in not believing the oral dying declaration given by the deceased to his brother.

2011 0 AIR(SC) 280; 2011 0 CrLJ 306; 2011 6 SCC 288; 2011 2 SCC(Cri) 923; Brahm Swaroop & Anr. Vs. State of U.P.; Criminal Appeal No. 1235 of 2005 with Criminal Appeal Nos. 1295-1296 of 2005 Decided on : 26-10-2010

The whole purpose of preparing an inquest report under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. For the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. The object of the proceedings under Section 174 Cr.PC is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. The question regarding the details of how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings i.e. the inquest report is not the statement of any person wherein all the names of the persons accused must be mentioned. Omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses can not be discarded if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilised for contradicting the witnesses of inquest. (See Podda Narayana & Ors. v. State of Andhra Pradesh,1 AIR 1975 SC 1252; Khujji v. State of Madhya

Pradesh,2 AIR 1991 SC 1853; George & Ors. v. State of Kerala & Anr.,3 (1998) 4 SCC 605; Shaikh Ayub v. State of Maharashtra,4 (1998) 9 SCC 521; Suresh Rai v. State of Bihar,5 (2000) 4 SCC 84; Amar Singh v. Balwinder Singh & Ors.,6 (2003) 2 SCC 518; Radha Mohan Singh alias Lal Sahab & Ors. v. State of Uttar Pradesh,7 (2006) 2 SCC 450; and Aqeel Ahmad v. State of Uttar Pradesh,8 AIR 2009 SC 1271).

Non-cross-examination-the defence did not put any question in this regard to the investigating officer Raj Guru (PW.10), thus, no explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report.

Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that effects the credibility of a witness, more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence. (Vide: Dalip Singh & Ors. v. State of Punjab,20 AIR 1953 SC 364; Masalti v. State of U.P.,21 AIR 1965 SC 202; Lehna v. State of Haryana,22 (2002) 3 SCC 76; and Rizan & Anr. v. State of Chhattisgarh Through The Chief Secretary, Government of Chhatisgarh, Raipur, Chhatisgarh,23 (2003) 2 SCC 661).

Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness”. (Vide: State of U.P. v. Kishan Chand & Ors.,24 (2004) 7 SCC 629; Krishan & Ors.v. State of Haryana,25 (2006) 12 SCC 459; Dinesh Kumar v. State of Rajasthan,26 (2008) 8 SCC 270; Jarnail Singh & Ors. v. State of Punjab,27 (2009) 9 SCC 719; Vishnu & Ors. v. State of Rajasthan,28 (2009) 10 SCC 477; Anna Reddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh,29 AIR 2009 SC 2661; and Balraje @ Trimbak v. State of Maharashtra,30 (2010) 6 SCC 673).

It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See: State of U.P. v. M.K. Anthony,31 AIR 1985 SC 48; and State of Rajasthan v. Om Prakash,32 AIR 2007 SC 2257; State v. Saravanan & Anr.,33 AIR 2009 SC 152; and Prithu @ Prithi Chand & Anr. v. State of Himachal Pradesh,34 (2009) 11 SCC 588).

Guilty should be punished

State Of Punjab vs Karnail Singh on 14 August, 2003; AIR 2003 SUPREME COURT 3609, 2003 (11) SCC 271, 2003 (2) ANDHLT(CRI) 273 SC

The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not.

Honour Killing. Hostile witness

2011 0 AIR(SC) 1863; 2011 0 CrLJ 2903; 2011 6 SCC 396; 2011 2 SCC(Cri) 985; Bhagwan Dass Vs. State (NCT) of Delhi; Criminal Appeal No. 1117 of 2011; @ Special Leave Petition (Crl.) No.1208 of 2011; Decided on : 9-5-2011

No doubt a statement to the police is ordinarily not admissible in evidence in view of Section 162(1) Cr.PC, but as mentioned in the proviso to Section 162(1) Cr.PC it can be used to contradict the testimony of a witness. Smt. Dhillo Devi also appeared as a witness before the trial court, and in her cross examination, she was confronted with her statement to the police to whom she had stated that her son (the accused) had told her that he had killed Seema. On being so confronted with her statement to the police she denied that she had made such statement. We are of the opinion that the statement of Smt. Dhillo Devi to the police can be taken into consideration in view of the proviso to Section 162(1) Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment.

