THE INDIAN EVIDENCE ACT

(ACT NO. 1 OF 1872)

(AS MODIFIED UP-TO-DATE)

Received the Governor-General's Assent on March 15, 1872

Preamble.—Whereas it is expedient to consolidate, define and amend the Law of Evidence ; it is hereby enacted as follows :—

The preamble consolidates laws which were existing from before in this area and also provides the aim of the Act as to define and amend the Law of Evidence. Notably it being the outcome of English principle, in case of need the Courts do have to follow them.

INTRODUCTION

Meaning of Evidence.—'Evidence' is a word derived from the Latin word 'evidera' which means to discover clearly, to ascertain or to prove. According to Blackstone, evidence "signifies that which demonstrates, makes clear or ascertains the truth of the facts or points in issue either in one side or the other". Taylor describes evidence as "all means which tend to prove or disprove any matter, fact, the truth of which is submitted to judicial investigation".[1] According to Dr. Johnson's Dictionary, the word evidence signifies "the state of being evident, that is plain apparent or notorious". Bentham defined "evidence" as "any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative, of the existence of some other matter of fact".[2]

Wigmore defined "evidence" as representing "any knowable fact or group of facts, not a legal or logical principal, considered with a view to its being offered before a legal Tribunal for the purpose of producing a persuasion, positive or negative, on the part of the Tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the Tribunal is to be asked".[3]

According to Stephen, "It sometimes means words uttered and things exhibited by witnesses before a Court of Justice. At other times, it means the facts proved to exist by those words or things and regarded as grand work of inference as to other facts not so proved. Again, it is sometimes used as meaning to assert that a particular fact is relevant to the matter under inquiry".[4]

Stephen in his speech in Council described the "evidence" in these words—

1. Taylor, 'Evidence', Section 1.
2. Bentham, 'Judicial Evidence' p. 17.
3. Wigmore, 3rd Ed. Vol. I, p. 3.
4. Stephen, Introduction to the Law of Evidence.

"A law of evidence properly constructed would be nothing less than an application of practical experience acquired in courts of law to the problem of enquiring into the truth as to the controverted questions of facts".[1]

According to Phipson, evidence means testimony, whether oral or documentary or real, which may be legally received in order to prove or disprove some facts in dispute. According to Best, "Evidence is any matter of fact, the effect, tendency or design of which is, to produce in the mind, a persuasion, affirmative or disaffirmative of the existence of some other matter of facts".[2]

Section 3 of the Indian Evidence Act defines "evidence" in these words :

"Evidence means and includes—

(1) All statements which the Court permits or requires to be made before it by witnesses in relation to matters of facts under enquiry; such statements are called oral evidence.

(2) All documents including electronic records produced for inspection of the Court, such documents are called documentary evidence."

The definition of evidence given in the Act is objected to be too narrow as it does not include the following–

(1) Material things other than documents *e.g.*, weapons, articles of stolen property;

(2) Statements made out of Court or before the Court by the parties;

(3) A thing like struggle in the case of murder;

(4) The result of local inquiry or inspection;

(5) Identification proceedings.

The answer to the objection can be given that Section 3 is an interpretation clause which only explains the evidence. The definition of "evidence" considered with the definition of "proved" in the Act, will not give rise to such objection.

'Evidence', 'Testimony' and 'Proof'.—'Evidence' means that which makes evident. 'Testimony' is derived from "testes" which means witness. 'Testimony' means statement of witness. Testimony is also an evidence. 'Proof' is the result or effect of evidence either in affirmation or negation of an alleged fact. Thus, the 'evidence' means the fact which proves a fact and 'proof' is the effect of evidence.

In ordinary parlance, the evidence and testimony are used interchangeably but that is not correct. Evidence is wider than testimony because former includes oral as well as documentary evidence whereas a testimony is the oral evidence given by the witness in the Court.

Law and Law of Evidence.—Law means the rules which determine our relations. The day-to-day behaviours of individuals are regulated by the law

1. Gazette of India, 18th April, 1871 p. 42 (Extra-Supplement).
2. Best, "Evidence".

which may be social, customary or the law as made by the State. The law prescribes our rights and duties. This branch of law is called substantive law. Thus, the right to inheritance, the right under the contract, the right of a person who is wronged are contained in the rules of substantive law. What are the duties of a person towards his fellow members are also contained in this branch of law. Thus, the right can be exercised by a person subject to the duty that he should not violate the rights of others. If he breaks this duty, the law provides a penalty for it.

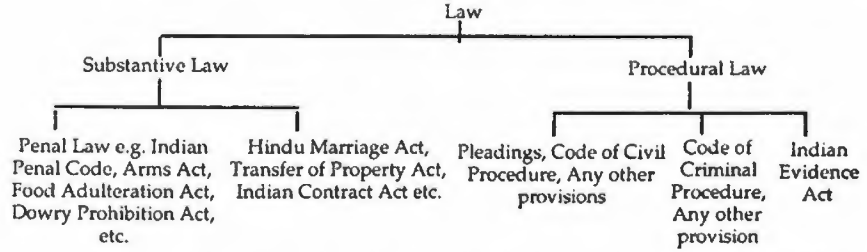
Illustrations

(1) 'A' has a right to live peaceably but he does not have the right to disturb the peace of others.

(2) A has a right of personal liberty. It does not mean that he can violate personal liberty of others.

(3) 'A' has the right to move on the road by driving a vehicle. He cannot drive the vehicle in such a way as to hurt others by causing accident. If he does so, the law provides the penalty.

For enforcement of right or for compelling other to act according to his duty or to penalise a person, there are rules prescribed by the law. These rules are procedural in nature. The law which prescribes such rules is called 'procedural law'. Procedural law provides the rules for proceeding a matter before the authorities and judiciary. The parties to a legal proceeding, whether the party bringing an action or the other party which is defendant in a civil suit or the accused in a criminal case, have to follow the procedural law. Thus, the tabular form of law in the aforesaid sense can be given as follows :



Sometimes procedural law is contained in a substantive law also and sometimes substantive law is contained in a procedural law also. The law of evidence is a procedural law.

Stages of Trial and Evidence.—(1) In every trial, whether civil or criminal, there are five stages which are follows :

Civil Case	Criminal Case
(1) Filing of suit by the plaintiff. The summons is issued to the defendant.	(1) Prosecution is started by the prosecutor or the complaint is filed by a private person in the Court. Summons or warrant is issued to the accused.

Civil Case	Criminal Case
(2) Striking of issues for the trial by the Court.	(2) Framing of charges by the Court.
(3) Actual trial of the issues. Evidence is given by the parties to prove or disprove the issues.	(3) The evidence is given by the prosecution or the complainant and the accused person when he is tried for an offence charged by the Court.
(4) The Court pronounces its opinion after weighing the evidence brought before it. The opinion of the Court is called as judgment.	(4) The Court pronounces its opinion after weighing the evidence brought before it. The opinion of the Court is called as judgment.
(5) The enforcement of judgment. Execution of decree.	(5) The enforcement of judgment *i.e.*, the acquittal or a sentencing the accused.

Thus, from the aforesaid, we come to know that the evidence is led at the third stage of a trial.

Importance of law of evidence.—A case for the decision before the Court has disputed facts. The plaintiff or the prosecutor/complainant alleges the existence of some facts in his favour and the opposite party *i.e.*, the defendant or the prosecutor-complainant alleges non-existence of those facts or the existence of the facts which may disprove the facts alleged by the plaintiff or the prosecutor/complainant. The facts alleged in a case brought before the Court may be either proved or disproved. The Court has to find out the truth on the basis of the facts brought before the Court by the parties. In a civil case, the right of the plaintiff or the liability/obligation of the defendant is decided and in a criminal case, the guilt or innocence of the accused is pronounced taking into consideration of such facts. Such facts are called evidence. If there is no restriction on the parties to give the evidence, the parties may indefinitely go on in bringing the facts in the support and, besides wasting much of the time, the task of the Court may be difficult to reach a conclusion. The law of evidence restricts the parties to those facts which can be brought before the Court in support of the disputed facts. Had there not been the rules of evidence, there would have been much uncertainty, loss of time and energy of the Court. The law of evidence lays down the following rules—

(1) What facts may be used in evidence for deciding the disputed facts.

(2) How disputed facts are to proved.

(3) What weight is to be attached to the facts adduced as evidence.

Thus, the rules of evidence not only put the restrictions on the parties to the case in giving the evidence but they are also guiding factors for the Courts in taking evidence.

Object of law of evidence.—The object of the Law of Evidence is to restrict the investigations made by the Court within the limits of general

convenience. If such restrictions are not put, no suit can be decided even if its trial takes place for a long time. The Law of Evidence is for a judicial behaviour like the reasoning for logic. Without it, there will be much delay in trial and the harm to the general public and the litigants will have to face the obstructions and bear more costs.

Adversarial system and Inquisitional system.—In India, investigation system is 'Adversarial' where the investigation of offences is done by the police or other investigating agencies, the investigation being free from judicial supervision or control. As distinct from it, in Inquisitorial System, investigation is supervised by the Magistrates resulting in high rate of conviction. The Committee on Reforms of Criminal Justice System (Malimath Committee) in its report submitted in March, 2003 felt that fair trial and in particular fairness to the accused, are better protected in the Adversarial system but it also felt that some of the good features of inquisitorial system as prevalent in France, Germany and other continental countries could be adopted in India, to strengthen Adversarial System which includes the duty of the court to search for truth, to assign a particular role to the Judges to give directions to the Investigating Officers and Prosecution agencies in the matter of investigation and leading evidence with the object of seeking the Truth and focusing on justice to victims. The Committee has made recommendations on five points in this regard.

(1) Preamble.—The Committee has recommended a Preamble to be added to the Code of Criminal Procedure as follows :

"Whereas it is expedient to constitute a Criminal Justice System for punishing the guilty and to protect the innocent.

Whereas it is expedient to prescribe the procedure to be followed by it.

Whereas quest for truth shall be the foundation of the Criminal Justice System.

Whereas it shall be the duty of every functionary of Criminal Justice System and everyone associated with it in the administration of justice, to actively pursue the quest for truth.

It is enacted as follows :"

It is submitted that the function of the judiciary in a criminal matter is to decide the case and to give the verdict of conviction or acquittal on the basis of facts and evidence brought before it. The object of judiciary as a separate wing to administer justice is to be an impartial adjudicating authority. The emphasis should be on investigating agency to be free from any influence. The function of the Courts is always to do justice by reaching the Truth. It is the investigating agency which needs to be made more dutiful and responsible in collecting the evidence.

(2) Section 311 Cr. P.C.—The Committee recommended a provision on the following lines to be made and placed immediately before Section 311 of the Code of Criminal Procedure—

"Quest for truth shall be fundamental duty of every Court."

The provisions of Cr. P.C. and Indian Evidence Act aim to decide facts in issue which aim to arrive at the reality of things as existed at the time of incident alleged to have happened. The proposed amendment "quest for truth" as the "fundamental duty of every Court" is only explanatory of the provisions which already exist in the unamended provisions.

Law of Evidence in India.—(1) Hindu Period.

(2) Muslim Period.

(3) Modern Period—

Introduction of English Law

—Indian Evidence Act, 1872

(1) Hindu Period.—There is ample material on the law of evidence in Hindu Dharmashastras. The object of the trial was to find out truth from the false in the same way as a surgeon by his tools takes out an iron arrow from the body. Dharmashastras recognized four types of evidence—(1) *Lekhya, i.e.* document, (2) *Sakshi i.e.,* oral evidence, (3) *Bhukti or Bhog, i.e.,* use in other words possession, and (4) *Divya i.e., Divine tests or ordeals.*

(1) Lekhya (Document).—Lekhya evidence was of three types—

(i) Rajya Sakshayak.—It was a document written in the court by the clerk of the King. It was like a registered document.

(ii) Sakhshyak.—It was a document written by the private person and attested by the witnesses.

(ii) Asakhshyak.—It was a document written by the parties themselves by their own hands.

Lekhya Sakhsya was preferred to *Sakshi, i.e.* oral evidence. Latter on Dharmashastris keeping in view, the defects of *Lekhya Sakshya* made provisions for the removal of such defects. For example, it was provided that a document written by a rogue or its attestation by a wicked person would vitiate it. In the same way, the documents written by the women, children, dependants or by afraid persons would not be lawful. According to Vardachariyar, there is description of notorial system also in Dharmashastras. There is detailed classification of documents in public and private, ancient and modern India and direction for comparative appreciation of legal documents and the method to prove them.

The original document was of great weight. According to Narada,[1] Vishnu Dharmashastra,[2] and Katyayan,[3] that *Lekhya-Praman* (documentary evidence) is treated as proved which is written conforming with the rules, beyond doubt and meaningful. Normally, the attestation of two witnesses was

1. 4/136.
2. 7/11.
3. 306/307; (Section 91 of Indian Evidence Act, 1872 also provides that documentary evidence is better than oral evidence).

required on the *Lekhya Praman* but the utmost documents of importance required the attestation by more than two witnesses.[1]

(ii) Sakshi (Oral evidence).—The rules of *Sakshi* or oral evidence were quite different in civil and criminal matters. The capacity of witnesses was regulated by the rules made like other ancient laws. The strict rules of capacity of witnesses were relaxed in penal matters probably due to reason that the crimes could be committed in forests or lonely places where only the persons present could see the incidents whatever their eligibilities. The statements of witnesses were taken by the Commissions also. Nyayadhish (Judges) put questions to the witnesses and while answering the questions put by them watched their demeanour and took the decisions on their credibility. The Courts' behaviour with the witnesses was quite meek. The respectful behaviour with the witnesses inspired non-partisan persons to come and testify before the Courts.[2]

(iii) Bhukti or Bhog (Use).—The main economy in ancient India, was agriculture. The disputes relating to *Bhukti i.e.,* the possession of the land were in plenty. The law relating to possession was well settled. There were two kinds of *bhukti.*

Bhukti-Sagma (with right) and *Anagama Agam* means *Udgam* (origin) the root of the ownership or the basis of the right, *e.g.,* whether the property was purchased or obtained in gift or inherited. The *Agam* and prescription *i.e.,* the use of the property give weight to each other. According to Narada, the man who proves only the use of the property without *Agam i.e.,* if the property is *Anagama* but under use, the King should punish him as a thief even if he has used the property for 100 years. The emphasis has been put by some on the prescription *i.e.,* the use of the property while others have put emphasis on *Agam.* Aprask (P. 631-632), Kulluk and Raghunandan have said that the use of the property for 20 years damages the ownership *i.e.,* the ownership ends. According to Mitakshara, which is accepted by Vyavaharmayukh and Mitramishra, the use of the property does not damage the ownership but the consequence. If the owner of the property sees another using his property for twenty years and thereafter disputes it, he will get his property but not the profits. Some authors have prescribed very brief period of time of *bhukti i.e.,* the use of the property in which case the ownership of the movable and immovable property may end. The explanation has been given that the owner should take back his property very soon unless there are potent reasons for it.[3]

(iv) Divya (Divine tests or Ordeals).—Where the evidence given by a man does not lead to decision, *Divya i.e.,* divine tests (ordeal) help to reach the decision. Such tests were prevalent in ancient India where the appeal was to super natural power to prove guilt or innocence. If a man entered the burning fire or into deep water and came out without any harm, he was innocent in the eye of law or his case stood proved. Similarly, if a man swallowing the poison

1. Narad 4/134; Vishnudharmasutra 7/6-10, Katyayan/271.
2. G. Rao, Hindu Judicature.
3. P.V. Kane, Dharma Shastra Ka Itihas, 4th Ed., pages 730 to 734.

did not die, he stood innocent. There were other forms of *Divya* holding red hot iron and *Tula* (Balance). Gradually *Divya* was limited to extra-ordinary cases only where the common type of evidence was not available.

In small pecuniary disputes, *'Kosh' Divya* was recognized. According to Yajnavalkya (2/22), Narada (2/29, 4/239), Brahaspati, Katyayan and Pitamah *Divya* should be used only when *Manushya Praman i.e., Sakshi, Lekhya, Bhog* or *Paristhitijanya Praman* (circumstantial evidence) are not available. Different types of *Divya* were also prescribed for different Varnas. Brahmina was exempt from vish *Divya* (ordeal by poison).[1]

Hindu system of evidence had advanced much in course of time and the modern concepts of evidence were incorporated in them. For example, it was well-settled that in case of doubt, the truth was not established.

(2) Muslim period.—In the Muslim period, the rules of evidence were well developed.[2] The evidence was of two types—Oral and documentary. The oral evidence was further divisible into direct and hearsay evidence. It appears that oral evidence was preferred to documentary evidence. Regarding the oral evidence, *Quran*, enjoins as follows :

> "O You who believe ! Stand out firmly for Allah, as just witness for just (and fair) dealing, and do not let the hatred of others to make you lean towards wrong and go away from Justice. Be just : That is next to Piety : And fear Allah, because Allah is Well Acquainted with all that You do." (Sura 5-8).
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> "O You who believe! stand out firmly for justice, as witness to Allah, even against yourselves, or your parents or your kin, and whether it be (against) rich or poor : Allah protects you both (much) better. So follow not the desires (of your hearts), because you may swerve and if you distort justice, or decline to do justice. Surely, Allah is Well Acquainted with all that You do." (Sura 4-135)

Demeanour of witnesses.—The demeanour of the parties and witnesses were also taken into account. A Hindu scribe filed a suit against a Muslim soldier for enticing away his wife. The wife denied that the complainant was her husband. The Emperor, Shahajahan who was trying the case was not satisfied with her demeanour who stood as a witness. The Emperor directed that woman to fill up the ink in the inkpot of the Court. The woman did it efficiently. Upon this, the Emperor drew the conclusion that the woman was the wife of Hindu scribe and gave decree in his favour.

Examination of witnesses.—The witnesses were examined and cross-examined separately and far from other witnesses so that the latter could not hear the former. These days this system has been adopted by the Courts from the common law courts. Leading questions were permitted. The persons not

1. *See* Chapter 14 entitled 'Divya' 'Dharmashastra Ka Itihas by P.V. Kane (Translated from English), 4th Edn. (Uttar Pradesh Hindi Sansthan).
2. Sir Abdul Rahim, Muslim Jurisprudence. Wahid Hussain, 'Muslim Rule in India'; M.B. Ahmad, Administration of Justice in Medieval India'.

considered as competent witnesses were—near relatives, partners etc. Drunkard, children, persons of unsound mind, the blind persons (where the question involved was of witnessing the incident) were not qualified to testify.

Circumstantial evidence.—Circumstantial evidence was accepted without any hitch. For example, if a man in fear and anxiety comes out of a deserted house with a blood-stained dagger and a dead man with severed head is found inside that house, the inference can be drawn from these facts that he has murdered the man found dead in that house. In a criminal case, on difference of opinion amongst the witnesses, the benefit of doubt was given to the accused person. The evidence was also taken by issuing Commission. The witnesses were administered oath—Hindus of *Go Mata*, Muslims of *Khoda* and Christians of *Bible*.