Thus it is the duty of the Court to separate the grain from the chaff, and the maxim “falsus in uno falsus in omnibus” has no application in India vide Nisar Alli vs. The State of Uttar Pradesh11 AIR 1957 SC 366. In the present case we are of the opinion that Smt. Dhillo Devi denied her earlier statement from the police because she wanted to save her son. Hence we accept her statement to the police and reject her statement in court. The defence has not shown that the police had any enmity with the accused, or had some other reason to falsely implicate him. We are of the opinion that this was a clear case of murder and the entire circumstances point to the guilt of the accused.

Before parting with this case we would like to state that ‘honour’ killings have become commonplace in many parts of the country, particularly in Haryana, western U.P., and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. We have held in Lata Singh’s case (supra) that there is nothing ‘honourable’ in ‘honour’ killings, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds.

In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out

these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them.

Quality and not quantity

Badri vs State Of Rajasthan on 6 November, 1975; AIR 1976 SUPREME COURT 560, (1976) 1 SCC 442, 1976 SCC(CRI) 60,

Since under the Evidence Act no particular number of witnesses are required for the proof of any fact, it is a sound and well-established rule of law that quality and not quantity of evidence matters. In each case the court has to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness for the purpose of convicting a person.

If a witness, who is the only witness against the accused to prove a serious charge of murder, can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such a witness cannot be considered as a reliable person and no conviction can be based on his sole testimony.

Confrontation with evidence given in another case

2005 10 SCC 701; 2005 0 SCC(Cri) 1712; Mishrilal & Ors. Vs State of M.P. & Ors.; Criminal Appeal No. 939 of 2004; Decided on 11-5-2005

In our opinion, the procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him.

Common Object

2013 0 AIR(SC)(Cri) 841; 2013 0 CrLJ 486; 2012 12 SCC 657; BHARAT SONI Vs. STATE OF CHHATISGARH; Criminal Appeal Nos. 1262-1264 of 2010 with Criminal Appeal No. 1873 of 2011; Decided on : 22-11-2012.

An assembly of five or more persons having as its common object any of the five objects enumerated under Section 141 of the IPC is deemed to be an unlawful assembly. Membership of an unlawful assembly is itself an offence punishable under Section 143 whereas other species of the said offence are dealt with under Sections 143 to 145 of the IPC. Similarly, Sections 146 to 148 of the IPC deals with the offence of rioting which is defined to be use of force or violence by any member thereof. Section 149 makes every member of an unlawful assembly liable for offence that may be committed by any member of the unlawful assembly in prosecution of the common object of that assembly or for commission of any offence that the members of the assembly knew to be likely to be committed in prosecution of the common object of the assembly.

14. Section 149 IPC, therefore, engrafts a principle of vicarious or constructive liability inasmuch as a person would be guilty of an offence, though he may not have directly committed the same if as a member of an unlawful assembly he had shared a common object with the other members to commit such an offence or if he knew that such offence was likely to be committed in prosecution of the common object of the assembly of which he was a member.

15. The purport and effect of the provisions of Section 149 IPC has received the consideration of this court on more than one occasion. Without referring to any particular or specific precedent available on the point, it would suffice to say that determination of the common object of an unlawful assembly or the determination of the question whether a member of the unlawful assembly knew that the offence that was committed was likely to be committed is essentially a question of fact that has to be made keeping in view the nature of the assembly, the arms carried by the members and the behaviour of the members at or near the scene and a host of similar or connected facts and circumstances that cannot be entrapped by any attempt at an exhaustive enumeration.

16. In Dani Singh Vs. State of Bihar [(2004) 13 SCC] the meaning of the word “common object” had been considered by this Court. The relevant part of the discussion may be summarized up below:

11.....The word “object” means the purpose or design and, in order to make it “common”, it must be shared by all. In other words, the object should

be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it.....

12.....The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident.....

13.....An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident....."

17. In a recent decision of this court in Kuldip Yadav Vs. State of Bihar [(2011) 5 SCC 324] to which one of us (Justice Sathasivam) was a party, the principle of constructive liability under Section 149 IPC had once again received an elaborate consideration. In paragraph 39 of the judgment it was held that: "It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of lawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object."

18. In para 40 of the judgment an earlier decision in Rajendra Shantaram Todankar Vs State of Maharashtra [(2003) 2 SCC 257] was noticed, particularly, the opinion that ...." It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of

the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime."

Overt Acts

1965 0 AIR(SC) 202; 1965 1 ALT(SC) 19; 1965 0 CrLJ 226;1. Masalti (in Cr. A. No. 30 of 1964); 2. Munga Ram and others (In Cr. A. No. 31 of 1964); 3. Bhagwati and others (In Cr. A. No. 32 of 1964); 4. Chandan Singh and others (In Cr. A. No. 33 of 1964);5. Laxmi Prasad (In Cr. A. No. 34 of 1964) Vs The State of U.P. (In all the Appeals); Criminal Appeals Nos. 30 to 34 of 1964.

Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not wellfounded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.

Injured Witness

2011 0 AIR(SC)(Cri) 964; 2010 10 SCC 259; 2010 3 SCC(Cri) 1262; Abdul Sayeed Vs. State of Madhya Pradesh; Criminal Appeal No. 1243 of 2007; Criminal Appeal No. 1399 of 2008; Criminal Appeal Nos.1363-1365 of 2010; Decided on : 14-9-2010

26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide Ramlagan Singh & Ors. v. State of Bihar,5 AIR 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh,6 AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab,7 AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, 8 AIR 1988 SC 696; Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra,9 (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar Pradesh,10 (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan,11 (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan,12 (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh,13 AIR 2009 SC 2261; Balraje alias Trimbak v. State of Maharashtra,14 (2010) 6 SCC 673).

27. While deciding this issue, a similar view was taken in, Jarnail Singh v. State of Punjab,15 (2009) 9 SCC 719, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:-

"Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In State of U.P. v. Kishan Chand, (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was

present during the occurrence. In case the injured witness is subjected to lengthy cross- examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana, (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

28. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

Related Witness

2002 0 AIR(SC) 3633; 2002 2 ALD(Cri)(SC) 794; 2003 0 CrLJ 41; 2002 8 SCC 381; 2003 0 SCC(Cri) 32; Gangadhar Behera & Ors. Vs. State of Orissa; Criminal Appeal No. 1282 of 2001; Decided on 10-10-2002

Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

12. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee

of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

13. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

14. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh s case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - Rameshwar v. State of Rajasthan (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

15. Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed: (p, 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

16. To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76). Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one tiring, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence . (See Nisar Alli v. The State of Uttar Pradesh (AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurucharan Singh and Anr. v. State of Punjab (AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court

considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh 1972 3 SCC 751) and Ugar Ahir and Ors. v. The State of Bihar (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15) and Balaka Singh and Ors. v. The State of Punjab (AIR 1975 SC 1962). As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party s case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi and Ors. v. State of Bihar etc. (JT 2002 (4) SC 186). Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned

2010 0 AIR(SC) 3300; 2010 2 ALD(Cri)(SC) 896; 2010 10 SCC 374; 2010 3 SCC(Cri) 1301; Sri Sambhu Das @ Bijoy Das & Anr. Vs. State of Assam; Criminal Appeal No. 342 of 2007; Decided on : 15-9-2010

In the present case, there is the documentary evidence in the form of G.D. entry No.164 recorded by PW-8 in the General Diary on 07.06.1997 at about 6.30 P.M. That entry was made on the telephonic message/information supplied by Asabuddin Mazumdar, PW-3. It is clearly stated therein by PW-3 that a man named Fanilal Das was lying in a serious condition on the side of verandah of Chandan Das. It was on receipt of this information that PW-8 went to the place of occurrence of the incident, drew up the inquest report, made seizure of the material objects and recorded the statement of those present, including PW-1. Admittedly, the inquest report is prepared by PW-8 at 9.30 P.M. and the formal FIR is lodged by PW-1 at 11.30 P.M. The learned senior counsel Shri M.N. Rao, by placing his fingers on the admission made by PW-8 in his evidence would contend, that, FIR loses its authenticity if it is lodged after the inquest report is recorded. This submission of the learned counsel is a general proposition and may not be true in all cases and all circumstances. This general proposition cannot be universally applied, by holding that if the FIR is lodged for whatever reason after recording the inquest report the same would be fatal to all the proceedings arising out of the Indian Penal Code.