(3) Modern Period.—*(1) Introduction of English Law.*—The English common law and statutory law as prevalent prior to 1726 was introduced in India by the Charter of 1726 in Presidency Towns of Calcutta, Madras and Bombay. The Courts established by the Royal Charter, in these Presidency towns administered English law. In the Mofussil area *i.e.*, the area following outside the Presidency Towns, there was no definite law of evidence. The rules of evidence were governed by the customs and usages. The courts in the Mofussil area for guidance sometimes referred to directions and Regulations made between 1793 to 1834. The law of evidence was not satisfactory here.

(2) Enactment of the Indian Evidence Act, 1872.—The first Act relating to the Evidence was of 1835 enacted by the Governor-General. A series of Acts were passed between the period of 1835 to 1855 to incorporate the reforms as suggested by Bentham.

Act 10 of 1855, Act 8 of 1859, Act 25 of 1861 and Act 15 of 1869 were also passed but the Courts in India while administering justice followed the English law of evidence although only a part of English law was applicable in Mofussil area and Presidency Towns both. Thus, the position was quite unsatisfactory and regarding it the Judges also made comments in their judgments.[1]

Maine Commission.—There was a need to codify the Law of Evidence. A Commission under the Chairmanship of Sir Henry Maine the then Law Member was constituted in 1868 for drafting the Law of Evidence. The Bill presented by Maine was rejected because it was not suitable under the conditions at the time.

Stephen Commission.—In 1871, the Stephen Commission was constituted for drafting of the Law of Evidence. Stephen presented the draft of the Bill to the Council on 31st March, 1871 which was sent to the local Governments, High Courts and Advocates for their consideration. After receiving their views, the Bill was referred to the Select Committee which made the appropriate amendments and then presented to the Council which enacted it as The Indian Evidence Act, 1872 (Act No. 1 of 1872). Since its enactment, the Act has

1. Gajju Lal *v.* Fattehlal, 6 Cal 193.

undergone several amendments. The latest amendment was made by the Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013).

The Indian Evidence Act, 1871 is based on the English law of evidence but there are some provisions, in the Act according to the situations and need in India. Though defects have been pointed out in the Act form time to time yet the drafting of the Act is the model of the best draftsmanship skill. It may be relevant to mention that most of the States had already adopted this Act much prior to the Constitution of India came into force. It is a matter of importance that the Law of Evidence which came to be enforced in 1872 still continues to be applicable with least changes being made during the long period of more than 140 years.

The main features of Indian Evidence Act are as follows :

(1) Preamble—Interpretation clause and presumptions.—The first part consists of one chapter and after giving the preamble, etc. it contains the definitions of the terms used in the Act. This part is called Preliminary.

(2) Relevancy of facts.—The second part is entitled as "The relevancy of facts". This part consists of 51 Sections from 5 to 55 both inclusive. They lay down what facts may be Proved before a Court. The question what facts a party to a proceeding may prove obviously lies at the root of the whole matter.

Section 5 lays down that in any suit or proceeding evidence may be given of the existence or non-existence of every fact in issue and of such other facts as are declared to be relevant under Sections 6 to 55 both inclusive. The section makes it clear also that no evidence can be given of a fact which is neither fact in issue nor is relevant under any of the Sections 6 to 55. Thus under this part the evidence of the following facts may be given and of no others :

(1) The fact from which either by themselves or in connection with other facts the existence or non-existence of a right or liability necessarily follows, that is the facts in issue.

(2) The collateral or relevant facts as :—

(a) forming part of the same transaction (Section 6);

(b) facts which are occasion, cause or effect of fact in issue (Section 7);

(c) facts showing motive, preparation and conduct, previous and subsequent (Section 8);

(d) facts necessary to introduce the facts in issue etc. (Section 9);

(e) things done or said by conspirators (Section 10);

(f) facts not otherwise relevant (Section 11);

(g) facts enabling the Court to determine damages (Section 12);

(h) facts relevant to prove right or custom (Section 13);

(i) facts showing the existence of state of mind, or of body or bodily feeling (Section 14);

(j) facts bearing on question whether an act was accidental or intentional (Section 15);

(k) the facts showing the course of business (Section 16);

(l) facts which amount to admission (Sections 17 to 23 and 31);

(m) facts which are confessions of the accused persons (Sections 24 to 30);

(n) facts which are statements, under certain circumstances of persons who cannot be called as witnesses (Sections 32 and 33);

(o) facts which are statements, under certain circumstances (Sections 34 to 38); regarding the evidence to be given of statement forming part of a conversation, document, electronic records, books or series of letters or papers. The evidence shall be given of so much and so more as the Court considers necessary in that particular case (Section 39);

(p) judgments of Courts (Sections 40 to 44);

(q) opinion of third persons (Sections 45 to 51);

(r) characters of parties to a proceeding in a suit (Sections 52 to 55).

(3) Proof of relevant facts.—The second chapter of the first part describes as to what facts are relevant. The Act deals in the second part how a relevant fact is to be proved.

(4) Facts that need not be proved.—In certain circumstances facts need not be proved.

In the first place, the fact to be proved may be one of so much notoriety that the Court will take judicial notice of it. It need not be proved (Sections 56 and 57). The facts may be admitted by parties. In that case also they are not to be proved (Sections 58 and 70). There are some facts which the Court shall presume unless the contrary is proved. (Sections 85-B and 85-C). There are certain facts about the genuineness of which the Court has to make a presumption and no proof is required (Sections 79 to 85, 85A, 86 and 89). Again there are facts about the genuineness of which a Court may make a presumption or it may require proof of it. In that case they are to be proved like the facts which require proof (Sections 86, 87, 88, 88-A, 90 and 90-A). All other facts require proof.

(5) Different Types of Evidence.—If evidence is to be given of any fact that evidence must be either oral or documentary (Section 59). There is, however, one topic which applies to oral and documentary evidence both. The oral evidence must be direct (Section 60). There is distinction between primary and secondary evidence. The contents of a document may be proved either by primary or secondary evidence (Section 61). Sections 62 to 66 deal with primary and secondary evidence and lay down that primary evidence of documents are to be given and then mention the cases wherein a secondary evidence may be given. Then are provisions for the leading of oral evidence to prove a document (Sections 67, 67-A, 68, 69, 71 and 72). In Sections 73 and 73-A, there are provisions to ascertain the signature of a person by comparison. Sections 74 to 78 provide for proving the contents of a public and official document. Then Sections

91 to 98 lay down that oral evidence is concluded in face of documentary evidence except in some exceptional cases. Section 99 lays down that a person not a party to a deed, may lead evidence of the fact tending to show a contemporaneous agreement varying the term of a deed. Section 100 excludes the application of the Chapter to the provisions of Indian Succession Act (X of 1865) as to the construction of wills.

(6) Manner of proof—Burden of proof—Presumption without calling for proof.—The question of the proof of fact has been dealt with under Part II. In Part III, the Act passes to the question of the manner in which the proof is to be produced. This part consists of 5 chapters. Chapters VII to XI. In Chapter VII, Sections 101 to 114-A deal with the question of burden of proof. They lay down that in particular circumstances burden of proving a fact lies on some special person. Sections 112 and 113 deal with cases of conclusive proof. Section 114 lays down that the Court may presume without calling for proof the existence of certain facts which ought to happen in the common course of the natural events, human conduct and public and private business.

Section 111-A provides for presumption of certain offences. Section 113-A makes the provision for presumption as to abetment of suicide if a married woman commits suicide within 7 years of her marriage and that she had been subjected to cruelty by her husband or his relatives. Section 113-B makes provisions for presumption as to dowry death. Section 114-A makes the provisions for presumption as to absence of consent in certain prosecution of rape.

(7) Estoppel.—Under Chapter VIII, Sections 115 to 117 deal with the question of estoppel, another rule of leading evidence. Under these sections, certain persons are estopped from leading evidence contrary to what they have said and represented previously.

(8) Competency, Compellability, Examination and cross-examination and Impeachment of credit of witness etc.—Chapters IX and X deal with competency, compellability, examination and cross-examination of witnesses, impeachment of the credit of testimony of the witnesses, and the use of previous writings of witnesses for refreshing their memory also using their previous statements for corroboration of their statement in Court.

A witness is said to be competent when there is nothing in law to prevent him from appearing in Court and in giving evidence. Whether a witness is competent, depends upon his capacity to understand the questions put to him and capacity to give rational answers thereto.

Sections 118, 119, 120 and 133 deal with the competency of persons who can appear as witnesses. A witness may be competent and yet not compellable, *i.e.*, to say that the Court cannot compel him to attend the Court. Foreign ambassadors and sovereigns cannot be compelled by a Court to appear before it to give evidence. In general, a witness who is competent may also be compellable. A witness may be competent and may also be compellable yet the

law may not force him to answer certain questions. This is called restricted compellability or privilege. Sections 122 to 132 deal with this privilege. Section 134 deals with the quantum of evidence. Sections 135 to 139 deal with the examination-in-chief, cross-examination, re-examination-in-chief of witnesses. Sections 140 to 153 deal with the questions which may and the questions which may not be put to witnesses during cross-examination. Section 153 excludes evidence to contradict a witness on his answers given in cross-examination. Section 154 makes provisions for a party to put to his own witness that question which can be asked in cross-examination. Section 155 deals with impeaching the credit of a witness. Section 58 deals with leading of the evidence either to contradict or in order to impeach or confirm the credit of a person who gave the evidence led under Sections 32 and or 33 of the Act. Sections 159 to 161 make provisions for a witness to refresh his memory looking into a record previously prepared. Sections 162, 163 and 164 make provisions for production of a document and the proof of contents thereof. Sections 165 and 166 give the extent of the powers of the Judge and the jury to put questions to witnesses.

(9) Admissibility of evidence.—Chapter XI which contains only one section *i.e.*, Section 167 makes provision for no new trial in the cases where evidence has been illegally admitted or disallowed.

Principles of Induction and Deduction

If we want to investigate the matters of daily affairs by applying the methods of induction and deduction with greater degree of exactness than that which is commonly needed, we need to know the theory on which these methods rest. A Judge investigates the matter to find out the truth not only by the aforesaid method but under the conditions imposed by law.

(i) External facts.—The general problem of science is to discover, collect and arrange true proposition about facts. Thus, we need to know the following terms—(i) Facts, (ii) Proposition, (iii) The Truth of propositions.

Facts.—The things which we perceive are facts. We are conscious of everything which we perceive. We may also say that we perceive everything of which we are conscious of. Some of our perceptions are distinct from each other in space and time both in the external world. Our perceptions are also distinct in time only in our internal world, *i.e.*, thoughts and feelings. It is our perceptions of things which give rise to our thoughts and feelings. These are the objects in the external world of which we are acquainted with. Regarding them, our knowledge is composed of by perceptions and inferences. The external facts are perceived by every body through five sensory organs *viz*, eyes, ears, nose, tongue, touch.

Thus, the facts are within our perception through five senses. There are some other facts which we cannot perceive through our five senses but about which we can draw only inferences as it is not possible to have a perception of them through our five senses. For example, a man can never see the internal construction of his skull. He can draw only an inference about his own internal

skull by the broken skull of others or if he has been explained of it by any other person or he has read it in the books.

Thus, the perceptions and inferences are two sources of composition of knowledge.

(ii) Internal facts.—The internal facts are thoughts and feelings and are not subject to the perception by senses but are perceptible and of utmost importance. Love, hatred, anger, intention, will, wish, knowledge, opinion are the facts of perception by feeling not by five senses. Thus, whether a man strikes another in anger not by way of accident is capable of direct perception as a noise or flash of light. The difference is that the anger is the internal fact which can be perceived only by the man in which it exists. The external fact can be perceived by every body.

Thus, when a man strikes another and the latter is killed, the death resulting from the strike is an external fact which is perceived not only by the striker but by others also. As to whether he did it intentionally or accidentally is an internal fact to be perceived only by him. Thus, the fact is the thing that exists.

Definition of fact in the Evidence Act.—The definition of 'fact' as given in Section 3 of the Evidence Act, is in the aforesaid sense which comprises external and internal facts both. The definition is as follows :

Fact.—"Fact" means and includes—

(1) anything, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious;

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has certain reputation, is a fact.

Proposition.—"A proposition" as defined by Woodroffe and Amir Ali, "is a collection of words so related as to raise in the minds of those who understand them a corresponding group of images or thoughts".[1]

True Proposition.—The "true proposition" as defined by the same authors, "is one which excites in the mind, thoughts or images, corresponding to those which would be excited in the mind of a person so situated as to be able to perceive the facts to which the proposition relates".

1. Woodroffe and Amir Ali, 'Law of Evidence' 14th Ed. p. 8.

Framing of true propositions.—The framing of true proposition is the problem of science (knowledge) arranged in such way as to be easily understood and remembered.

Mill's theory of logic—A fixed order in the world.—For it, the observations of the facts must be corrected and recording thereof should be in the apt language. Then the problem is of their application to the facts under inquiry. According to Mill,[1] the great lesson learnt by our observation is that there is a fixed order in this world amongst the various facts of which it is composed. Thus, fire always burns wood, and day follows the night. What we have learnt is that the certain quantity of air must be present for combustion. It is due to position of heavenly bodies that day and night follow each other.

Induction and Deduction.—Great problem is to find out what particular antecedents and consequences are connected together and what are the conclusions of their connections. For this purpose, the processes of induction and deduction are employed to find out the cause and its effect, their connections and conclusions thereof. The facts which we observe with its antecedents and conclusions if identical in all the cases are our inductions. For example, when a ball is thrown in the air, after reaching up a certain distance, it comes down to the earth. We observe these facts in a number of cases and then we come to the conclusion that the ball if thrown up in the air will come down in every case. This is a true proposition of science. A true proposition of science is obtained by comparing different groups of facts resembling each other in some particulars and differing in others. The two main inductive methods adopted in arranging these comparisons are agreement and difference.[2] To take an illustration the contents A + B + C + D become E. A + C do not become E. B + C do not become E. A + B + C do not become E. B + C + D do not become E. A + C + D do not become E. A + B + D become E. Thus, in as many cases as we experiment, it is the contents A, B and D which together form the content E whether some other content is added to them or not. This is the method of agreement. The method of disagreement is that A + B, or A + C or A + D or A + B + C or B + C + D or A + C + D do not form the content E.[3]

Induction and deduction involve three steps—

(1) Establishment of a premises by induction. The previous deduction which rests on induction comes to the same thing.

(2) Reasoning, according to logical rules, to a conclusion.

(3) Conclusions are verified by observation.

Judicial inquires involve the problem of discovering the truth in the matters under investigation like the discovery of true propositions as to matters of fact as the general problem of science. The solution of this problem lies in the

1. Mill on Logic.
2. Mill has described five methods—(1) Agreement, (2) Difference, (3) Agreement and Difference, (4) Residue, (5) Concomitant variations. The last three are only special applications of the other two methods.
3. This illustration is not given by Mill but by the revising author of this edition.

rules of induction and deduction which are generally employed to conduct and testing the inquiries into the physical nature. The due application of induction and deduction exhibit the facts standing towards each other in relation to cause and effect. The argument can be given with certainty from cause to effect and effect to cause with certainty and precision proportionate to the completeness of the observations of relevant facts.

The difference between the physical inquiries and judicial inquiries is that in physical inquires the number of relevant facts are generally unlimited, capable of being increased by experiments and can be prolonged for any time till the full proof of conclusion is obtained but in judicial inquiry such facts are limited by circumstances capable of being increased. Physical inquiries are always subject to review on the discovery of fresh facts or on the objection on the process by which it was reached. When a conclusion is arrived at in a judicial inquiry, it is final and irreversible with rare exceptions. In judicial enquires, the process to get conclusion is far easier than the conclusion with complete certainty to be arrived at in physical inquiries. In judicial inquiries, the experience of people in general is taken into consideration with the general rules. In judicial inquiries, the conclusion reached is less satisfactory than that in physical inquiry. Judicial inquiry establishes only a high degree of probability not complete certainty required in physical inquiry. The probability means the probability of a prudent man acting in the circumstances in which he is placed in reference to the matter. This is moral certainty which depends not on calculation but on prudence. In judicial inquiry, a civil case is proved in favour of a party on "preponderance of probabilities" and in a criminal case guilt should be proved "beyond reasonable doubt."

In a judicial inquiry inferences are drawn from—

(1) an assertion, oral or documentary, to the truth of the matter asserted;

(2) facts, which upon the strength of such assertions, are believed to exist the existence of which has not been so asserted.

The evidence before the Court which comes is either direct or circumstantial. The theory of induction and deduction is employed by the Court in coming to a conclusion of the facts asserted by a party and denied by the other. A Judge neither hears nor sees the facts but he hears what the witnesses state and sees what is produced in the Court and he has to draw inference from it. He has to use his faculties and acquired experience in arriving at the truth and to avoid miscarriage of justice. The inference drawn from effect to cause should confer to the method of difference. The circumstances in each case should be such that the effect is inconsistent with any other cause than the existence of cause proposed to be proved. In judicial inquiries, certain conclusions arrived at are more or less probable. The degree of probability is not a question of logic but of prudence.

There can be no strict definition of degree of probability which varies in different cases but is a moral certainty.

Relevance of the Law of Evidence.—In the process of delivering justice, the Courts have not only to go into the facts of the case but also to

ascertain the truthfulness of the assertions made by the parties. The area of assertions and ascertainment of its truthfulness is governed by the Law of Evidence. It is the procedural side of law which lays down the rules of evidence.[1] These rules are for the guidance of the Courts upon the questions of reaching the truth and getting the assertions and facts proved before it. Assertions consist of facts, some of which are disputed and some are proved ones. Thus, the Law of Evidence is relevant in deciding the above issue in reaching to a conclusion; decision upon some disputed issues, facts. In short it is a procedural law which provides, *inter alia*, how a fact is to be proved. It helps in preventing the wastage of court's valuable time upon irrelevant issues.

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1. Ramjas *v.* Surendra Nath, AIR 1990 All 385.

PART I
RELEVANCY OF FACTS

CHAPTER I
PRELIMINARY

SECTION 1.—Short title, extent and commencement.—This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including Courts-martial other than Courts-martial convened under the Army Act, the Naval Discipline Act [1][* * *], the Indian Navy (Discipline) Act, 1934 or the Air Force Act but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator ;

and it shall come into force on the first day of September, 1872.

COMMENTS

Application of the Act.—This section provides for the applicability of the Indian Evidence Act. It specifies the (1) territories to which the Act applies, and (2) the Courts and proceedings to which the law applies. We shall take these two points separately.

Territorial.—The Indian Evidence Act extends to the whole of India except the State of Jammu and Kashmir.

Judicial proceedings.—(*a*) The Evidence Act applies to all judicial proceedings. The Law of Evidence is not to be applied to proceedings which are not judicial whether civil or criminal. Now it is very necessary to know the distinction between judicial and non-judicial proceedings. "An enquiry is judicial if the object of it is to determine a jural relation between one person and another or a group of persons or between him and the community generally". It should be borne in mind that, even a judge, acting without such an object in view, does not act judicially.

According to Section 2, sub-clause (*i*), Criminal Procedure Code, 1973, a judicial proceeding includes any proceedings in the course of which evidence is or may be legally taken on oath.