17) The Inquest Report is prepared under Section 174 Cr.P.C. The object of the inquest proceedings is to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is? The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174 Cr.P.C. The names of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to identification marks of the accused. The inquest report is not a substantive evidence. Mention of the name of the accused and eye witness in the inquest report is not necessary. Due to non-mentioning of the name of the accused in the inquest report, it cannot be inferred that FIR was not in existence at the time of inquest proceedings. Inquest report and post mortem report cannot be

termed to be substantive evidence and any discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance which would warrant a benefit to the accused and the resultant dismissal of the prosecution case. The contents of the inquest report cannot be termed as evidence, but they can be looked into to test the veracity of the witnesses. When an officer incharge of Police Station receives information that a person had committed suicide or has been killed or died under suspicious circumstances, he shall inform the matter to the nearest Magistrate to hold Inquest. A criminal case is registered on the basis of information and investigation is commenced under Section 157 of Cr.P.C. and the information is recorded under Section 154 of Cr.P.C. and, thereafter, the inquest is held under Section 174 Cr.P.C. This Court, in the case of Podda Narayana Vs. State of Andhra Pradesh,13 [AIR 1975 SC 1252], has indicated that the proceedings under Section 174 Cr. P.C. have limited scope. The object of the proceedings is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death and if so, what is the apparent cause of the death. The question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances, he was assaulted is foreign to the ambit and scope proceeding under Section 174. Neither in practice nor in law was it necessary for the Police to mention these details in the Inquest Report. In George Vs. State of Kerala,14 AIR 1998 SC 1376, it has been held that the Investigating Office is not obliged to investigate, at the stage of Inquest, or to ascertain as to who were the assailants. In Suresh Rai Vs. State of Bihar,15 AIR 2000 SC 2207, it has been held that under Section 174 read with Section 178 of Cr. P.C., Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also possible cause of death.

18) This Court has consistently held that Inquest Report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of the Inquest. Section 175 Cr. P.C. provides that a Police Officer proceedings under Section 174 may, by an order in writing, summon two or more persons for the purpose of the said investigation. The provisions of Sections 174 and 175 afford a complete Code in itself for the purpose of inquiries in cases of accidental or suspicious deaths.

19) Section 2 (a) of the Cr.P.C. defines “Investigation” as including all the proceedings under this code for the collection of evidence conducted by the police officer.

20) Section 157 of the Code says that if, from the information received or otherwise an officer incharge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall forthwith send a report of the same to the Magistrate concerned and proceed in person to the spot to investigate the facts and circumstances of the case, if he does not send a report to the Magistrate, that does not mean that his proceedings to the spot, is not for investigation. In order to bring such proceedings within the ambit of investigation, it is not necessary that a formal registration of the case should have been made before proceeding to the spot. It is enough that he has some information to afford him reason even to suspect the commission of a cognizable offence. Any step taken by him pursuant to such information, towards detention etc., of the said offence, would be part of investigation under the Code.

21) In Maha Singh vs. State (Delhi Administration),16 [(1976) SCC 644], this court considered a case in which police officer arranged a raid after recording a complaint, but before sending it for registration of the case. It was held in that case that “the moment the Inspector had recorded a complaint with a view to take action to track the offender, whose name was not even known at that stage, and proceeded to achieve the object, visited the locality, questioned the accused, searched his person, seized the note and other documents, turns the entire process into investigation under the Code.

22) In State of U.P. vs. Bhagwant Kishore,17 [AIR 1964 SC 221], this court stated that “Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation.”

23) The principles now well settled is that when information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and all enquiries held by the police subsequent thereto would be treated as investigation, even though the formal registration of the FIR takes place only later.