The following are held to be judicial proceedings, and so the recording of evidence in those proceedings, are governed by the rules of Evidence Act :

(1) The proceeding under Chapter IX of Cr.P.C., 1973[2] ;

1. The words "that Act as modified by" omitted by A.O. 1950.
2. 5 All. 224.

(2) An execution proceeding[1] ;

(3) An enquiry conducted by a Magistrate into the truth of the allegation contained in a petition, presented to a Deputy Commissioner, Enquiries under Sections 97, 145, 340 of the Cr.P.C., 1973. Proceedings before Industrial Tribunal.[2]

The word "Court" includes all the persons who are legally authorised to take evidence.[3]

Non-judicial proceedings.—"An enquiry about matters of facts where there is no discretion to be exercised and no judgment to be formed, but something is to be done in a certain event, as a duty, is not a judicial but an administrative enquiry".[4] The following are held not to be judicial proceedings and so the Evidence Act does not apply to them :—

(1) An enquiry by a Collector under Land Acquisition Act.[5]

(2) A departmental enquiry under Section 197 of Bombay Land Revenue Code. A departmental enquiry held by police officers.[6]

(3) An order passed by 1st Class Magistrate under Section 452(3) or 454 of the Cr.P.C., 1973. A contempt proceeding.[7]

Disciplinary proceedings.—In *State of Haryana* v. *Ratan Singh*,[8] a bus-conductor was terminated from service for not realizing fare from some passengers. The oral statements of the passengers by the checking squad inspector were accepted as sufficient evidence. It was held that the rules of Evidence Act could not be properly applied to the departmental inquiry or disciplinary proceedings.

The rules of evidence do not apply to the disciplinary proceedings in an inquiry to which Article 311 of the Constitution applies.[9]

However in disciplinary proceedings, the proof required is beyond reasonable doubt as the proceedings are like criminal proceedings and cannot be compared to civil proceedings.[10]

Courts-martial.—The Evidence Act applies to Courts-martial except Courts-martial convened under :—

(1) Army Act ;

(2) The Naval Discipline Act ;

1. 23 All. 89.
2. Burrakar Coal Co. *v.* Labour Appellate Tribunal of India, AIR 1958 Cal. 226.
3. AIR 1968 Cal. 532.
4. 5 Mad. 178 (FB).
5. 30 Cal. 136.
6. Sisir Kumar *v.* State of West Bengal, AIR 1955 Cal. 183.
7. Sheoraj *v.* A.P. Batra, AIR 1955 All. 638 ; State *v.* Padmakant, AIR 1954 All. 523 (FB) ; Sukhdeo Singh *v.* Teja Singh, AIR 1954 SC 186.
8. AIR 1977 SC 1512.
9. K.L. Shinde *v.* State of Mysore, AIR 1976 SC 1080.
10. R. *v.* Police Complaints Board, (1983) 2 All ER 353.

(3) The Indian Navy (Discipline) Act, 1934 ; and

(4) The Air Force Act.

This Act applies to native Court-martial and to proceedings before Indian Marine Act.

Affidavits.—The Evidence Act does not apply to affidavits presented to any Court or officer.

Although the Evidence Act does not apply specifically to affidavits there is no doubt that affidavits are used as mode of proof. It is always open to the court to take into consideration all facts alleged in an affidavit if they have not been controverted in the counter-affidavit.

The provisions for affidavits are made in Civil Procedure Code [(Order XIX, Rules 1, 2 and 3] and the Criminal Procedure Code, 1973 [Sections 295, 296 and 297 (1)].

An affidavit is not an evidence under Section 3 of the Evidence Act. It can be used as evidence only if for sufficient reasons, the Court passes an order under Order XIX of the C.P.C. Filing of an affidavit of one's own statement, in one's own favour, cannot be regarded as sufficient evidence for any Court or Tribunal on the basis of which it can come to a conclusion as regards a particular fact situation.[1]

However, in a case where the deponent is available for cross-examination and opportunity is given to the other side to cross-examine him, the same can be relied upon. This view is fully supported with the amendment of Order XVIII, Rules 4 and 5 of Code of Civil Procedure.[2]

When the court has not directed the proof of a fact by an affidavit it is no evidence.[3] Affidavit is no evidence under the Evidence Act but it can be so used under Order XIX, C.P.C., and Sections 295 and 296 of the Criminal Procedure Code.

The definition of evidence in Section 3 of Evidence Act does not include affidavit and the affidavit can only be included in the definition of evidence if the Court has passed orders under Order XIX, Rules 1 and 2 on sufficient ground. The affidavit can not be read as evidence to prove some evidence (fact). Any such decree which is based on affidavit filed before the Court should not be deemed to be based upon any evidence and (that decree) should be treated as nullity.[4]

In *Nirmala* v. *Hari Singh*,[5] the Delhi High Court held the affidavits not included in Section 3 of Evidence Act. An affidavit cannot be used in evidence

1. Ayaaubkhan Noor Khan Pathan *v.* State of Maharashtra, AIR 2013 SC 58 ; Sudha Devi *v.* M. P. Narayanan, AIR 1988 SC 1381 ; Range Forest Officer *v.* S. T. Hadimani, AIR 2002 SC 1147.
2. Ayaaubkhan Noor Khan Pathan *v.* State of Maharashtra, AIR 2013 SC 58 at pp. 68, 69.
3. Vishwanath *v.* Abdul, AIR 1963 SC 1.
4. Smt. Sudha Devi *v.* M. P. Narayanan, AIR 1988 SC 138 ; See also Jagdish Prasad *v.* Prem Lata Rai, AIR 1990 Rajasthan 87.
5. AIR 2001 HP 2001.

unless law specifically permits certain matters to be proved by affidavit. The reason is that the deponents of affidavit is not subject to cross-examination for the declaration made in such affidavit.

Arbitrators.—The provisions of the Evidence Act do not apply to proceedings before an arbitrator. The arbitrators are not bound by those strict rules of evidence which are applicable to Court of law. The object of submission to arbitrator is to avoid the elaborate procedure of a regular trial. An arbitrator is unfettered by technical rules of evidence and it is not valid objection to an award that arbitrator has not acted in strict conformity to the rules of evidence.

Tribunals.—The provisions of the Evidence Act do not apply to proceedings before Tribunal.

Lex fory.—This phrase means the law of the place of the action. "The law of evidence is the *lex fory* which governs the courts whether a witness is competent or not; whether a certain fact requires to be proved by writing or not; whether certain evidence proves a certain fact or not; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced, and where the court sits to enforce it".[1]

Where evidence is taken in one country in aid of a suit or action (proceeding) in another country, either on ordinary commission or with the assistance of the local courts, the law applicable to the recording of the evidence, would be the law prevailing in the country where the proceeding is going on.

SECTION 2.—Repeal of Enactments.—The repealed section ran as follows :—

"On and from that day the following laws shall be repealed :

(1) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India ;

(2) All such rules, laws and Regulations as have acquired the force of law under 25th section of the "Indian Councils Act, 1861" in so far as they relate to any matter herein provided for ; and

(3) The enactments mentioned in the Schedule hereto to the extent specified in the third column of the said Schedule.

But nothing herein contained shall be deemed to 'affect any provision of any Statute, Act or Regulation in force in any part of British India not hereby specially repealed."

COMMENTS

Scope of section.—Sub-section (1) of the old Section 2 repealed all rules of evidence which were not contained in a Statute, Act or Regulation. Before passing of the Indian Evidence Act, the rules of evidence were governed by the

1. Bain *v.* White Raven and Furness Junction Ry, (1850) 3 HLC 1 at p. 19.

Rules of English Common Law, of the Hindu and Mohammedan Laws, and the rules of justice, equity and good conscience. Section 2(1) repealed all those rules of evidence, sub-section (2) of the section repealed all those rules, laws and Regulations which acquired the force of law under Section 25 of Indian Councils Act, 1861, but only in so far as they related to any matter provided for in this Act.

Sub-section (3) repealed previous enactments relating to evidence mentioned in the Schedule given in the Act to the extent specified in the 3rd column of the Schedule.

The Act a complete Code.—The Indian Evidence Act is a consolidatory enactment repealing all rules of evidence except those which are exempted from being repealed by the proviso of Section 2. But it has been held that the Evidence Act does not contain the whole of the rules of the evidence. The law of Evidence is contained in the Evidence Act and in other Acts and Statutes which make specific provisions on matter of evidence. There are several laws relating to the subject of evidence which supply the omissions in the Evidence Act and supplement its provisions. We may take for instance (1) Bankers Books Evidence Act XVIII of 1891 ; (2) Civil Procedure Code, 1908, Order XXVI ; (3) Commercial Documents Evidence Act XXX of 1939 ; (4) Criminal Procedure Code, 1973, Sections 291 and 292 ; (5) Divorce Act, 1889, Sections 7, 12 and 14 ; (6) Limitation Act, 1963, Sections 19 and 20 ; (7) Patna Regulation VIII of 1819, Section 8 ; (8) Registration Act, 1908 Sections 49 and 50 ; (9) Stamp Act, 1899, Section 35 ; (10) Succession Act, 1925, Section 63 ; and (11) Transfer of Property Act, 1882, Sections 59 and 123.

Effect of the repeal of Section 2.—Under Section 2 all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India were repealed. The repeal of Section 2 under a subsequent Amending and Repealing Act makes no difference because its repeal does not have the effect of re-enacting the rules which it repealed. As the provisions of this section were unnecessary it were repealed.[1]

Scope of Evidence Act.—The Evidence Act deals with the particular subject of evidence including admissibility of evidence and is a special law.[2] Hence no rule about the relevancy of evidence contained in the Evidence Act is affected by any provision in the Criminal Procedure Code or any other enactment unless it is so specifically stated in the Code or it has been repealed or annulled by another statute. Evidence excluded by the Evidence Act as inadmissible, should not be admitted merely because it may be essential for ascertainment of truth.[3]

The parties cannot contract themselves out of the provisions of the Act. If evidence is tendered, the court is to see whether it is admissible under the Evidence Act.[4]

1. T.W. King, Capt. *v.* Mrs. F.E. King, AIR 1954 All. 190.
2. Ramnaresh *v.* Emperor, AIR 1939 All. 242.
3. Srichandra Nandy *v.* Rakhala Nandy, AIR 1941 PC 16.
4. Sago Rai *v.* Ramji Singh, AIR 1942 Pat 105.

SECTION 3.—Interpretation clause.—In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context :

"Court".—Includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

"Fact".—"Fact" means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has certain reputation, is a fact.

"Relevant".—One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue".—The expression "facts in issue" means and includes—any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of the murder of *B*.

At this trial the following facts may be in issue :—

that *A* caused *B*'s death ;

that *A* intended to cause *B*'s death ;

that *A* had received grave and sudden provocation from *B* ;

that *A*, at the time of doing the act which caused *B*'s death was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document".—"Document" means any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of those means intended to be used, or which may be used for the purpose of recording the matter.

Illustrations

(*a*) A writing is a document ;

(*b*) Words printed, lithographed or photographed are documents ;

(*c*) A map or plan is a document ;

(*d*) An inscription on a metal plate or stone is a document ;

(*e*) A caricature is a document.

"Evidence".—"Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ; such statements are called oral evidence ;

(2) [1][all documents including electronic records produced for the inspection of the Court],

such documents are called documentary evidence ;

"Proved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved".—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved".—A fact is said not to be proved when it is neither proved nor disproved.

"India".—"India" means the territory of India excluding the State of Jammu and Kashmir.

[2][The expressions *"Certifying Authority"*, [3]*["electronic signature"]*, [4]*["Electronic Signature Certificate"]*, *"electronic form"*, *"electronic records"*, *"information"*, *"secure electronic record"*, *"secure* [5]*[electronic signature]"* and *"subscriber"* shall have the meanings respectively assigned to them in the Information Technology Act, 2000.]

1. Subs. by the Information Technology Act, 2000, (Act No. 21 of 2000), S. 92 and Sch. II.
2. Ins. by the Information Technology Act, 2000, (Act No. 21 of 2000), S. 92 and Sch. II.
3. Subs. for "digital signature" by Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009), S. 52 (a) (w.e.f. 27.10.2009).
4. Subs. for "Digital Signature Certificate" by ibid.
5. Subs. for "digital signature" by ibid.

COMMENTS

"Unless a contrary intention appears from the context".—The section lays down that the terms defined under Section 3 should be interpreted according to the definition of them, given in the section, unless by doing so any repugnancy is created in the subject or context.[1] But if the defined expressions are used in a context in which the definition will not fit, the words may be interpreted according to their ordinary meaning.

Court.—The definition of 'Court' in this Act is framed only for the purpose of the Act itself and should not be extended beyond its legitimate scope. Special Laws must be confined in their operations to their special subject. The definition of the word 'Court' in the Act is not meant to be exhaustive.[2] So in a trial by jury, the Court does not exclude the jury. In such a case it means to include both the Judge and the Jury. A Court does not include an arbitrator though he is legally authorised to take evidence.

Where the authorities under the M.P. Madhyasthan Adhikaran Adhiniyam are empowered to examine witnesses after administering oath to them, they are Court within the meaning of Evidence Act.[3]

Persons legally authorised to take evidence.—The word 'Court' according to Section 3, Evidence Act, includes all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence.[4] The right to take evidence is not an incident of an appellate court. Whenever an appellate court *possess* the right to receive evidence it is by the virtue of an express enactment such as those contained in Section 391, Cr.P.C., 1973, and Order 41, R. 27, C.P.C.

A District Magistrate hearing an appeal under Section 163 of the Municipalities Act is not legally authorised to take evidence and so it is not a court.[5]

A S.D.O. hearing election petition under Panchayat Raj Act is not a court.[6]

The definition of the word 'Court' as given in the Act is meant for the purposes of this Act and it cannot be said as a general rule of law that every officer who is entitled to take evidence is necessarily a court, within the meaning of Contempt of Courts Act. But Commissioner appointed under Public Servant Act is a court under Contempt of Courts Act.[7] The proceedings under Income Tax Act, are not proceedings within the meaning of "judicial proceedings".[8] On the same principle Income Tax Officer is not a Court.[9]

1. Partab Singh *v.* Gulzare Lal, AIR 1942 All. 185 ; Ram Bandhu *v.* Brahmanand, AIR 1950 Cal. 524.
2. AIR 1941 Pat. 65.
3. State of M.P. *v.* Anshuman Shukla, AIR 2008 SC 2454 at p. 2456.
4. Jokhanram *v.* Ram Din, 8 All. 429.
5. State of U.P. *v.* Ratan Shukla, AIR 1956 All. 258.
6. AIR 1959 All. 43.
7. Jotinarain *v.* Brijnandan, AIR 1954 Pat 281.
8. Anraj Narain Das *v.* Commissioner of Income-tax, 1952 Punj 46 : 20 ITR 562.
9. Krishna *v.* Gobardhan Aiars, AIR 1954 Mad. 822.

Industrial Tribunal under Industrial Disputes Act is not court in the technical sense.[1]

Administrative Tribunals.—Articles 323-A and 323-B (Part XIV-A) of the Constitution make the provisions for the establishment of Administrative Tribunals to deal with service matters and to deal with other matters respectively. The Parliament enacted Administrative Tribunals Act, 1985 for adjudicating disputes pertaining to service matters of the Government servants. The Administrative Tribunal must follow the rules of natural justice. The Tribunal functions under the provisions of the Administrative Tribunals Act, 1985 and the rules framed by the Central Government. It has the power to regulate its own procedure.[2] The rules cannot be contrary to natural justice.

Inquiry Commission.—Under Section 8 of the Commission of Inquiry Act, 1952, the Commission is empowered to frame rules for regulating its procedure subject to the rules framed by the appropriate Government. In *State of Jammu and Kashmir* v. *Bakshi Ghulam Mohammad*,[3] the Supreme Court held that the Commission while conducting an inquiry into the conduct of an individual and allegations made against him must observe the principles of natural justice subject to the provisions of the Act and the rules framed thereunder.

Findings of a statutory commission appointed under the Commission of Inquiry Act, 1952 are not enforceable *proprio vigore*. The statements made before such commission are expressly made inadmissible in any subsequent proceedings, civil or criminal.[4]

Means and includes.—The words "means and include" wherever used, indicate that the definition is hard and fast. It means no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which for the purposes of the Act, must invariably be attached to these words or expressions.[5]

Fact.—In the popular concept the term 'fact' means an existing thing. It does not refer to a mental condition of which a person is conscious. But as defined in the Evidence Act, the meaning of the word "fact" is not limited to only what is tangible and visible or, is in any way, the object of senses. According to this definition, as it is also clear from illustrations, the statements, feelings, opinion and state of mind are as much fact as any other fact which is tangible and visible or any other circumstance of which, through the medium of senses we become aware.

1. Bharat Bank *v.* Employees of Bharat Bank, AIR 1960 SC 188.
2. Section 22(1).
3. AIR 1967 SC 122.
4. State Bank of India *v.* National Housing Scheme, AIR 2013 SC 3478 at pp. 3489, 3490; Ram Krishna Dalmia *v.* Justice S.R. Tendolkar, AIR 1958 SC 538.
5. Hardeep Singh *v.* State of Punjab, AIR 2014 SC 1400 at p. 1419; Mahalakshmi Oil Mills *v.* State of A.P., AIR 1989 SC 335; Ponds India Ltd. *v.* Commr. of Trade Tax, Lucknow, (2008) 8 SCC 369; M/s. Ponds India Ltd. (Merged with H.L. Ltd.) *v.* Commissioner Trade Tax, Lucknow, AIR 2009 SC (Supp) 664.

The fact may be classified as (1) Physical and Psychological, (2) Positive and Negative.

(1) Physical and Psychological Facts.—'Physical' fact is a fact considered to have its seat in some inanimate or animate being, by virtue not of the quality by which it is considered animate, but of those which it has in common with class of inanimate things. A horse, a man, are physical facts. This clause refers to external facts, the subject of perception by the five senses, illustrations (a), (b) and (c) are examples of this physical fact. A psychological fact is considered to have its seat in some animate being, and that by virtue of the quality by which it is constituted animate. Thus the existence of visible object, the outward aspect of intelligent agents, range themselves under the former class while to the latter belong such facts as only exist in the mind of individuals, *e.g.*, the sensation or recollection of which man is conscious, his desires, his intentions in doing particular acts, etc.

This clause refers to internal facts the subject of consciousness, such as intention, fraud, good faith and knowledge. The illustrations (d) and (e) are examples of this clause.

(2) Positive and Negative Facts.—The existence of a certain state of things is a positive fact, the non-existence of it is a negative fact.

Matter of fact and matter of law.—'Matter of fact' has been defined to be anything which is the subject of testimony which can be proved by evidence ; matter of law is general law of land of which the court will take judicial notice. It is not to be proved by evidence.

Relevant.—The word "relevant" has two meanings. In one sense it means 'connected' and in another 'admissible'. According to *Stephen*, 'relevancy' means connection of events as cause and effect. What is really meant by 'relevant fact' is a fact that has a certain degree of probative force.

The connection may be traced either from cause to effect or from effect to cause. All facts are relevant which exist in relation to cause or effect to the fact alleged to exist. The relevancy of facts in a case of circumstantial evidence can be explained by the illustration of *R.* v. *Richardson*.[1] In this case, a young woman of weak intellect was alone in the cottage when her parents had gone to harvest field. On their return, a little after mid-day, they found her murdered with throat cut. The circumstances excluded the possibility of suicide. According to the surgeon who examined the wound, the throat was cut by a sharp edged weapon by the left hand. On opening the body, the deceased was found to be pregnant for some months. On the ground, there were marks of foot-steps of a person who might have run hastily through indirect way and in confusion and slipped into a quaguire or bog which had stepping stones and he must have been wet till his middle of leg. The impression of footsteps were taken and measured. It appeared that the impression of the foot steps were of the person who must have worn shoes and were newly mended. The shoes

1. Wills pp. 224-229; Stephen, 'Introduction to the Evidence Act' (1902) p. 93, Woodroffe and Amir Ali, 'Law of Evidence', 14th Ed., pp. 64 to 68.

appeared to be with iron knobs or nails. Along the tracks of the footsteps with a certain interval drops of blood were found. At this stage, there was neither any suspicion on any person murdering the woman nor there was any suspicion on the man by whom she was impregnated. At the funeral, a number of persons assembled and the steward thought it a fit occasion to detect the criminal as he might not be absent to avoid any kind of suspicion. There were about sixty men at that time and after interment, the steward called one by one and asked them to take off their shoes, measured and found one of them pretty of same impression as measured nearby the cottage. The person who wore the shoes was a school-master and it was suspected that he might have been father of the child and would have murdered the woman to save his character. On a closer examination, the shoes corresponded with the impressions found on the ground near the cottage. On the closer examination, the shoes were found to be pointed at the toe but the impression of the shoes at the place of incident were round in shape. Rest of the shoes corresponded exactly with the impression in dimension, shape, sole and the position of nails. On being questioned as to where he was on the day of the murder, he without any embarrassment replied that he was employed whole day in his master's work. His statement was confirmed by his master and fellow servants present there. A few days thereafter, he was apprehended. On the examination, he acknowledged to be left-handed man. On being asked regarding some scratches on his cheek, he told that he got scratches while pulling the nuts in the wood. He adhered to his previous statement of being employed that day in his master's work. In course of inquiry, it appeared that on the day of murder he had been absent from the work about half an hour in the forenoon; he called at a smith's shop in the way of the cottage of deceased. A young girl about hundred yards away from the cottage saw a man exactly with the dress and appearance of Richardson running hastily towards the cottage at about the same time when the deceased was murdered but she did not see his return as he might have gone by a small eminence to avoid being viewed by her. It was the very track where foot-prints were found.

The fellow servants of Richardson recollected that on that day they and Richardson were driving the master's cart. While passing a wood, Richardson left the cart saying that he must run to the smith shop and told fellow servants that he would come back in half an hour but he took longer time. On being asked by a fellow servant, he told that he had stopped in the wood to gather some nuts. One of his stockings were wet and soiled. He told that he had stepped into a marsh which he named also. His fellow servants remarked that he must have been either mad or drunk as there was a foot path by the side of the marsh. The time of absence from the cart and the distance of the cottage from there appeared that he might have gone there, committed the crime and returned. On the search, his stockings were found concealed in the thatch of his apartment. The stockings were much soiled and some blood-stains were also found on them. He first told that he had bleeding in the nose a few days back and then he said that he had assisted a horse in bleeding but it was proved that he had not assisted. The soil on examination was found to correspond with that of more the puddle adjoining the cottage and was of a particular kind

found in the neighbourhood. The shoe-maker who had mended his shoes a short while ago, was discovered. On the shoes being exhibited to the shoe-maker, he told that he had mended the shoe which were of prisoner. It came out that he was acquainted with deceased and was on one occasion seen with her in such situation as to give rise to suspicion that he had criminal intercourse with her. On being taunted with such connection with one in her situation, he felt ashamed and greatly hurt. The man sitting next to him at the time, the shoes were measured, he appeared to be a good deal agitated. Between that time and his apprehension he was advised to fly but he answered, "Where can I fly to ?" The prisoner was convicted, confessed and hanged.

According to Woodroffe and Amir Ali, this is a case of illustration of method of agreement as described by Mill excluding the supposition of chance. Thus—

"(1) The murderer had a motive—Richardson had a motive.

(2) The murderer had an opportunity at a certain hour of a certain day in a certain place—Richardson had an opportunity on that hour of that day at that place.

(3) The murderer was left-handed—Richardson was left-handed.

(4) The murderer wore shoes which made certain marks—Richardson wore shoes which made exactly similar marks.

(5) If Richardson was the murderer and wore stockings, they must have been soiled with a peculiar kind of sand—he did wear stockings which were soiled with that kind of sand.

(6) If Richardson was the murderer, he would naturally conceal his stockings—he did conceal his stockings.

(7) The murderer would probably get blood on his clothes—Richardson got blood on his clothes.

(8) If Richardson was the murderer, he would probably tell lies about the blood—he did tell lies about the blood.

(9) If Richardson was the murderer, he must have been at the place at the time in question—a man very like him was seen running towards the place at the time.

(10) If Richardson was the murderer, he would probably tell lies about his proceedings during the time when the murder was committed—he told such lies.

Here are ten separate marks, five of which must have been found in the murderer, one of which must have been found on the murderer if he wore stockings, whilst others probably would be found in him.

All ten were found in Richardson. Four of them were so distinctive that they could hardly have met in more than one man. It is hardly imaginable that two left-handed men, wearing precisely similar shoes and closely resembling each other, should have put the same leg into the same hole of the same marsh at the same time, that one of them should have committed a murder, and that the other should have causelessly hidden

the stocking which had got soiled in the marsh. Yet this would be the only possible supposition consistent with Richardson's innocence".

Relevant under the Act.—This Act does not give any definition of the word 'relevant'. It only lays down that a fact becomes relevant only when it is connected with other facts in any of the ways referred to, in this Act relating to the relevancy of facts. Under Chapter II, Sections 5 to 55, deal with the relevancy of facts. A fact in order to be relevant fact must be connected with the facts in issue or with any other relevant fact in any of the ways referred to in Sections 6 to 16, 27 to 30, 32 to 38 and 40 to 55. A fact not so connected is not a relevant fact. The scheme of the Act seems to be to make all relevant facts admissible.

Logically relevant and legally relevant.—When a fact is connected with another fact, it is logically relevant but it is legally relevant if the law declares it to be relevant. If it is not declared by the law to be relevant, it is not admissible in evidence. Every fact that is legally relevant is also logically relevant but every logically relevant fact may not be necessarily legally relevant. Under the Evidence Act, a fact is said to be relevant to another when it is relevant under the provisions of Sections 6 to 16, 27 to 30, 32 to 38, 40 to 55 of Evidence Act.

In **Chamberlayne's Modern law of Evidence**,[1] relevant, as applied to evidence, must be understood as touching upon the issue which the parties have made by their pleadings so as to assist in getting at the truth of the disputed facts. Whatever evidence will withstand this text should not be objected to.

Facts in issue.—There is no difficulty at all in ascertaining what are the facts in issue. The facts in issue may by themselves or in connection with other facts constitute such state of things that the existence of the disputed right or liability would be a legal inference from them. The expression means the matter which are in dispute or which form subject of investigation.

'Facts in issue' are those facts which are alleged by one party and denied by the other in the pleading in a civil case or alleged by the prosecution and denied by the accused in a criminal case. These are the facts of which existence or non-existence is disputed by the parties.

The term "facts in issue" will become intelligible by examples.

Examples

(1) *A* is a cashier in a factory. It is his duty to bring money from bank and distribute it to the labourers. A case under Section 409, I.P.C. for Criminal Breach of Trust" is started against him. The case against him is that he brought Rs. 25,000 from the bank and misappropriated Rs. 13,000 out of it. *A* says, in his defence, that he brought the cash from the bank and as he was to go on leave that day, he according to the direction of the Manager of the Company, handed over Rs. 25,000 to *B*, the Assistant Cashier. Now the question is whether *A* is liable for criminal breach of trust. Now we should know what is a Criminal Breach of Trust.

1. Vol. I, Sec. 25.

"Whoever being in any manner entrusted with property..... dishonestly misappropriates or converts to his own use that property, is guilty of criminal breach of trust".[1]

According to this definition, before a person is held guilty of criminal breach of trust, it is to be found :

(1) That he has been entrusted with some property.

(2) That he has dishonestly misappropriated that property.

Now we refer to the aforesaid illustration. The question is whether *A* is liable for criminal breach of trust. Before the Court holds *A* liable for Criminal Breach of Trust, it has to decide :

(*a*) Whether *A* handed over money to *B*.

(*b*) Whether *A* worked that day in the office.

(*c*) Whether *B* worked that day and distributed the money—

(*a*) the fact that *A* handed over money to *B*,	The guilt or innocence of *A* follows and so these are facts in issue in the trial of *A* for criminal breach of trust.
(*b*) the fact that *A* did not work in the office that day,	
(*c*) that *B* worked and distributed money to labourers that day.	

(2) One *A* dies intestate. One *D* enters into possession of his property. *S* filed a suit for possession against *D* alleging that she is a sister of *A*, that she alone is the heir of *A*. *D* files a written statement contending that she is the daughter and the only heir of *A* and that *S* is not a sister of *A*. In this case the court in order to give a decision has to decide (1) whether *S* is a sister of *A* ; (2) whether *D* is a daughter of *A* ; (3) whether *S* is the only heir of *A*. If the court comes to the conclusion that *S* is not a sister of *A*, it will dismiss the suit. Again if it comes to the conclusion that *D* is a daughter of *A* the suit of *S* would be dismissed even if it is held that *S* is a sister of *A*, because under Hindu law a daughter is a preferable heir to a sister. The court can decree the suit of the plaintiff when it comes to the finding that *D* is not a daughter of *A*, that *S* is the sister of *A* and that no nearer heir than *S* is in existence. From the fact (1) whether *S* is a sister of *A*, (2) whether *D* is a daughter of *A*, (3) whether *S* is the only heir of *A*, the existence or non-existence of right of *S* to the property of *A* necessarily follows. Therefore they are facts in issue.

1. See Section 405, I.P.C.

What facts are in issue in a particular case is a question to be determined by the substantive law, or in some instances by that branch of the law of procedure which regulates the forms of the pleading, civil or criminal.

Order XIV, Rule 1, C.P.C., lays down that "issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other." Thus under the said Order issues are framed on the contest of the parties.

Under the explanation to the definition of "facts in issue" when under Order XIV, Rule 1, issues of facts are recorded, the facts to be asserted or denied in the answer to such issue are also "facts in issue". Reverting to the example given in answer to issue 'whether S is the sister of *A*' the plaintiff has to lead evidence to the effect that '*S* is a sister of *A*' and the defendant will give evidence to the effect that '*S* is not a sister of *A*'. Thus the facts that '*S* is a sister of *A*' are also facts in issue.

Facts

Facts in issue

Means and includes any fact from which either by itself, or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability asserted or denied in any suit or proceeding necessarily follows. No list is given in Evidence Act of the facts in issue. The court has to frame in every case.

Relevant facts

One fact is said to be relevant to another when one is connected with the other in any of the following ways:

(1) Facts forming part of the same transaction (Section 6).

(2) Facts which are occasion, cause or effect of the facts in issue (Section 7).

(3) Motive, preparation, conduct of a party (Section 8).

(4) Facts, necessary to explain the facts in issue (Section 9).

(5) Things, said or done by conspirators (Section 10).

(6) Facts inconsistent with facts in issue (Section 11).

(7) Facts helping in the estimate of damages (Section 12).

(8) Transaction creating right, etc. (Section 13).

(9) Facts stating of mind or body (Section 14).

(10) Facts showing whether act is intentional or accidental (Section 15).

(11) Existence of course of business (Section 16).

(12) Admission (Sections 17 to 23 and 31).

(13) Confession (Sections 24 to 30).

(14) Statements of persons who are dead or cannot be found (Sections 32 and 33).

(15) Statements made under special circumstances (Sections 34 to 39).

(16) Judgments (Sections 40 to 44).

(17) Opinions of experts and others (Sections 45 to 47).

(18) Opinions as to existence of custom and usages (Sections 48, 49).

(19) Opinion on relationship (Section 50).

(20) Character (Sections 52 to 55).

Document.—The definition of the term 'document' as given in this section is very wide. In general parlance the word 'document' is understood to mean any matter written upon a paper in some language, such as English, Hindi, Urdu and so on. But according to the definition given in this Act "document" means any matter expressed or described upon any substance, paper, stone, or anything by means of letter or marks. The term 'document' includes 'milkman's score'. Exchequer's tallies, a ring, or banner with an inscription, a musical composition, a savage tattooed with words intelligible to himself. Letters or marks imprinted on trees and intended to be used as evidence that the trees have been passed for removal by a Ranger, are documents.

"Evidence".—The word "evidence" in the Act signifies only the instruments by means of which relevant facts are brought before the court. The instruments adopted for this purpose are witnesses and documents. Under this definition the evidence is divided in two clauses (1) oral and (2) documentary.

Oral evidence.—The oral evidence means statement made by a witness before a court in relation to matter of fact under inquiry. Thus the oral evidence is the evidence that is given before the Court.

Documentary evidence.—When a document is produced in a case in support of the case of the party producing it, the document becomes the documentary evidence in the case. By the Information Technology Act, 2000, all the electronic records produced for the inspection of the Court are included in the document and therefore they are also documentary evidence.

A document is evidence only when it is produced for the inspection of the Court. Consequently a writing obtained by the court for the accused for comparison is not evidence as it is not a document produced for the inspection of the court.[1]

Definition defective.—As said above, the word 'evidence' under the Evidence Act includes only the statements of witnesses and documents produced. This definition is incomplete. There are so many things which are as good evidence as statements and documents but they are excluded from the definition of evidence. A Magistrate or a Sessions Judge may question the accused and the answer may be used against him. Every day at a trial questions are put to the accused as to whether they committed the crime with which they have been charged and very often the accused answers in the affirmative, *i.e.*, he admits his guilt and his statement is considered by the court. But according to the

1. Ram Swarup *v.* State, AIR 1958 All. 119.

definition in the Evidence Act this statement of the accused is not evidence. The demeanour of a witness is very often taken into consideration by a court but this is also not evidence according to the Act. The courts (criminal and civil) make local inspection, and the memorandum prepared by them forms part of the record and also utilised by the court in weighing the evidence but when tested by the definition of the Act it is not evidence.

Thus, it is clear that the definition of 'evidence' given in Indian Evidence Act is incomplete and defective. It excludes the statements and admissions of the parties, their conduct and demeanour before the court, circumstances coming under the direct cognizance of the Court, facts of which, the court can take judicial notice of and the fact which the court must or may presume.

FIR not a substantive piece of evidence.—FIR is not a substantive piece of evidence but it cannot be given a complete go by. It can be used to corroborate the evidence of the person lodging the same.[1]

Judge's personal knowledge and observation—No evidence.—Judge cannot impart his personal knowledge to take place of evidence nor can he rely on books (not being text books) if the books were not admitted in evidence or were inadmissible.[2] When the Act speaks of matters before it, it means before it in legal manner.[3]

The Judge should not use his personal observation as evidence because in this way he becomes a witness without being cross-examined. The Sessions Judge ordered the accused to put on the pair of shoes recovered by the police. He then observed and got recorded. "To all appearance they quite fitted the feet of the accused even though he complained that the shoes were too tight for his "feet". It was held that the Judge was not entitled to allow his view or observation to take the place of evidence, because such view or observation could not be tested by cross-examination.[4]

Statement of accused if evidence.—In *Hari Singh Bhagat Singh* v. *State of Madhya Pradesh*,[5] the Supreme Court has held that the statement of the accused under old Sections 208, 209 and 342 (new Section 313), Cr.P.C., have to be received in evidence and treated as evidence.

Contrary to this, the High Court of Calcutta has held that when the accused makes a statement in answer to questions from the court it does not fall within the definition of the word 'evidence' as defined in the Evidence Act.[6]

It may be submitted that strictly speaking the statement of the accused is not evidence under Evidence Act. But whether evidence or not it is a matter before the Court and may be taken into consideration with the evidence

1. C. Magesh *v.* State of Karnataka, AIR 2010 SC 2768 at p. 2773.
2. Vallabh *v.* Madusudanam, ILR 12 Mad. 495 ; Durga Prasad Singh *v.* Ram Dayal Chaudhari, ILR 38 Cal. 153.
3. Barindra *v.* Emperor, ILR 37 Cal. 467.
4. Pritam Singh *v.* State of Punjab, AIR 1956 SC 415 : 1956 Cr.LJ 805.
5. AIR 1953 SC 468.
6. AIR 1958 Cal. 616.

adduced by the prosecution for deriving assistance to the prosecution case.[1] No conviction can be based only on the statement of the accused.[2]

Recording of evidence through video conferencing.—Examination of witnesses through Video Conferencing has been approved by the Supreme Court in Civil Cases in *State of Maharashtra* v. *Dr. Prafulla B. Desai*.[3] In *State of Maharashtra* v. *Prafulla B. Desai (Dr.)*,[4] according to the prosecution, the complainant's wife was suffering from the terminal cancer. She was examined by Dr. Earnest Greenberg of Sloan Kettering Memorial Hospital, New York, U.S.A. who advised that she was inoperable and should be treated only with medication. The complainant and his wife thereafter consulted the respondent who was a surgeon with 40 years practice. He was made aware of the opinion of Dr. Greenberg. Despite this, the respondent advised surgery and the complainant and his wife agreed to his opinion on the condition that the respondent would perform surgery. The complainant's wife was, however operated upon by one Dr. A.K. Mukherjee. When the stomach was opened ascetic fluids oozed out of the abdomen. He closed the stomach on the advice of the respondent which resulted in an intestinal festula. Whenever, the complainant's wife ate or drank, the same would come out of the wound. The complainant's wife required 20/25 dressing a day for more than 3-1/2 months in the hospital and thereafter till her death. On the complaint, the case was registered under Section 338 read with Sections 109 and 114 I.P.C. The prosecution's application to examine Dr. Greenberg by video-conferencing was allowed by the Trial Court as Dr. Greenberg had expressed his willingness to give evidence but refused to come to India. The respondent challenged the order in the High Court which allowed his application.

The Supreme Court set aside the judgment of the High Court and directed the Magistrate will record the evidence by video-conferencing. The officer deputed for this purpose will ensure that the respondent, his counsel and one assistant are allowed with the papers and documents required by him or his counsel in the studio when the evidence is being recorded. There is no substance in the submission that it would be difficult to put documents or written material to the witness in cross-examination. It is now possible to show to a party, with whom video conferencing is taking place, any amount of written material. The concerned officer well ensure that after commencement of video-conferencing, as far as possible, it will be proceeded without any adjournments. If Dr. Greenberg does not attend at the time/s without any sufficient cause, it would be open for the Magistrate to disallow recording of evidence by video conferencing. If the officer finds that Dr. Greenberg is not answering questions, the officer will make a memo of the same. Finally when the evidence is taken in the Court, this is an aspect which will be taken into consideration in testing the veracity of evidence.

1. Jammu Municipality *v.* Puran Prakash, 1975 Cr LJ 677 ; Parshotam Das *v.* State, 1975 Cr. LJ 309.
2. Hari Kishan *v.* State, 1974 Cr. LJ 1121.
3. AIR 2003 SC 2053. In Bodala Musali Krishna *v.* Bodala Prathima, AIR 2007 AP 43, the Andhra Pradesh High Court held that video conferencing could be afforded in criminal cases too.
4. AIR 2003 SC 2053.