24) Assuming that some report was made on telephone and that was the real First Information Report, this by itself would not affect the appreciation of evidence made by the learned Sessions Judge and the conclusions of fact drawn by him. The FIR under Section 154 Cr. P.C. is not a substantive piece of evidence. Its only use is to contradict or corroborate the maker thereof. Therefore, we see no merit in the submission made by learned counsel for the appellants.

2011 0 AIR(SC)(Cri) 1245; 2011 1 ALD(Cri)(SC) 162; 2010 8 SCC 536; 2010 3 SCC(Cri) 960; Prithi Vs. State of Haryana; Criminal Appeal No. 1835 of 2009; Decided on : 27-7-2010

It is true that he is related witness inasmuch as he happens to be the brother of the deceased but that, in our view, would not render his evidence unworthy of credence. Nothing inherently improbable has been brought out which may justify rejection of the testimony of PW-9. His conduct of having stayed behind the bushes for about 4/5 hours and not informing the police or villagers of the incident until the police arrived on scene at about 3.00 p.m. may look at the first blush little out of the ordinary but on a deeper scrutiny, does not appear to be unusual or exceptional. He was scared as he saw indiscriminate firing by the accused who were armed with guns and rifles; his brother was dead and removed by the assailants and the other two persons who were with him got firearm injuries. It may be that any other person in his place might have reacted differently but the conduct of PW-9 in any case does not seem to be improbable.

Vajresh Venkatray Anvekar vs. State of Karnataka (2013) 3 SCC 462

We are amazed at this observation. When a man looses his daughter due to cyanide poisoning, he is bound to break down. He would take time to recover from the shock. Six hours delay cannot make his case untrue. It is also not proper to expect him to give all minute details at that stage. The F.I.R. contains sufficient details. It is not expected to be a treatise. We feel that the comments on alleged delay in lodging the F.I.R. and its contents are totally unwarranted. For the same reasons, we also reject the submission of counsel for the appellant that because PW1-Suresh did not tell the police

officers who were present at the scene of offence that the appellant was responsible for the suicide his FIR lodged after six hours is suspect.

Vajresh Venkatray Anvekar vs. State of Karnataka (2013) 3 SCC 462, Vineet Singh vs. State 2014 VII AD (Delhi) 23). Substantially similar view was taken in Vishwanath Aggarwal vs. Sarla Vishwanath Aggarwal (2012) 7SCC 288 where it was held that in a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witness. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. The view was reiterated recently in Bhanuben & Ors. Vs. State of Gujarat 2015 XI AD (SC) 35.

2009 0 AIR(SC) 2513; 2009 12 SCC 342; 2010 1 SCC(Cri) 241; Kirender Sarkar & others Vs State of Assam; CRIMINAL APPEAL NO. 845 OF 2009 (Arising out of SLP (Crl.) 4145 of 2007); Decided on : 27-04-2009
The law is fairly well settled that FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minutest details of the events. When essentially material facts are disclosed in the FIR that is sufficient. FIR is not substantive evidence and cannot be used for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting maker of the report. Though the importance of naming the accused persons in the FIR cannot be ignored, but names of the accused persons have to be named at the earliest possible opportunity. The question is whether a person was impleaded by way of afterthought or not must be judged having regard to the entire factual scenario in each case. Therefore, non naming of one or few of the accused persons in the FIR is no reason to dis-believe the testimony of crucial witnesses.

2009 0 AIR(SC) 3265; 2009 12 SCC 447; 2010 1 SCC(Cri) 275; Bhupendra Singh & Ors. Vs. State of U.P.; Criminal Appeal No. 743 of 2009; (Arising out of SLP(Crl.) No. 812 of 2008); Decided on : 16-04-2009
Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the

same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

The emphasis in Section 149 IPC is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word “object” means the purpose or design and, in order to make it “common”, it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur with it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression “in prosecution of common object” as appearing in Section 149 has to be strictly construed as equivalent to “in order to attain the common object”. It must be immediately connected with the common object by virtue of the nature of the

object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and their knowledge, possessed by each member of what is likely to be committed in prosecution of their common object which may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

"Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instanti.

Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of

which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the unlawful assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. The word “knew” used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of “might have been known”. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object; would be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object.

2007 1 ALD(Cri)(SC) 713; 2007 1 APLJ 52; 2007 1 SCC 699; 2007 1 SCC(Cri) 425; Salim Sahab Vs. State of Madhya Pradesh; Criminal Appeal

No. 1269 of 2006; (Arising out of S.L.P. (Crl.) 3389 of 2006); Decided on 5-12-2006

Motive not significant

2011 0 AIR(SC) 3147; 2012 1 ALD(Cri)(SC) 229; 2011 3 ALT(Cri)(SC) 120; 2011 0 CrLJ 4387; 2011 11 SCC 766; 2011 3 SCC(Cri) 630; Gosu Jairami Reddy & Anr. Vs. State of A.P.; Criminal Appeal No. 1321 of 2006; (With Crl. Appeal No.1327 of 2006); Gosu Ramachandra Reddy & Ors. Vs. State of A.P.; Decided on : 26-7-2011

It is settled by a series of decisions of this Court that in cases based on eye witness account of the incident proof or absence of a motive is not of any significant consequence. If a motive is proved it may supports the prosecution version. But existence or otherwise of a motive plays a significant role in cases based on circumstantial evidence.

Action against Hostile Witness

2012 0 AIR(SC) 3104; 2012 3 ALT(Cri)(SC) 424; 2012 0 CrLJ 4174; 2012 8 SCC 450; 2012 3 SCC(Cri) 899; STATE TR.P.S.LODHI COLONY NEW DELHI Vs. SANJEEV NANDA; Criminal Appeal No. 1168 of 2012 [Arising out of S.L.P. (Crl.) No.3292 of 2010]; Decided on : 03-08-2012.

We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Sidhartha Vashisht @ Manu Sharma v. State (NCT o Delhi) [(2010) 6 SCC 1] and in Zahira Habibullah Shaikh v. State of Gujarat [AIR 2006 SC 1367] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked.

Witness stating exaggerated version

1988 0 AIR(SC) 1998; 1989 0 CrLJ 88; 1989 0 SCC(Cri) 48; State of U.P. Vs. Anil Singh; Criminal Appeals Nos. 671-672 of 1980, D/- 26-8-1988.

Of late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if .the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version.

Medical Evidence prevails

1999 2 ALD 405; 1999 1 ALD(Cri) 52501; 1999 1 ALT(Cri) 529; 1999 0 CrLJ 2368; Kollam Brahmananda Reddy Vs State of A.P; Decided On : 11-02-99

IF there is any conflict between the occular evidence and the medical evidence normally the medical evidence shall prevail. In other words, if there is any difference in the evidence as to the injuries caused by the alleged overt acts spoken to by the witnesses and the evidence given by the doctor. It is not safe and proper to base conviction on such inconsistent evidence. On the other hand, the benefit of doubt shall be extended to the accused as held by the Supreme Court in Mohar Singh v. Slate of Punjab, AIR 1981 SC 1578 and Milkiyat Singh v. State of Rajasthan, AIR 1981 SC 1579.

2010 0 AIR(SC) 3231; 2010 3 SCC 648; 2010 2 SCC(Cri) 427; Boddella Babul Reddy Vs. Public Prosecutor, High Court of A.P.; Criminal Appeal No. 451 of 2007; Decided on : 06-01-2010

As held in Ram Sunder Yadav & Ors. Vs. State of Bihar [1998(7) SCC 365], this Court has held that though in all the cases, the prosecution was not obliged to explain the injuries, the prosecution has to, however, explain the injuries on the accused, where the evidence consists of interested and inimical witnesses and where defence alleges a version which competes in probability with that of the prosecution.

The trial Court then also relied on the decisions in The State of Uttar Pradesh Vs. Sahai & Ors. [1981 Crl. L.J. 1034], V.Satyamaiah & Ors. Vs. State of A.P. [1978(1) A.P.L.J. 83), Raghunath and Ram Kishan & Ors. Vs. State of Haryana & Ors. [2003 Crl. L.J. 401] and Mool Chand Vs. Jagdish Singh Bedi & Ors. [1992 Crl. L.J. 1539], wherein it was held that it was unusual for a factionist to take advantage of every situation and occurrence and there is incurable tendency in the factionists to rope in the innocent members of the opposite faction alongwith the guilty and twist and manipulate the facts with regard to the mode and manner of the occurrence so as to make their case appear true with the innocent members of the opposite faction also as participants in the occurrence.