Under Section 3 of the Evidence Act, the evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence even in criminal matters, can also by way of electronic records. This would include video conferencing. Section 273 of Cr. P.C. provides for dispensation from personal attendance. The presence of the pleader is deemed to be the presence of the accused as the 'presence' has not been used in the sense of actual physical presence. There is no provision in Cr. P.C. by which Dr. Greenberg can be compelled to give evidence in India. His evidence on the facts *prima facie* to be relevant and essential to the prosecution case. The law is well-settled that the doctrine *"contemporanea exposit to est optimaet"* has no application while interpreting a provision of an on going statute act like the Cr. P.C. "Regarding the argument that the video conferencing could not be allowed as the right of an accused under Article 21 cannot be subjected to a procedure involving "virtual reality", the Court held—

> "Such an argument displays ignorance about the concept of "virtual reality" and also of video conferencing. "Virtual reality" is a state where one is made to feel, hear or imagine what does not really exist. In "virtual reality", one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when he is sitting in the mountains, one can be made to imagine that he is taking part in Grand Prix Race whilst one is relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advance in science and technology have now, so to say, shrunk the world. They now enable to see and hear events, taking place far away, as they are actually taking place. This is not virtual reality but actual reality. Video conferencing is an advancement in science and technology which permits one to see, hear and talk to some one far away with the same facility as if he is present before you. Except for touching, one can see, hear and observe as if he is present before you as he/she is present before you on the screen. So long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the presence of the accused and would fully meet the requirements of Section 273, Cr. P.C. Recording of such evidence would be as per procedure established by law".

The requirement of Sections 274 and 275 of Cr. P.C. would be fully met by keeping the video conferencing equipment in the Court where the evidence would be recorded by the Magistrate or under his dictation in the open Court. As a matter of prudence, evidence by video conferencing in an open Court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of Court and perjury are also punishable, so that such witness could be punished for perjury and contempt of Court. The evidence of witnesses can also be recorded by way of video conferencing by the commissions issued by the Court under Sections 284 and 285 of Cr. P.C.

Tape-recorded version—Admissibility of.—In *Ram Singh* v. *Ram Singh (Col.),*[1] the Supreme Court through Justice Fazal Ali laid down the following tests regarding the admissibility of tape-recorded version—

1. AIR 1986 SC 3.

"1. The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

2. The accuracy of the tape-recorded statement must be proved by the maker of the record by satisfactory evidence : direct or circumstantial.

3. Possibility of tampering with, or erasure of any part of, the tape-recorded statement must be totally excluded.

4. The tape-recorded statement must be relevant.

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

6. The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances."

In *Ziyauddin Burhanuddin Bukhari* v. *Brijmohan Ramdass Mehra,*[1] the Supreme Court examined the question of admissibility of tape recorded speech in which the Supreme Court referred to the judgment in *R.* v. *Maqsud Ali,*[2] observed :

"We think that the High Court was quite right in holding that the tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions :

(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

(b) Accuracy of what was actually recorded has to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, has to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded has to be shown to be relevant according to rules of relevancy found in the Evidence Act".

Classification of evidence.—Evidence may be classified under the following heads :

(1) Direct and circumstantial evidence.

(2) Real and personal evidence.

(3) Original and un-original evidence.

(4) Substantive and non-substantive.

(5) Positive and negative.

(6) Prosecution evidence and defence evidence.

(1) Direct evidence.—*Direct or positive evidence* is evidence about the real point in controversy, *e.g., A* is tried for causing grievous hurt to *B* with a club. *C* deposes to the effect that he saw the accused, inflicting the blow which

1. AIR 1975 SC 1788.
2. (1965) 2 All ER 464.

caused the grievous hurt. *A* is tried for setting fire to the house. *B* deposes that he saw *A* setting fire to the house. *A* files a suit against *B* on the basis of an agreement. *C* deposes that he was present when the agreement was entered into and he witnessed it. All these are instances of direct or positive evidence, as the witnesses are deposing exactly to the precise point in issue.

Appreciation of evidence of eye-witness

Not giving exact description of injuries.—Where the entire family was involved in the incident either one side or the other and the injuries were caused by several accused persons armed with different kinds of weapons and evidence of eye-witnesses was recorded more than five years ago, it would be unreasonable to expect a witness to give a picture of perfect report of the injuries caused by each witness to the deceased or the injured. With the passage of time, memory also tends to dim and it is difficult for a witness to recall events with precision. Not giving an exact description of the injuries would not detract from the substratum of their evidence.[1]

Variations or discrepancies in Statements of witnesses.—When the evidence of eye-witnesses clearly bring out accusations against the accused, certain minor variations in their testimony cannot in any way corrode the credibility of the prosecution version.[2]

Where the eye-witnesses were examined in the Court two and half years latter, some contradictions or even omissions to state the incident in great details by itself would not lead to a conclusion that the appellants had been falsely implicated in the case.[3]

The minor discrepancies on trivial matters without affecting the case of the prosecution evidence should not prompt the Court to reject evidence in entirety.[4]

Minor discrepancies in evidence are not to be given an undue emphasis and the evidence is to be considered from the point of trustworthiness. It is the serious omission or contradiction in the evidence that creates a serious doubt about the truthfulness or credit worthiness of a witness that materially affects the case of prosecution but not every contradiction or omission.[5]

It is a settled principle that the variations in the statements of witnesses which are neither material nor serious enough to affect the case of the prosecution adversely, are to be ignored by the Courts.[6]

1. Chandrappa *v.* State of Karnataka, AIR 2008 SC 2323 at pp. 2327-2328.
2. Ram Swaroop *v.* State of Rajasthan, AIR 2008 SC 1747 at p. 1749.
3. Vikram *v.* State of Maharashtra, AIR 2007 SC 1893 at p. 1898.
4. State Rep. by Inspector of Police *v.* Saravanon, AIR 2009 SC 152 at p. 156 ; Also see State of M.P. *v.* Dal Singh, AIR 2013 SC 2059.
5. Yogesh Singh *v.* Mahabeer Singh, AIR 2016 SC 5160 ; Also *see* Rammi @ Rameshwar *v.* State of M.P., AIR 1999 SC 3544; Leela Ram *v.* State of Haryana, AIR 1999 SC 3717 ; Bihari Nath Goswami *v.* Shiv Kumar Singh, (2004) 9 SCC 186; Vijay @ Chinee *v.* State of M.P., (2010) 8 SCC 191 : 2010 AIR SCW 5510; Sampath Kumar *v.* Inspector of Police, Krishnagiri, AIR 2012 SC 3539 and Mritunjoy Biswas *v.* Pranab @ Kuti Biswas, AIR 2013 SC 3334.
6. Ravi Kapur *v.* State of Rajasthan, AIR 2012 SC 2986 ; Sunil Kumar Sambhudayal Gupta *v.* State of Maharashtra, AIR 2011 SC (Cri) 69 ; State *v.* Sarvanan, AIR 2009 SC 152.

Where three persons were murdered in two incidents on the same evening and the son of one of the accused persons in the latter incident was murdered in the first incident, some eye witnesses in the latter incident were mentioned in the FIR of first incident, the cogent and credible testimony holding the accused persons guilty of murder cannot be discarded.[1]

Irrelevant details which do not in any way corrode the credibility of a witness cannot be levelled as omissions or contradictions.[2]

Minor inconsistencies appearing between the statements of two eye witnesses should not be given undue importance and acquittal on this ground is not proper.[3]

Only because eye-witness deviates from her statement made in the FIR, her evidence cannot be held to be unreliable. The principle *'falsus in uno, falsus in omnibus'* has no application in India.[4]

When implicit reliance is placed on eye-witness, some embellishment in the prosecution case caused by reason of evidence of any prosecution witness although not declared hostile by itself cannot be a ground to discard the entire prosecution case.[5]

The fact that the eye-witness, the son of the deceased, had not been able to spell out accurately the situs of injuries on the dead body, would not make his presence doubtful when the victim was under the attack from a group of persons armed with deadly weapons, one cannot expect that in such a situation, the witness would graphically describe the nature of injuries and spell out accurately the situs of injuries on the body of the victim.[6]

Enmity with accused cannot be the only ground to reject testimony of the eye-witnesses being related with the deceased when the evidence of the eye-witnesses with minor contradictions here and there has withstood the test of cross-examination.[7]

A witness who witnesses attack is not supposed to go on counting number of assaults on the parts of the body where the injuries were inflicted. The witnesses came running after hearing shout of the deceased. They categorically stated some external injuries and it was possible that they had not noticed the injuries inflicted earlier. When they reached they saw the deceased lying on the ground. The eye-witnesses were held to be reliable.[8]

Generally in the oral evidence of crime normal discrepancies exist. They are due to errors of observation, mental disposition, shock and horror at the

1. Bathula Nagamalleswar *v.* State Rep. by Public Prosecutor, AIR 2008 SC 3227 at p. 3237.
2. State of Rajasthan *v.* Om Prakash, AIR 2007 SC 2257 at p. 2259.
3. Indra Pal Singh *v.* State of U.P., AIR 2009 SC 958 at p. 961.
4. Gangamma *v.* G. Nagarathamma, AIR 2009 SC 2558 at pp. 2560-2561 ; Prem Singh *v.* State of Haryana, AIR 2009 SC 2573.
5. Bhanwar Singh *v.* State of M.P., AIR 2009 SC 768 at p. 783.
6. Paramjit Singh *alias* Mithu Singh *v.* State of Punjab, AIR 2008 SC 441 at p. 446.
7. Dharamveer *v.* State of U P., AIR 2010 SC 1378 at p. 1383.
8. State of Maharashtra *v.* Prakash Sakha Vasove, AIR 2009 SC 1636 at p. 1638.

time of incident. Such discrepancies do not make evidence unreliable unless they go to root of matter.[1]

While appreciating the evidence of a witness, minor discrepancies on trivial matters may not prompt the Court to reject the evidence in its entirety. The mental capabilities of a human being cannot be expected to be attained to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses.[2]

It is well-settled in law that minor discrepancies in on trivial matters not touching the core of the case or not going to the root of the matter cannot result in rejection of the evidence as a whole. It is also well accepted principle that no true witness can possibly escape from making some discrepant details. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version, the Court would be justified in jettisoning his evidence. The Court has to call into its aid vast experience of men and and matters in different cases to evaluate the entire matter on record.[3]

In *Krishnagowda* v. *State of Karnataka,*[4] the eye-witnesses P.W. 1, P.W. 2 and P.W. 3 who were the sons of the deceased, stated that they were carrying milk to the collection centre when the accused persons who were 14 in number restrained and assaulted D-1 with clubs and stone. Thereafter, the other deceased alongwith other persons came there and interfered the accused persons questioning the reason of the assault. D-1 was assaulted with chopper and clubs by A-5 and A-2. The deceased succumbed to his injuries. P.W. 1, P.W. 2 and P.W. 3 were injured at the hands of A-2 and A-3. P.W. 2 gave the evidence that A-11 and A-12 hit the deceased with stones on his chest. It was not stated by P.W.-1 and not supported by medical evidence. The statement of P.W.-1 was inconsistent with the previous statement recorded by Police under Section 161 of Cr. P.C. A-7 to A-13 were implicated in F.I.R. after 6.3.1991 and their names did not find place in the first and second F.I.R. The incident was of 27.2.1991 and P.W.-2 went to the hospital on 8.3.1991 for examination and treatment. The Trial Court held that the prosecution failed to prove the guilt of the accused beyond reasonable doubt due to inconsistent evidences of prosecution witnesses with medical evidence and other probable consequences. The High Court after scrutinizing the order of the Trial Court held that A-2 and A-5 had common intention to kill the deceased and sentenced them to life imprisonment and to pay a fine of Rs. 10,000 each. A-1 to A-5, A-9 and A-10 were held to have common object to assault P.W.-1 and they were given lesser punishment. On special leave to appeal, the Supreme Court gave the benefit of doubt and held—There were lot of variations in the evidence of prosecution witnesses in respect of exact time of the incident, the people present at the scene of the offence, the police reaching the scene of the offence and place of registering the

1. State of U.P. *v.* Krishna Master, AIR 2010 SC 3071 at p. 3077.
2. Bhajan Singh *v.* State of Haryana, AIR 2011 SC 2552.
3. Vinod Kumar *v.* State of Haryana, AIR 2015 SC 1032 at p. 1039; State of U.P. *v.* M.K. Anthony, (1985) 1 SCC 505 : AIR 1985 SC 48; Rammi *v.* State of M.P., AIR 1999 SC 3544 and Appabhai *v.* State of Gujarat, AIR 1988 SC 696.
4. AIR 2017 SC 1657.

complaint. P.W.-1 stated that the complaint was recorded at 12 p.m. but the Investigating Officer deposed that he registered the complaint at 10.30 a.m. at the Police Station. P.Ws. 1, 2 and 3 stated that they were arrested by the Investigating Officer but the Investigating Officer gave a contradictory statement that he had not arrested them. P.W.-1 initially gave a statement before the Police saying that A-1, A-5, A-3 and A-4 had not assaulted him. This later statement was contradictory to it. The eye-witnesses did not mention the names of accused 7 to 13 in any of the F.I.R. and subsequent adition of their names after 6.3.1991 clearly demonstrates that it was an afterthought only to implicate them. The eye-witnesses were relatives and the prosecution failed to adduce reliable evidence of the independent witnesses for the incident that took place in broad day light. There is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of the independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eye-witness is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of eye-witnesses will not tilt benefit of doubt in favour of the accused but when the contradictions in the evidence of prosecution prove to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets benefit of doubt. The Investigating Officer suppressed the fact of a direct evidence of seizure of gun used by the deceased and did not register a complaint against the deceased under the relevant provisions of the Arms Act. A-1 had sustained injuries and a complaint was given by his father. The doctor categorically deposed about injuries sustained by P.W.-1. Investigating Officer deposed that the complaint given by his father was investigated and the case was closed by filing 'B' form but the document was not marked which was fatal to the prosecution. there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear latches in investigation. The High Court brushed aside the vital defects involved in the prosecution case and in a very unconventional way convicted the accused.[1]

In a hooch tragedy in which several persons died, the witness who lost his eye-sight immediately after consuming spurious liquor stated that he had purchased liquor from vends of the respondents. The Court held that such contemporary statements could not be disbelieved and were also relevant under Section 7 of the Evidence Act.[2]

The daughter of the deceased was studying in her house. She heard the scream of her father, so she came out and saw in the full street light from a distance of about 100 metres 6 to 7 persons attacking her father when at about 10 p.m. he was returning back from his clinic. The neighbour of the deceased heard her distress call coming out of house but did not see her. He saw 4 to 5 persons attacking the deceased. Merely because the neighbour did not see the daughter of the deceased until the accused persons had left and there was omission of her name in inquest report and complaint, it was not fatal as her evidence was

1. Krishnagowda *v.* State of Karnataka, AIR 2017 SC 1657 at pp. 1663, 1664, 1665.
2. State of Haryana *v.* Krishan, AIR 2017 SC 3125.

cogent and convincing corroborated by the neighbour. It could also not be rejected because she was an interested witness.[1]

Eye-witness delay in reporting to the Investigating Officer.—The eye-witness stated that the deceased after being assaulted on the head by the butt of rifle was dragged in a bush by the accused. He was spared only on the condition not to reveal the incident to anyone. His statement relating to the incident to the C.B.I. after it took over investigation of the case could not be discarded on the ground of delay in reporting the version to the Investigating Officer.[2]

Injured witness—Delay in examination.—The delay in examination of injured witness due to his unconsciousness for twenty days is not fatal to the prosecution case when there is vivid description of incident and roles of different accused persons and the eye-witnesses alongwith injured witness fully support prosecution case.[3]

Material discrepancies.—Material discrepancies are those which are not normal and not expected of a normal person. 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. Such discrepancies are always there, howsoever, honest and truthful a witness may be. Normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.[4]

In *Shyamlal Ghosh* v. *State of West Bengal*,[5] the accused persons eight in number were sentenced to death for murdering the deceased in the night when he was coming back on his bicycle to his house after visiting a person for making *tagada* in connection with his business. He was restrained, assaulted and then strangulated and thereafter severed, head, leg, hands and body of the corpse by a sharp cutting weapon and in the gunny bags carried by a Maruti Van and left by the side of a highway. The Trial Court sentenced all the accused persons under Section 302 read with Section 34, Section 379 read with Section 34 and Section 279 read with Section 34 of I.P.C. and sentenced them to death along with other sentence. On appeal, the High Court holding it not to be the rarest of rare category case awarded life-imprisonment. The Supreme Court found no reason to interfere with the sentence awarded by the High Court. On the point of contradiction in the statements of witnesses, the Supreme Court held—the Court has to see whether variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution. In a murder case, 15 to 20 minutes variance in the time of occurrence is not material contradiction. The witnesses mere rickshaw-pullers or illiterate or not highly educated persons whose statements

1. Sheikh Sintha Madhar *alias* Jaffar *alias* Sintha *v.* State by Inspector of Police, AIR 2016 SC 1844 at pp. 1847, 1848.
2. Dharm Pal *v.* State of Haryana, AIR 2017 SC 3720 at p. 3724.
3. Sudha Renukaiah *v.* State of A.P., AIR 2017 SC 2124 at pp. 2131, 2132, 2133, 2136.
4. Kulesh Mondal *v.* State of West Bengal, AIR 2007 SC 3228 at p. 3230; Krishna Mochi *v.* State of Bihar, JT 2002 (4) SC 186.
5. AIR 2012 SC 3539.

had been recorded by the police and their statements were recorded more than two years from the date of occurrence. It cannot be expected of these witnesses to state the events with the relevant timing with great exactitude in view of the attendant circumstances and the manner in which the incident took place.

P.W. 4 and P.W. 6 stated that the deceased and his brother had constructed shops for letting out. It was thereupon that the accused persons started demanding a sum of Rs. 40,000/- from the deceased and threatened him of dire consequences if their demand was not met. P.W. 2 also made the similar statement that one 'U' along with the accused persons had threatened the deceased not to allow them to enjoy the property if the demand was not met by him. According to P.W. 4 and P.W. 6 the accused persons had threatened to kill the deceased but according to P.W. 2, the accused had threatened the deceased not to permit him to enjoy the said property. The statements of these witnesses clearly showed one motive *i.e.* illegal demand of money coupled with the warning of dire consequences to the deceased in case of default. Held—these are not contradictions but are statements made *bona fide* with reference to the conduct of the accused in relation to the property built by the deceased and his brother. It is a settled principle of law that the Court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. There is no material or serious contradiction in the statement of the witnesses which may give any advantage to the accused.

Exaggeration in evidence.—The maxim *'falsus in uno falsus in omnibus'* has no application in India. If the maxim is applied, it is feared that administration of criminal justice would come to a dead stop. If the witness exaggerates evidence, it does not make it completely unreliable. The Court has to separate grain from the chaff. Witnesses just cannot help in giving embroidery to a story, however, true in the main. It has to be appraised in each case as to what extent the evidence is worthy of credence.[1]

Improvements or variations of the statements of witnesses.—In *Kuria* v. *State of Rajasthan*,[2] the Supreme Court on the improvements or variations of the statements of witnesses held—As to whether the version presented in the Court is substantially similar to what he said during investigation. It is only when exaggeration fundamentally changes the nature of the case, the Court has to consider whether the witness was stating truth or not.[3] The statements recorded immediately upon the incident would have to be given a little lee way with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the Court has to be a reasonable and practicable.[4]

1. Ramesh Harijan *v.* State of U.P., AIR 2012 SC 1979.
2. AIR 2013 SC 1085 at p. 1095.
3. Sunil Kumar *v.* State Govt. of NCT of Delhi, AIR 2004 SC 667 referred to.
4. Kuria *v.* State of Rajasthan, AIR 2013 SC 1085 at p. 1095 ; Ashok Kumar *v.* State of Haryana, AIR 2010 SC 2839 and Shivlal *v.* State of Chhattisgarh, AIR 2012 SC 280 referred to.

The minor contradictions in the depositions of witnesses are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so when the statements in the Court are recorded after an inordinate delay. It is only when the contradictions are so material that the same go to the root of the case and materially affect the trial or core of the prosecution case that the Court has to form its opinion about the credibility of the witnesses and find out whether their depositions inspire confidence.[1]

Independent witnesses—Non-examination.—Mere non-examination of independent witnesses is not disastrous to the prosecution case when there is no lacuna in evidences given by the prosecution witnesses.[2]

When there is overwhelming evidence of eye-witnesses available and examination of other witnesses would only be repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. If the witnesses already examined are reliable and their testimony is unimpeachable, the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses. It cannot be laid down an invariable rule that the evidence of interested witness can never form the basis of conviction unless corroborated to a material extent in material particulars by independent witness.[3]

Independent witness—Examination of—A rule of caution.—Where no independent person agrees to become witness, there is no reason to doubt version of police and recoveries made pursuant to the disclosure statement of the accused. Need to examine independent witnesses in such a case is only a rule of caution evolved by the judiciary to prevent the misuse of provision of Section 27 of the Evidence Act.[4]

Inimical witness.—The testimony of eye-witnesses cannot be rejected merely on the ground of being inimical to the accused persons.[5]

The evidence of interested or inimical witnesses cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased.[6]

1. Gangabhavani *v.* Rayapati Venkat Reddy, AIR 2013 SC 3681 at p. 3687. Also *see* Mritunjoy Biswas *v.* Pranab *alias* Kuti Biswas, AIR 2013 SC 3334.
2. Sheo Shankar Singh *v.* State of U.P., AIR 2013 SC 2853 at p. 2857.
3. Vijendra Singh *v.* State of U.P., AIR 2017 SC 860 p. 871; Hari Obua Reddy *v.* State of A.P., AIR 1981 SC 82; Kartik Malhar *v.* State of Bihar, (1996) 1 SCC 614 ; Rana Pratap *v.* State of Haryana, AIR 1983 SC 860; State of H.P. *v.* Gian Chand, AIR 2001 SC 2075; Takhaji Hiraji *v.* Thakore Kubersing Chamansingh, AIR 2001 SC 2328 ; Dahari *v.* State of U.P., AIR 2013 SC 308; Manjit Singh *v.* State of Punjab, (2013) 12 SCC 746 and Joginder Singh *v.* State of Haryana, (2014) 11 SCC 335 referred to.
4. Gajendra Somaiah *v.* State of Karnataka, AIR 2007 SC 1355 ; Mukesh *v.* State of N.C.T. of Delhi, AIR 2017 SC 2161 pp. 2312; 2313.
5. State of Maharashtra *v.* Tulshiram Bhanudas Kamble, AIR 2007 SC 3042 at p. 3046; Kulwinder Singh *v.* State of Punjab, AIR 2015 SC 2488.
6. Yogesh Singh *v.* Mahabeer Singh, AIR 2016 SC 5160 ; Also *see* Anil Rai *v.* State of Bihar, AIR 2001 SC 3193 ; State of U.P. v. Jagdeo Singh, (2003) 1 SCC 546 ; Bhagalol Lodh *v.* State of U.P., AIR 2011 SC 2292; Dahari *v.* State of U.P., (2012) 10 SCC 256 ; Raju Balchandran *v.* State of Tamil Nadu, (2012) 12 SCC 701 ; Gangabhavani *v.* Rayapati Venkat Reddy, AIR 2013 SC 3681; Jodhan *v.* State of M.P., AIR 2015 SC (Supp.) 1991; Dalip Singh *v.* State of Punjab, AIR 1953 SC 364 ; Piara Singh *v.* State of Punjab, AIR 1977 SC 2274 ; Hari Obula Reddy *v.* State of A.P., (1981) 3 SCC 675 1; Ramashish Rai *v.* Jagdish Singh, AIR 2005 SC 335.

When there is overwhelming evidence of eye-witnesses available and examination of other witnesses would only be repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. If the witnesses already examined are reliable and their testimony is unimpeachable, the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses. It cannot be laid down an invariable rule that the evidence of interested witness can never form the basis of conviction unless corroborated to a material extent in material particulars by independent witness.[1]

The fact that the witness was inimical towards the accused persons as he had made a complaint to the police that the accused persons had attempted to kill him, it by itself would not be a valid ground to discredit him who is otherwise truthful.[2]

The fabricated first information report in which there was minute description of injury sustained by some persons during incident. There was enmity between witnesses and the deceased. There was common inconsistency and omission in the testimony of witnesses. The presence of accused at the place of incidence was almost doubtful. Thus there was adverse effect on the testimony of witnesses. There was very inconsistency in the statement of prosecution. Since the enmity between witnesses and deceased was well accepted, the testimony of such witnesses should be seen with very much care and caution. If the testimony of partisan witness is not reliable, the accused should not be convicted.[3]

In *Syam Sunder* v. *State of Chhattisgarh*,[4] the relationship between prosecution witness and defence witness were strained. Criminal litigation was pending between the two. It was held by the Supreme Court that testimony of witness needs to be subjected to careful scrutiny.

Victim as eye-witness.—Where the eye-witness to the actual act of abduction is victim himself who had suffered ordeal and his testimony projected stage-wise development after his abduction till his release remained unshaken substantially even by his cross-examination, his testimony was held to be truthful and reliable. Mere omission by him to mention the name of the accused at the first instance is not fatal particularly when he named and identified the accused at trial as one of perpetrators of offences.[5]

Evidence of prosecutrix.—A woman who is victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as

1. Vijendra Singh *v.* State of U.P., AIR 2017 SC 860 p. 871; Hari Obua Reddy *v.* State of A.P., AIR 1981 SC 82; Kartik Malhar *v.* State of Bihar, (1996) 1 SCC 614 ; Rana Pratap *v.* State of Haryana, AIR 1983 SC 860; State of H.P. *v.* Gian Chand, AIR 2001 SC 2075; Takhaji Hiraji *v.* Thakore Kubersing Chamansingh, AIR 2001 SC 2328 ; Dahari *v.* State of U.P., AIR 2013 SC 308; Manjit Singh *v.* State of Punjab, (2013) 12 SCC 746 and Joginder Singh *v.* State of Haryana, (2014) 11 SCC 335 referred to.
2. Manilal Hiraman Chaudhari *v.* State of Maharashtra, AIR 2008 SC 161 at p. 163.
3. Dharm Singh and others *v.* State of Punjab, AIR 1993 SC 319.
4. AIR 2002 SC 3292.
5. Harpal Singh *alias* Chhota *v.* State of Punjab, AIR 2016 SC 5389.

that of an accomplice. The evidence of prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary.[1]

Sole Testimony of prosecutrix.—In case of gang-rape, the conviction can be based on sole testimony of the victim if it is explicitly reliable. There is no need of corroboration of the testimony of the victim. Trivial discrepancies ought not to obliterate otherwise acceptable evidence. The Courts should not attach undue importace to discrepancies. Minor variations in the testimony of the witnesses are often the hallmark of truth. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Minor contradictions/ discrepancies in the statement of the prosecutrix are bound to occur due to efflux of time but such discrepancies and inconsistencies are only natural since when truth is sought to be projected through human, certain inherent contradictions are bound to happen.[2]

Reluctance on the part of prosecutrix aged 9 years in not narrating the first incident of rape by her uncle for three years, the incident coming to light only after she was medically examined for stomach ache and a further delay of three days in lodging of FIR after disclosure of incident is not fatal to the prosecution case as there is possibility of exposing prosecutrix to social stigma, hurting, honour of family and antagonizing other relations. There is no need of corroboration of testimony of prosecutrix unless these are compelling reasons. Seeking corroboration to otherwise reliable testimony of prosecutrix can only add insult to her injury. Victim of rape is not an accomplice.[3]

Absence of injury on eye-witness to crime.—Merely because there is absence of injury on the person of the eye-witness, his presence at the place of occurrence does not become doubtful.[4]

Eye-witness most reliable.—In case where there was charge of murder, the eye witness is most reliable witness. If the Court has acquitted one accused giving benefit of doubt and convicted other accused because of this the credibility of eye witness is not affected.[5]

Sole eye-witness.—The conviction can be based on the uncorroborated testimony of sole eye-witness if it is found reliable.[6]

A reliable evidence of sole eye-witness is sufficient even if medical evidence differ.[7]

The reliable ocular testimony of the witness as to occurrence cannot be discarded only on the ground of absence of motive.[8]

1. State of U. P. *v.* Chhoteylal, AIR 2011 SC 697 at p. 703.
2. Mukesh *v.* State of N.C.T. Delhi, AIR 2017 SC 2161 at pp. 2291, 2292, 2294.
3. State of H.P. *v.* Sanjay Kumar, AIR 2017 SC 835 at pp. 844, 845; Kernel Singh *v.* State of M.P., AIR 1995 SC 2472 and State of Punjab *v.* Gurmit Singh, AIR 1996 SC 1393., referred to.
4. Jalpat Rai *v.* State of Haryana, AIR 2011 SC 2719.
5. Krishna Ram *v.* State of Rajasthan, AIR 1993 SC 1386.
6. Sudip Kr. Sen *alias* Bittu *v.* State of W.B., AIR 2016 SC 310 at p. 313.
7. Edward *v.* Inspector of Police, AIR 2015 SC 2374.
8. Saddik *alias* Lalo Gulam Hussein Sheikh *v.* State of Gujarat, AIR 2016 SC 5101 p. 5107; Hari Shankar *v.* State of U.P., (1996) 9 SCC 40; Bikan Pandey *v.* State of Bihar, AIR 2004 SC 997.

Credibility of testimony of stamped (injured) witness.—The testimony of injured witness cannot be rejected only because they were partisan witness. At the most their statement should be examined with close scrutiny.[1]

Evidence given by an eye witness or injured witness cannot be lebelled as of interested witness. When witnesses are examined after 5 years, discrepancies are bound to creep in. Hence, cannot be disbelieved so as to harm the substratum of prosecution case.[2]

The evidence of injured person lends more credence because normally he would not falsely implicate a person thereby protecting the actual assailant.[3]

The doctor testified that the injury suffered by the witness was a typical bruise. He did not note the colour of injury and described the injury as simple and fresh at the time of medical examination. He also did not note down the depth of the bruise. He admitted that these bruises could be managed with a chemical. It was depressed in the middle and the edges were slightly raised but he admitted that he did not note down these things in the injury report. It was held that discarding of evidence of injured witness by the High Court was total non-application of mind.[4]

In *Anna Reddy Sambasiva Reddy* v. *State of A.P.*,[5] in an incident of murder and rioting the omissions and discrepancies pointed out by the injured witnesses (P.W. 1 and P.W. 3) were only minor and did not shake their trustworthiness, it was held that their testimony could not be discarded on the ground of non-mentioning of specific acts and their credibility could not be affected merely because two of the accused persons were acquitted. Two of the family members of injured witnesses had died and one of such witnesses suffered a grave injury on his head, it was held to be most unlikely that they would have spared actual assailants. Justice R.M. Lodha of the Supreme Court observed :

"The testimony of eye-witnesses carries with it the criticism of being tutored if they give graphic details of the incident and their evidence would be assailed as unspecific, vague and general if they fail to speak with precision. The golden principle is not to weigh such testimony in golden scales but to view it from cogent standards that lend us assurance. In our view, the testimony of P.W. 1 and P.W. 3 is of credence and does not deserve to be discarded on the ground of non-mentioning of specific acts. The trial court and the High Court have given cogent and convincing reasons for accepting the evidence of P.W.1 and P.W. 3. We concur. Merely because A-14 and A-15 got acquittal, in our view, credibility of deposition of P.W. 1 and P.W. 3 is not affected."[6]

The evidence of a stamped witness must be given due weightage as his presence at the place of occurrence cannot be doubted. The testimony of an

1. Nallam Setty Yanadaiah *v.* State of A.P., AIR 1993 SC 1175.
2. B.K. Channappa *v.* State of Karnataka, AIR 2007 SC 432.
3. Vijay Sankar Sinde *v.* State of Maharashtra, AIR 2008 SC 1198 at p. 1199.
4. State of U.P. *v.* Sheo Lal, AIR 2009 SC 1912.
5. AIR 2009 SC 2661.
6. Anna Reddy Sambasiva Reddy *v.* State of A.P., AIR 2009 SC 2661 at p. 2667.

injured witness is accorded a special status as he 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 some one.[1]

Minor contradictions and inconsistencies in the testimony of injured eye-witness does not make him untrustworthy and unreliable.[2]

Improvements made in supplementary evidence by the informant-cum injured witness does not necessarily render evidence untrustworthy when there is no reason for the accused to be false implicated by the informant.[3]

Injured witness—Failure to place the injury report.—The failure of the prosecution to place the injury report from the hospital where the injured witness was first taken for treatment is a lacuna but not fatal as to doubt the entire prosecution case or shake the credibility of the witness.[4]

Sterling witness or witness of Sterling worth.—In *Kuria* v. *State of Rajasthan*,[5] the Supreme Court held—In the context of criminal jurisprudence, the use of the expression 'sterling worth' means a witness worthy of credence, one who is reliable and truthful. This has to be gathered from the entire statement of the witnesses and the demeanour of the witnesses, if any, noticed by the Court. Linguistically, 'Sterling worth' means 'thorough excellent' or 'of great value'. In the context of criminal jurisprudence, this term cannot be of any rigid meaning. It must be understood as a generic term. It is only an expression that is used for judging worth of the statement of a witness.[6]

In *Rai Sandeep* alias *Deepu* v. *State of NCT of Delhi*,[7] which was a case of alleged gang-rape by the two accused persons, there were material contradictions leave alone lack of corroboration in the evidence of the prosecutrix. The Supreme Court held that the examination of prosecutrix after two years could not be an excuse for giving a version totally conflicting with what she stated in her complaint especially when she was the victim of the alleged brutal assault on her. The Court held —To rely on her version in order to support the prosecution case would be totally dangerous. It is only 'sterling witness' whose version can be accepted by the Court without any corroboration and base on which the guilty can be punished. The sterling witness should be of a very high quality and caliber whose version should be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. It is not the status of the witness but the truthfulness of his version that is material. The consistency of the statement right from the starting point of making initial statement and ultimately before the Court is relevant which should be natural with the case of the prosecution *qua* the accused. The witness must withstand the cross-

1. Bhajan Singh *v.* State of Haryana, AIR 2011 SC 2552 at pp. 2561, 2562 ; Abdul Sayeed *v.* State of M.P., AIR 2011 SC (Cri) 964.
2. Mukesh *v.* State for N.C.T. of Delhi, AIR 2017 SC 2161.
3. *Ibid.*
4. Chandrasekar *v.* State, AIR 2017 SC 2600 p. 2604.
5. AIR 2013 SC 1085 ; per Swatanter Kumar J. and Fakkir Mohammad Ibrahim Kalifulla, J.
6. Kuria *v.* State of Rajasthan, AIR 2013 SC 1085, per Justice Swatanter Kumar.
7. AIR 2012 SC 3157.

examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. The version should have co-relation with each and every-one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. It should consistently match with the version of every other witness. It should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. To be more precise, the version of such witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for the offender guilty of the charge alleged.[1]

Partisan or Interested Witness—Credibility

A partisan or interested witness is one who is somehow related to the victim of crime and is interested in the conviction of the accused person. It may be a relative, a friend, servant or master.

In *Sabaskhan Nurkhan Pathan* case there was criminal riot. There was no doubt about the presence of eye witness at the place of incident. This fact that his brother came as a Panch witness and his relatives were accused in previous cases, could not be the basis to make doubt about the veracity of his testimony.[2]

If evidence on record is otherwise trustworthy, rejection of evidence of witness on the ground of being interested witness is not proper.[3]

In a case all the witnesses are relatives of the deceased, their evidence ought not be discarded on that ground. The Court should however be sensitive in scrutinising as to the acceptability of such evidences.[4]

In *Bhagwan Singh and others* v. *State of U.P.*,[5] it was held by Supreme Court that the evidence of related witness cannot be disregarded on the ground of being related to the victim.

The testimony of the witness was in accordance with first information report. The eye witness was injured during the incidence. Accused had accepted the presence of eye witness. His testimony cannot be rejected only because he was interested witness.[6]

Related witness.—The evidence of witnesses who are relatives of the deceased cannot be discarded unless there is infirmity in evidence.[7]

1. Rai Sandeep alias Deepu *v.* State of NCT of Delhi, AIR 2012 SC 3157 at pp. 3163, 3164, per Justice Fakkir Mohammed Ibrahim Kalifulla.
2. Paresh Kalyandas *v.* Sadiq Yaqubbhai, AIR 1993 SC 1544.
3. Munshi Prasad *v.* State of Bihar, AIR 2001 SC 3031.
4. Kajal Sen *v.* State of Assam, AIR 2002 SC 620.
5. AIR 2002 SC 1621.
6. State of U.P. *v.* Jodha Singh, AIR 1989 SC 1822 ; Chandra Mohan Tiwari *v.* State of M.P., AIR 1992 SC 891.
7. Dheram Pal *v.* State of U. P., AIR 2008 SC 920 at p. 927.

Relation of a witness does not affect his credibility as more often than not it would not conceal actual culprit and make allegation against an innocent person.[1]

Relationship of a witness is not a factor to affect the credibility of witness.[2]

The evidence of eyewitnesses present on the spot cannot be disbelieved on the ground of belonging to the same family.[3]

The witnesses were sister and father-in-law of deceased. They were living infront of the house of deceased. They entered the house of deceased after hearing the cries of deceased by breaking the door of house and saw the incident. They were held to be natural witnesses and reliance could be placed upon them.[4]

Thus there can be no hard and fast rule about reliance of testimony of partisan witness. Its reliability should be judged from fact of the case before the Court.

In *State of Rajasthan* v. *Teja Ram and Others*,[5] the Supreme Court held that rejection of testimony of interested witness on the ground that they all were relatives of deceased and no independent witnesses were examined, was not proper. Over insistence as witness having no relation with victim often results in criminal justice going away. When any incidence happens in dwelling house, the most natural witnesses would be inmates of the house.

In *Surendra Pratap Chauhan* v. *Ram Naik and others*,[6] it was held that where due to strained relations between the accused and the complainant, there was groupism in the village, the evidence of eye witnesses who were caste fellows of the complainant need not be discarded on that ground. Their evidence however, needs to be scrutinised with caution.