1997 0 AIR(SC) 2186; 1997 2 ALD(Cri)(SC) 110; 1997 0 CrLJ 2531; 1997 4 SCC 445; 1997 0 SCC(Cri) 600; Kalika Tiwari & Ors. Vs. State of Bihar; Criminal Appeal Nos. 1171-74 of 1995 With Criminal Appeal Nos. 1175-78 of 1995 And Criminal Appeal No.1873 of 1996 Decided on 25-3-1997

The visibility capacity of urban people who are acclimatised to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light.

2004 2 ALD(Cri) 241; Ediga Jagannadha Gowd Vs. State; Decided On : 10-17-03

FIR is only used for the purpose of corroborating or contradicting if the person who has complained is examined. In a case where the first informant died before he could depose before the Court at best the purpose of corroborating or contradicting its contents by the person would not be possible. Keeping that in view, that the accused could not cross-examine the first informant, the other evidence produced can be looked into. As the FIR is not a substantial piece of evidence it should not have any effect on the prosecution case if its contents were not proved by the person who gave it because of his death. In view of the judgment of the Supreme Court, we feel that non- examination of the complainant on account of his death would not be factal on its own to the prosecution case and it will depend upon facts of each case. If the prosecution story as revealed by the witnesses in the Court is directly contradictory to the contents of the FIR it may have one effect and on the other hand if the contents of FIR are in conformity with the evidence adduced during the trial it may have altogether a different effect.

1995 0 AIR(SC) 1387; 1994 3 SCC 381; 1994 0 SCC(Cri) 656; Laxman Naik, Vs. State of Orissa; Criminal Appeal No. 407 of 1992; Decided on 22-2-1994.

The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions of this Court. According to that standard the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime. To quote a few decisions of this Court in this regard a reference may be readily made to the case of Sharad v. State of Maharashtra, AIR 1984 SC 1622 and Dhananjay Chatterjee v. State of West Bengal, (1994) I JT (SC) 33.

Learned counsel for the appellant, however, urged that mother and brother of the appellant (PW 3 and PW 4) were not happy with the appellant because most often he used to disappear from the house for days together and it was for this reason that they made the statement against the appellant and as such no weight should be attached to their testimony. Be that as it may, it is beyond comprehension to think that a real mother and real brother would ever think of falsely implicating the appellant in a heinous crime like this before us only because the appellant was in habit of disappearing from the town very frequently. The argument simply deserves to be rejected as without any merit.

Refreshing Memory

https://indiankanoon.org/doc/339710/; State Of Karnataka vs K. Yarappa Reddy on 5 October, 1999; AIR 2000 SUPREME COURT 185, 1999 (8) SCC 715, 2000 SCC(CRI) 61, 2000 (1) ANDHLT(CRI) 56 SC

Trial court cannot overlook the reality that an investigating officer comes to the court for giving evidence after conducting investigation in many other cases also in the meanwhile. Evidence giving process should not bog down to memory tests of witnesses. An investigating officer must answer the questions in court, as far as possible, only with reference to what he had recorded during investigation. Such records are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question.

The general rule of evidence is that no witness shall be cited to contradict another witness if the evidence is intended only to shake the credit of another witness. The said rule has been incorporated in Section 153 of the Evidence Act

The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence, should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined. In Vijayan v. State, [1999] 4 SCC 36 this Court has held that "the rule limiting the right to call evidence to contradict a witness on collateral issues excludes all evidence of facts which are incapable of

affording any reasonable presumption or inference as to the principal matter in dispute."

Md. Ibrahim and others V. State of Bihar and another; AIR 2010 SC (SUPP) 347, 2009 (3) SCC (CRI) 929, 2009 (8) SCC 751.

There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

Shall Presume

in State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC 61, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.


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