In *Balwan* v. *State of Haryana*,[7] P.W. 4 and P.W. 5 were the daughter-in-law and daughter of the deceased. They categorised brutal attack made by the appellants on the victims by describing their overt acts during the occurrence. They in their statements recorded during the investigation and testimony stated that the electricity lights were on in the house at the time of occurrence, their presence in the house could not be doubted and they had no difficulty in identifying the assailants. Both of them were grievously injured and admitted in the hospital. There were other two injured witnesses also but they were not examined. Held—Their testimony was natural, cogent and trust-worthy. Non-examination of the other two injured witnesses would not affect the prosecution case. The testimony of injured witness, being a stamped witness is accorded a special status in law. This is a consequence of the fact that injury to the witness

1. Gali Venkataiah *v.* State of A. P., AIR 2008 SC 462 at p. 463.
2. Kalegura Padma Rao *v.* The State of A. P., AIR 2007 SC 1299.
3. Bhagga *v.* State of M. P., AIR 2005 SC 175 at p. 178.
4. Om Prakash *v.* State of Punjab, AIR 1993 SC 138.
5. AIR 1999 SC 1776.
6. AIR 2001 SC 164.
7. AIR 2014 SC 3644 at p. 3648; Mano Dutt *v.* State of U.P., (2012) 4 SCC 79.

is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished.

When the eye-witness is closely related to the deceased the principle of strict scrutiny is to be applied.[1]

Relative witnesses.—Where the three out of six witness were related to the deceased but their presence was very natural and each of them explained good details of occurrence and the testimonies of each of the six witnesses were proved and corroborated by the other and there was no time gap in reporting to police so as to exclude any possibility of tutoring or manipulation, the testimony of eye-witnesses was held to be reliable.[2]

Known witness.—In *Sandeep* v. *State of Haryana*,[3] where the victim and the accused were known to witness, his evidence could be material and could not be criticised on the ground that as witness was knowing the father of accused, he was an interested witness.

In *Hari Singh M. Vasva* v. *State of Gujarat*,[4] the accused inflicted knife blow which caused death of deceased in the house of complainant. The complainant was tenant of the accused. Their intimate relationship could not be stretched to hold that the complainant was interested witness.

In *State of U.P.* v. *Jagdeo*,[5] where the eye witnesses clearly implicated the accused persons and one of the eye witnesses was injured in the incident, the evidence of eye witnesses could not be discarded only on the ground that they were interested witnesses. Most of the time eye witnesses happen to be family members or close associates because unless the crime is committed in public place, strangers are not likely to be present at the time of occurrence. The law is long settled that the mere reason that eye-witness is an interested witness his or her testimony cannot be rejected. The court while considering it can exercise the caution and give reasonable discount if required. But this surely cannot be the reason for discarding evidence of eye witness.

Relationship of a witness does not affect his credibility.[6]

The evidence of a witness cannot be discarded solely on the basis of his relation with deceased and strained relations with accused.[7]

The relatives of the victim cannot be treated as untruthful witnesses. The reason has to be shown if a plea of partiality is raised to show that the witness had reason to shield actual culprit and falsely implicate the accused.[8]

Unless a crime is committed at a public place, strangers are not likely to be present at the time of occurrence. A relative witness more often than not would not conceal actual culprit and make allegation against an innocent person. In

1. Balraj Singh *v.* State of M.P., AIR 2017 SC 2114 p. 2117.
2. Bimla Devi *v.* Rajesh Singh, AIR 2016 SC 158 p. 161.
3. AIR 2001 SC 1107.
4. AIR 2002 SC 1212.
5. AIR 2003 SC 660.
6. D. Sailu *v.* State of A. P., AIR 2008 SC 505 at p. 507.
7. Kapildeo Mandal *v.* State of Bihar, AIR 2008 SC 533 at p. 536.
8. Rajesh Kumar *v.* State of H. P., AIR 2009 SC 1.

case of plea taken by the accused about the interestedness of a witness, materials have to be placed in that regard and the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.[1]

The victim while returning home with cash from his shop was shot dead. The eye-witness who was working with victim in the shop and was accompanying him at the time of incident, identified the assailant in Test Identification Parade who had fired at the victim when he resisted to give the cash bag on demand. The evidence of eye-witness was not rejected merely on the ground that he was related to the deceased.[2]

A close relation would be the last to scare the real culprit and falsely implicate an innocent person.[3]

There is no reason as to why close relatives of the deceased would try to rope someone else as the murderers of their near relation and give up the actual accused. It is against the human conduct.[4]

Simply because eye-witnesses are the family members of the deceased, their evidence cannot *per se* be discarded if their evidence is otherwise cogent and credible.[5]

Where the mother of the deceased deposed about assault by the accused persons on her sons, there could be no dispute about her being an interested witness, as also having exaggerated her version and there was no dispute of her denial of injuries on one of the accused which were ultimately proved, it by itself would not make her evidence unbelievable. She was a mother deposing about the assault on her sons and she certainly would not be interested in allowing the real culprits to go unpunished.[6]

The mechanical rejection of such witness on the ground of being an interested and partisan witness is failure of justice.[7]

Relationship of witness does not affect credibility of witness and such witness could not be said to be not an independent witness. Foundation has to be laid if a plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.[8] Over-insistence on outsider witness having seen nothing as against natural witness often results in criminal injustice.[9]

In *Ram Singh* v. *State of M. P.*,[10] one Ganesh Prasad, the author of FIR, hearing hue and cry of Shakunbai at about 8-9 p.m. came from his house and

1. State Rep. by Inspector of Police *v.* Saravanan, AIR 2009 SC 152 at p. 154 ; Bur Singh *v.* State of Punjab, AIR 2009 SC 157.
2. Amitsingh Bhikamsingh Thakur *v.* State of Maharashtra, AIR 2007 SC 676 at p. 683.
3. Dalip Singh *v.* State of Punjab, AIR 1953 SC 364.
4. State of U.P. *v.* Shobhanath, AIR 2009 SC 2395 at p. 2399.
5. Mohabbat *v.* State of M.P., AIR 2009 SC 1893 at p. 1894 ; Sonelal *v.* State of M.P., AIR 2009 SC 760.
6. Bheru Lal *v.* State of Rajasthan, AIR 2009 SC 3208 at p. 3211.
7. Masalti *v.* State U. P., AIR 1965 SC 202.
8. Poonam Chandraiah *v.* State of A. P., AIR 2008 SC 3209. Also see Bathula Nagamalleswar *v.* State Rep. by Public Prosecutor, AIR 2008 SC 3227; Dinesh Kumar *v.* State of Rajasthan, AIR 2008 SC 3259.
9. Vinay Kumar *v.* State of Bihar, AIR 2008 SC 3276.
10. AIR 2009 SC 282 at p. 283.

saw the appellant, 'R' coming out from the house of the deceased and running away along with 'S', the co-accused. Thereafter Ganesh Prasad came to the house of the deceased and asked Shakunbai, the wife of the deceased regarding the occurrence of the incident. Shakunbai told that 'S' caught hold of the hands of the deceased and 'R' dealt several blows of knife on the person of the deceased causing his death. The prosecution examined nine witnesses including Shakunbai and Dhani Ram, the son of the deceased as eye-witness. The Trial Court found the evidence of eye-witnesses cogent and credible and held both the accused persons guilty and did not find any substance in the plea of the defence that the eye-witnesses being related to the deceased should be discarded. The D. B. of M. P. High Court dismissed the appeal. The Supreme Court also dismissed the appeal and held—Relationship is not a factor to affect credibility of a witness. It is more often than not that 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.[1]

The testimony of eye-witness cannot be discarded by the Court merely on the ground that he happens to be the relative or friends of the deceased. There is no bar in law to examine family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or friend that comes to rescue the injured. If the witness is injured, his testimony stands on a higher pedestal.[2]

Evidence of eye-witnesses cannot be disbelieved only on the ground of being related to the deceased.[3]

The evidence of eye-witnesses merely because they are family members of the deceased cannot be discarded. Relationship is not a factor to affect credibility of witness. In case of false implication, it has to be established.[4]

In an allegation of interestedness of witness, it has to be established. Merely because, the witnesses are relative of the deceased, their testimony are not liable to be rejected on the ground of interestedness when their testimony is otherwise cogent and credible.[5]

Relationship does not affect credibility of a witness for being an interested witness if evidence is otherwise cogent and credible. 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.[6]

P.W. 1, the father-in-law of the deceased saw him being attacked by the accused persons. He identified M.O. 1 and M.O. 2 aruvals (bill hooks). He

1. Ram Singh *v.* State of M. P., AIR 2009 SC 282 at p. 283. Per Dr. Arijit Pasayat J.
2. Shyam Babu *v.* State of U. P., AIR 2012 SC 3311.
3. Ravishwar Manjhi *v.* State of Jharkhand, AIR 2009 SC 1262 at p. 1268.
4. Joginder Singh *v.* State of Punjab, AIR 2009 SC 2263 at p. 2265.
5. State of U.P. *v.* Atul Singh, AIR 2009 SC 2713 at p. 2715.
6. Bhupendra Singh *v.* State of U.P., AIR 2009 SC 3265 at p. 3267.

stated that with M.O. 1, small aruval, the accused Mookkiau (A-1) was attacking the deceased. The accused, Subbiah used M.O. 2, bid aruval. He also noticed a pair of chappals (M.O. 3) and underwear (M.O. 4) near the corpse of his son-in-law. He stated that it was he who had made the complaint to the Police. He also explained the statement made by Subbiah (A-2) one week prior to the incident warning him that his son-in-law called his wife for sex and he would not spare him for this. In his lengthy cross-examination, he withstood his stand and reiterated that he along with two others saw the accused murdering his son-in-law. The Supreme Court held—There is no reason to disbelieve his version. Merely because a witness is relative, his evidence cannot be eschewed. It is the duty of the Court to analyse evidence continuously and scrutinize the same with other corroborative evidence.[1]

The presence of P.W. 5, the brother of the deceased at the place of occurrence was not doubtful in view of the FIR lodged by P.W. 1 and his testimony who turned hostile. It was not in dispute that the homicidal attack was made on the deceased and his mother. It was even confirmed by the testimony of P.W. 1 who turned hostile. The deceased died on the spot and his mother was grievously injured. P.W. 5 took his injured mother for being taken to the hospital immediately after attack on her. It was also confirmed by P.W. 1.

The mother died en route. On the basis of these facts, it was evident that P.W. 5 was present at the scene of occurrence and was an eye-witness to the incident. His testimony was supported in its essential details by the testimony of other details. Although he was a related witness yet he was not an unreliable witness. Regarding the credibility of a related witness, the Court held that the evidence of a related or interested witness should be meticulously and carefully examined. In a case, where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not of law.[2]

If the statement of a witness is found trustworthy and is duly corroborated by other evidence, there is no reason for the court to reject the statement of such witness on the ground that it was a statement of a related or interested witness. The Court has to give credence to the statements of such witnesses who had lost their close relations and had no reason to falsely implicate the accused persons who were also their relations.[3]

An interested witness cannot be disbelieved merely because of exaggeration, if his evidence is otherwise reliable. A relative witness is an interested witness. Witnesses are prone to exaggeration. It is for the trained judicial mind to find out the truth.[4]

1. Mookiah *v.* State, AIR 2013 SC 321 at p. 326.
2. Raju *alias* Balchandran *v.* State of Tamil Nadu, AIR 2013 SC 983 ; also see Dalip Singh *v.* State of Punjab, AIR 1953 SC 364.
3. State of Haryana *v.* Shakuntala, AIR 2012 SC 2123.
4. Vajresh Venkatray Annekar *v.* State of Karnataka, AIR 2013 SC 329.

In a murder case, the prosecution's main reliance was on P.W. 1, the eye-witness to the incident who narrated the earlier story, that the business were thrown on the pathway to the agricultural field and the deceased objected to it. Due to this incident, the accused developed grudge against the deceased. The P.W. 1 stated that on the day of incident, P.W. 1 accompanied the deceased to the mine and when the deceased was breaking stones in the mine, the accused came there with an axe and inflicted several injuries to the deceased by hitting him at his right leg, left hand, left shoulder and on back of his head due to which he fell down on earth and blood started oozing out. One brother along with P. W. 1 was also present in the mine but they did not try to save him out of fear. P.W. 1 ran to the house of the deceased and narrated the incident to the brothers and mother of the deceased. They brought the deceased from the mine and took him to the hospital and P.W. 1 lodged an FIR. The two prosecution witnesses P.W. 2 and P.W. 7 were the brothers of the deceased. Both of them in their evidence affirmed that P.W. 1 had come to their house and informed them that the accused assaulted the deceased with an axe. They also stated that the deceased was rushed to the hospital and in the way the complaint was made to the police by P.W. 1. The evidence of P.W. 1 and the corroborative statement of P.Ws. 2 and 7 were held to support the prosecution case. Though P.Ws. 2 and 7 were brothers of the deceased, their relationship was not a factor to affect credibility of a witness.[1]

It cannot be laid down as an invariable rule that interested witness can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. The evidence of interested witness should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.[2]

The evidence of closely related witnesses is required to be carefully scrutinized and appreciated before making any conclusion based on it regarding the convict/accused. If the evidence has a ring of truth to it, is cogent, credible and trust worthy, it can and certainly should, be relied upon.[3]

Related witness and interested witness—Differentiation :

A close relative who is a natural witness cannot be regarded as an interested witness. The term "interested witness" postulates that the witness must have some interest in having the accused, somehow or the other convicted for some animus or for some other reason.[4]

1. Prahlad Patel *v.* State of M. P., AIR 2011 SC 961 ; Also see Israr *v.* State of U.P., AIR 2005 SC 249 ; S. Sudershan Reddy *v.* State of A. P., AIR 2006 SC 2716 which accepted the principle.
2. Hari Obula Reddy *v.* State of A.P., AIR 1981 SC 82 (a three Judge Bench decision) ; Kanhaiya Lal *v.* State of Rajasthan, AIR 2013 SC 1940.
3. Dhari *v.* State of U.P., AIR 2013 SC 308 ; Himanshu *v.* State, AIR 2011 SC (Cri) 426 ; Ranjit Singh *v.* State of M.P., AIR 2011 SC 255 ; Onkar *v.* State of U. P., AIR 2012 SC (Cri) 474.
4. Kanhaiya Lal *v.* State of Rajasthan, AIR 2013 SC 1940 at p. 1946; Kartik Malhar *v.* State of Bihar, (1996) 1 SCC 614 : 1995 AIR SCW 4540.

In *State of Rajasthan* v. *Kalki*,[1] the Supreme Court differentiated between the "related" and "interested witness" in which the Court took the view that the wife of the deceased could not be called an "interested witness" although she was "related" to the deceased. It held "related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye-witness in the circumstances of a case cannot be said to be "interested". Regarding this view the Supreme Court in *Raju* alias *Balachandran* v. *State of Tamil Nadu*,[2] said that the case needs a rethink as the view expressed in *Kalki* case is too narrow and generalized as the wife of the deceased undoubtedly related to the victim, would be interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused need to be examined with greater care and caution than the evidence of a third party and unrelated witness.

The evidence of interested witnesses cannot be disbelieved merely on the ground that they are closely related to each other or to deceased. The natural witnesses may not be labelled as interested witnesses if they were present to the scene of occurrence and had witnessed the crime.[3]

Trap witness.—A trap witness is a witness who lays down the trap and wants his trap to be successful. A trap witness cannot be treated as an interested witness.[4]

Hostile Witness.—An outright rejection of evidence of a hostile witness is not called for and both parties are entitled to rely on such part of evidence which assists their case.[5]

It is a settled principle of law that the statement of a hostile witness can be relied upon by the Court to the extent it supports the case of the prosecution.[6]

In *Ram Bhukan* v. *State of U.P.*,[7] the Supreme Court held that in a murder case where version of eye-witness regarding identity of assailants appeared to be natural, the evidence of eye witnesses including injured witness is not liable to be discarded on the basis of vague evidence of other witness who was subsequently treated as hostile.

The fact that a witness is declared hostile at the instance of the prosecution, and the prosecution is allowed to cross-examine him, furnishes no justification for rejecting en bloc the evidence of the witness. If a witness

1. AIR 1981 SC 1390.
2. AIR 2013 SC 983.
3. Gangabhawani *v.* Rayapati Venkat Reddy, AIR 2013 SC 3681 at pp. 3687, 3688.
4. D. Velayutham *v.* State, AIR 2015 SC 2506 p. 2510.
5. Sarvesh Narain Shukla *v.* Daroga Singh, AIR 2008 SC 320 at p. 325.
6. Shyamlal Ghosh *v.* State of West Bengal, AIR 2012 SC 3539; Govinda *v.* State, AIR 2012 SC 1292.
7. AIR 1994 SC 561.

deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. The evidence of a hostile witness can be relied upon to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent, he has supported the case of the prosecution.[1]

In *State Tr. P.S. Lodhi Colony* v. *Sanjeev Nanda*,[2] the Supreme Court held that the Court cannot shut their eyes to the reality where the witnesses become hostile. 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.[3]

So where immediately after recurrence two persons reached the place of incident and the deceased told them instantaneously as to who were the assailants and they substantially supported what had been recorded in the FIR which further stand corroborated by the medical evidence and the statements of other witnesses. The statements of these witnesses therefore could not be discredited merely because they turned hostile.[4]

Even if after declaration of two witnesses as hostile witnesses, they took the stand that the accused assaulted the deceased which evidence remained unshaken but they did not take the names of other accused persons, the Court held that the accused could be convicted for murder relying on the evidence of hostile witnesses.[5]

Child witness.—There is no law that the evidence of a child witness should be rejected even if it is found reliable. A child is a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there exists no likelihood of being tutored.[6]

In *Surajit Sarkar* v. *State of West Bengal*,[7] the deceased was murdered at about 8/8.30 P. M. His son was of 12/13 years old. He testified that he was at the place of occurrence when his father was attacked. He was chased away by the accused persons. He feared for his life and went into hiding but it was not clear what his movements were thereafter. He stated that when he came back to the place of occurrence, he saw dead body of his father at around midnight when the inquest proceedings were over. He came back home only at 2.00 a.m. When he told his brother about the incident and narrated the events to

1. Mrinal Das *v.* State of Tripura, AIR 2011 SC 3753.
2. AIR 2012 SC 3104.
3. Ibid at p. 3128.
4. Bable *v.* State of Chhattisgarh, AIR 2012 SC 2621 at p. 2625.
5. Devraj *v.* State of Chhattisgarh, AIR 2016 SC 3498 p. 3504.
6. Algupandi *v.* State of Tamil Nadu, AIR 2012 SC 2405.
7. AIR 2013 SC 807.

investigating officer. The Court held—It is understandable that the child naturally fearing for his life went into hiding but the conduct of his family members is not understandable as they seem not to have taken any action to find out his whereabouts after they came to know about the murder of the deceased. On coming to know of the murder, the primary concern of the family would have been the safety of the child but no efforts appeared to have been made to locate his whereabouts or to search for him or even to inform the Police about his disappearance. Merely because his family acted a little strangely, would not necessarily lead to the conclusion that this witness should not be believed. There was nothing on record to suggest that he was not at the place of occurrence when his father was attacked or that he made up a story about the attack on his father by the appellant. The discrepancy or some gap in his whereabouts between the time of the attack and his returning home by itself is not enough to discredit this witness more so when he was not asked any question on his whereabouts. The discrepancy also does not destroy the substratum of the case of the prosecution. He withstood his cross-examination and therefore he was a credible witness.[1]

Police as witness.—The presumption that every person acts honestly applies as much to a police official as to any other person. No infirmity is attached to the testimony of a person because he is a police official. The rule of prudence may require more careful scrutiny to such Testimony.[2] In *Ram Kumar* v. *State of Delhi*,[3] the accused fired causing death. Incidence took place outside village. There was search and seizure by the police. No independent witness was available near the place of incident. Evidence of police official which was found reliable could not be discarded on the ground that no independent witness had been examined by prosecution.

In *Ravindra Santa Ram Sawant* v. *State of Maharashtra*,[4] the accused had fired gun shot at the victim while he was being taken out from the court by escorting police party. The police party was victim of assault inducted by the accused. Three of the Police witnesses were injured. They could not therefore be described as police witnesses, or official witness, interested in the success of the investigation or prosecution. They were eye witnesses who were injured in the course of incident. In fact the testimony of such witnesses did not require independent corroboration; if otherwise their evidence was found to be truthful and reliable. This was not a case where the police witness had been introduced to bolster the case of prosecution with the view to its success. The injured witnesses and other police witnesses were eye witnesses being members of escorting party. Therefore independent corroboration of testimony was not necessary in the facts and circumstances of the case.

In *Karmjit Singh* v. *State (Delhi Administration)*,[5] it was held by Supreme Court that without corroboration by independent witness, the

1. Surajit Sarkar *v.* State of West Bengal, AIR 2013 SC 807 at p. 817 ; Syed Ahmed *v.* State of Karnataka, AIR 2012 SC 3359 referred to.
2. Girja Prasad *v.* State of M. P., AIR 2007 SC 3106 at p. 3111.
3. AIR 1999 SC 2259.
4. AIR 2002 SC 2461.
5. AIR 2003 SC 1311.

testimony of police personnel could not be relied upon. The presumption that persons act honestly applies as much in favour of police personnel as other persons. It is not thus proper judicial approach to distrust and suspect them without good grounds.

It is not an absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect.[1]

There is no prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon if it inspires confidence. A witness is normally considered to be independent unless he springs from sources which are likely to be tried and this usually means that the said witness has cause to bear such enmity against the accused so as to implicate him falsely.[2]

Evidence of investigation officer.—In *Pan Aduthan* v. *Deputy Director Narcotic Control Bureau*,[3] the Supreme Court held that evidence of Investigation Officer who had searched and arrested the accused and informed the accused about his right was reliable. The fact that Investigation Officer, after 10 years was found involved in corruption case, was irrelevant and did not render his evidence inadmissible.

Chance witnesses.—If by coincidence or chance a person happens to be at the place of occurrence when the incident is taking place, he is called a chance witness and if such a person happens to be relative or a friend of victim or inimically disposed towards accused, then he being a chance witness is viewed by suspicion. Such a piece of evidence is not necessarily excludable, but it does require cautious and close scrutiny.[4]

In *Rana Pratap Singh* v. *State of Haryana*,[5] a witness "B" saw at about 8.30 A.M. the Alto car being driven away by the accused persons along with the deceased boy aged 16 years when the witness had come of his house to see off the children of a relative who had to take rickshaw to school. The witness recognized the accused persons but he could not get suspicions at that moment as it appeared to be a normal transaction, the boy appeared to be going willingly with his kidnappers. The same morning the witness went to pilgrimage and returned in the evening. On return in the evening he tried to contact the deceased's father on telephone but it was continuously engaged. Therefore, the suspicion about anything amiss could not have been raised prior to his return in the evening. The witness "S" having a bakery shop, while he was outside his shop, heard the screams of "bachao bachao". When he looked to that direction, he saw a car being driven at a high speed and a human foot protruding out of the car window. This witness was not in any way connected with the father of the deceased. The Supreme Court held that the presence of

1. Ram Swaroop *v.* State (Government NCT) of Delhi, AIR 2013 SC 2068 at p. 2069; State Government of N.C.T. of Delhi *v.* Sunil, (2001) 1 SCC 652.
2. Madhu *v.* State of Karnataka, AIR 2014 SC 394.
3. AIR 1999 SC 2355.
4. Bahal Singh *v.* State of Haryana, AIR 1976 SC 2032 ; State of Gujarat *v.* Pamu Bhai, 1991 Cr LJ 2226.
5. AIR 1983 SC 680.

witnesses "B" and "S" was natural at the places and they could not be dubbed as chance witnesses. The neighbour of "S" informed the police about the incidence.[1]

Justice Harijit Singh Bedi, observed :

> "Murders are not committed with previous notice to the witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passerby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard evidence of street hawkers and street vendors on the ground that they are "chance witnesses" even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."

When the incident of murder took place near a sugarcane crop at about 6.15 P.M. being a broad daylight, the eye-witnesses present were of the same locality, their presence at the place of occurrence could not be considered to be unnatural and they could not be said to be chance witnesses. They had no cause to give false evidence and their testimony could not be discarded.[2]

The evidence of a chance witness requires a very cautious and close scrutiny and he must adequately explain his presence at the place of occurrence.[3]

In *State of U.P.* v. *Anil Singh*,[4] the Supreme Court held that when a witness figures as an eye-witness, he cannot be categorized as a chance-witness.

The evidence of the witness cannot be discarded on the ground that he was only a chance witness the incident took place when the deceased were travelling on a motorcycle on the road and the witness was also coming on the road on his cycle when he saw the incident. If a murder is committed in a street, only passers-by will be witnesses and their evidence cannot be brushed aside on the ground that they were mere chance witnesses.[5]

Rustic witness.—Where a rustic witness is subjected to fatiguing, taxing and tiring cross-examination for days together, he is bound to get confused and to make some inconsistent statements. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor society is that his evidence should be appreciated as a whole. The discrepancies noticed

1. Rana Pratap Singh *v.* State of Haryana, AIR 1983 SC 680.
2. Ramvir *v.* State of U.P., AIR 2009 SC 3185 at p. 3187.
3. Jarnail Singh *v.* State of Punjab, AIR 2010 SC 3699 at p. 3702.
4. AIR 1988 SC 1998.
5. Hiralal Pandey *v.* State of U. P., AIR 2012 SC 2541 at p. 2547 ; Thangaiya *v.* State of T. N., AIR 2005 SC 1142 and State of U. P. *v.* Anil Singh, AIR 1988 SC 1998 relied on.

in such evidence should not be blown out of proportion ignoring hard realities of village life and give undeserved benefit to the accused who perpetrate heinous crime.[1]

Stock witness.—A stock witness is at the back and call of the police and obliges it with the tailored testimony. He is used by the police in cases of raid. Generally, witness the testimony of such is not given credence by the Court. A Panch witness whose evidence supports the recovery of weapons of offence truthfully and fully corroborated is acceptable. There is no reason to reject the version of the said witness. Merely because he tendered evidence in another case, on that score alone, his evidence cannot be rejected.[2]

Star witness.—The star witness means the principal witness. It is the most important witness in a trial. In the instant case,[3] the presence of star witness at the scene of crime was found doubtful. His name was not mentioned in FIR and his statement was also not recorded by the police although he resided in the house of first informant. His name was also absent in the inquest report and hospital record although he was alleged to have taken the deceased to the hospital but his name was in the list of witnesses. His statement was recorded five years after the incident. Held—His testimony as eye-witness to the incident was rightly disbelieved by the High Court.

In *Sow Bhima Bai* v. *Suresh Dayanand Kesar*,[4] it was held by Bombay High Court that respectability or veracity of witness does not necessarily depend on his status in life...If this logic is allowed to prevail then the person having low status would not find place in temple of justice. Quest should be for truth rather than the status of person. Worth of witness is to be measured on the basis of touchstone of cross examination and yardstick of probability.

Eye-witness—Conduct and behaviour of.—Where the two witnesses in a murder case, while the deceased was being accompanied by them and were his close friends at about 7.30 P.M., ran away from the scene of incident and left the deceased in lurch making the deceased to cringe an auto-driver to take him to hospital and they did not inform about the occurrence to anybody till they were asked by the police in the midnight of occurrence. The conduct of these witnesses was held to be unnatural and their presence at the time of occurrence was doubtful as no close friend of a person involved in the movement allow such a thing to happen to him and there was no explanation for it.[5]

In *Babasaheb Apparao Patil* v. *State of Maharashtra*,[6] the deceased and his driver P.W. 11 and P.W.10 while returning stopped at a hotel to take some snacks. Since vegetarian snacks were not available, they procured beer and had it in hotel. A former servant of the deceased who had left his service and also owed some money was belaboured by them and made to sit in the jeep and was

1. State of U.P. *v.* Krishna Master, AIR 2010 SC 3071 at p. 3072.
2. Nana Keshav Lagad *v.* State of Maharashtra, AIR 2013 SC 3510 at p. 3516.
3. Narinder Pal Singh *v.* State of Punjab, AIR 2017 SC 399 p. 401.
4. AIR 1999 Bom. 379.
5. State of Tamil Nadu *v.* Subair, AIR 2009 SC 1189 at p. 1193, Per Justice Dr. Arijit Pasayat.
6. AIR 2009 SC 1461.

being taken away alongwith them. In the way, the wife of the servant stopped the jeep. While the deceased was talking to the wife of the servant, another jeep came there and four persons alighted with dangerous weapons assaulted the deceased and committed murder. P.W. 10 ran away from the scene and P.W. 11 also ran away when a shot was fired in the air. P.W. 11 instead of informing the police went to the house of his uncle. The argument for the defence was that the trial court and the High Court had not appreciated properly the evidence on record as the conduct of the P.W. 11 was unnatural. It was held by Justice D.K. Jain—

P.W. 10 gave graphic description of the incident. P.W. 11 gave the evidence which corroborated the evidence of P.W. 10. The evidence of these witnesses stood corroborated by the medical evidence. The conduct of P.W. 11 in going to the house of the uncle instead of reporting the incident to the police cannot be said to be unnatural, impairing the creditworthiness of his evidence. The post-event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed as model by every one witnessing such event. Different persons would react differently on seeing crime and their behaviour and conduct would, therefore, be different.[1]

Where the witness, a neighbour of the victim testified that after witnessing the attack on the deceased, he did not bother to inform the family of the victim or anybody else and simply went home and he also deposed that he came to know of the death of the deceased only the next morning, his conduct was held to be quite unnatural and little odd which ought to have been looked into by the Police in investigating the crime.[2]

In *Rana Pratap* v. *State of Haryana*,[3] regarding the unusual behaviour of a witness of the crime of murder, Justice O. Chinappa Reddy of the Supreme Court observed :

"Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimanigible way."

In *Kathi Bharat Vajsur* v. *State of Gujarat*,[4] in a murder case, there were four main contradictions/discrepancies pointed out by the defence counsel in the prosecution story—(1) The two eye witnesses when they were shown the arms recovered emphatically denied that those were not the arms used on the date of incident, (2) the sequence of the shooting by A1 and A2, and who shot whom

1. Babasaheb Apparao Patil *v.* State of Maharashtra, AIR 2009 SC 1461 at p. 1464; Rammi *alias* Rameshwar *v.* State of M.P., (1999) 8 SCC 649 referred to.
2. Surajit Sarkar *v.* State of West Bengal, AIR 2013 SC 807 at p. 814.
3. AIR 1983 SC 680 at p. 682.
4. AIR 2012 SC 2163.

was not clear from their testimony when read along with their statements recorded under Section 161 of the Criminal Procedure Code, (3) the clothes of P.W. 5 which were seized and who is said to have carried the body of the deceased, had absolutely no blood-stains on his clothes, and (4) the conduct of the injured witness running away from the scene of the incident to a room and locking himself, and then running back to the scene of the incident was suspicious and abnormal. It was contended that where two views were possible, the one that was in favour of the accused should be adopted. Since on considering the entire evidence on record, the fact that the eye-witnesses did not recognize the weapons used, made no difference to the prosecution story. Further, in the commotion of the incident, the eye-witnesses might not have clearly seen the weapon. Unusual behaviour of the injured eye-witness would not aid the appellants to punch a hole on the prosecution story.

When faced with an unusual reaction of an eye-witness, the Court must only examine whether the prosecution story is in any way affected by such reaction. If the answer is in negative, such reaction is irrelevant.[1]

Eye-witness as a silent spectator.—Simply because the eye-witnesses were silent spectators and they did not make any attempt to save the life of the deceased from the clutches of the accused persons, their abnormal conduct by itself cannot be a ground to disbelieve and discard their testimony.[2]

Delay in recording the statement of a witness.—In a case of murder, the witness stated that he had come to the place of occurrence 7-8 minutes after occurrence. There was a delay of one and half months by the Police in recording his statement. The contention that it rendered the story suspect was not accepted. Mere delay in the examination of a particular witness does not as a rule of universal application, render the prosecution case suspect. It depends upon the circumstances of the case, the nature of the offence to be investigated, the availability of information by which the investigating officer could reach the witness and examine him and also the explanation, if any, which the investigating officer may offer for the delay. Where the investigating officer has reason to believe that a particular witness is an eye-witness to the occurrence but he does not examine him without any possible explanation for any such omission, the delay may assume importance and require the Court to closely scrutinize and evaluate the version of the witness but where the investigating officer had no such information about any particular individual being an eye-witness to the occurrence, mere delay in examination of such a witness would not render the testimony of the witness suspect or affect the prosecution version.[3]

Mistake in giving period.—Where in a case of dowry death, the witness committed some mistake in giving the period during which dowry demand was made by the accused which was not consistent with the facts on

1. Rana Pratap *v.* State of Haryana, AIR 1983 SC 680.
2. Satvir *v.* State of Uttar Pradesh, AIR 2009 SC 1741 at p. 1744.
3. Sheo Shankar Singh *v.* State of Jharkhand, AIR 2011 SC 1403 at p. 1419 ; Ranbir *v.* State of Punjab, AIR 1973 SC 1409.

record, the Court might not accept it but only for that reason, the court should not make disparaging remarks that there was falsehood on the part of the witness.[1]

Delay in examination of prosecution witnesses during the course of investigation.—The delay in examination of the prosecution witnesses by the police during the course of investigation *ipso facto* may not be a ground to create a doubt regarding the veracity of the prosecution case. Unless the Investigating Officer is categorically asked regarding delay in examination of witnesses, the defence cannot gain any advantage therefrom. The delay in examination of a particular witness does not make the prosecution version suspect. It would depend upon several factors. If the explanation offered for delayed examination of the witness is accepted by the Court as plausible, there is no reason to interfere with conclusion.[2]

Circumstantial evidence.—Circumstantial evidence is that which relates to a series of other facts than the fact in issue : but by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion.

When footprints are found on sand it is inferred that some animate being has gone that way and also from the shape of footprints it can be ascertained as to whether those are of a man or of a bird or of an animal, similarly from the circumstantial evidence the fact in issue is inferred, *e.g.*, (i) Mohd. Sabit was tried under Sections 377 and 302, I.P.C. for having committed sodomy and thereafter having murdered a boy of nine years old. There was no evidence to the effect that any person saw the accused committing the crime the only evidence led in the case was :

(*a*) That the accused was seen with the boy going towards the place where the dead body was found at two stages of the journey.

(*b*) After the alleged murder he was seen without the boy near the place where sodomy was committed and dead body was found.

(*c*) He pointed out that the dead body was recovered in consequence of his pointing out. All these evidence are circumstantial evidence. There being no direct evidence, from the facts mentioned above it may be inferred that the accused committed the crime mentioned above.

Circumstantial evidence is not to be confused with hearsay or secondary evidence. The circumstantial evidence is always direct and primary, *i.e.*, the facts from which the existence of the fact in issue to be inferred must be proved by direct evidence.

In *Meria Venkata Rao* v. *State of A. P.*,[3] it was held that where the prosecution case mainly rested on extra-judicial confession as one of the

1. Kishan Singh *v.* State of Punjab, AIR 2008 SC 233 at p. 238.
2. Abuthagir *v.* State Rep. by Inspector of Police, Madurai, AIR 2009 SC 2797 at p. 2802 ; Ranbir *v.* State of Punjab, AIR 1973 SC 1409 ; Bodhraj *v.* State of J&K, 2002 (8) SCC 45 ; Banti *v.* State of M.P., 2004 (1) SCC 414 and State of U.P. *v.* Satish, AIR 2009 SC 261.
3. AIR 1994 SC 470.

circumstance and the accused confessed commission of alleged crime 20 days after the incident but if no apparent reason was found for accused to do so, the possibility deposing about the confession at the instance of Police could not be ruled out. In the case of circumstantial evidence, all the circumstances should be established by independent evidence and they should form a complete chain, bring home the guilt to the accused without giving room to any other hypothesis. The giving of extra judicial confession was doubtful. Therefore the conviction was set aside.

In *State of Maharashtra* v. *Bharat Fakira Dhiwar*,[1] the Supreme Court held that where all the circumstantial evidence clearly and unerringly pointed to the guilt of the accused and the circumstances strongly lent the support to the evidence of child witness, ignoring and brushing aside those circumstance by the High Court and acquitting the accused was not proper.

Case resting squarely on circumstantial evidence.—Sir Alfred Wills in his book on 'Circumstantial Evidence' has described following rules to be observed in case of circumstantial evidence—

"(1) The facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum* ;

(2) The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability ;

(3) In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits ;

(4) In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt :

(5) If there be any reasonable doubt of guilt of the accused, he is entitled of the right to be acquitted."

A case which rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person.[2]

In *C. Chenga Reddy* v. *State of A.P.*,[3] the Supreme Court observed :

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn, should be fully

1. AIR 2002 SC 16.
2. Manjunath Chennabasappa Madalli *v.* State of Karnataka, AIR 2007 SC 2080 at p. 2082; Hukum Singh *v.* State of Rajasthan, AIR 1977 SC 1063; Eradu *v.* State of Hyderabad, AIR 1956 SC 316; Erabhadrappa *v.* State of Karnataka, AIR 1983 SC 446; State of U. P. *v.* Sukhbasi, AIR 1985 SC 1224; Balwinder Singh *v.* State of Punjab, AIR 1987 SC 350; Ashok Kumar Chatterjee *v.* State of M. P., AIR 1989 SC 1890; Bhagat Ram *v.* State of Punjab, AIR 1954 SC 621; State of U. P. *v.* Ashok Kumar Srivastava, 1992 Cri LJ 1104; Hanumant Govind Nargundkar *v.* State of M. P., AIR 1952 SC 343; Sharad Birdichand Sarda *v.* State of Maharashtra, AIR 1984 SC 1622; State of Rajasthan *v.* Rajaram, 2003 (8) SCC 180; State of Haryana *v.* Jagbir Singh, 2003 (11) SCC 261; Venkatesan *v.* State of Tamil Nadu, AIR 2008 SC 2369 at p. 2370; C. Chenga Reddy *v.* State of A. P., (1996) 10 SCC 193; Padala Veera Reddy *v.* State of A. P., AIR 1990 SC 79.
3. (1996) 10 SCC 193.

proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....."

Proof by circumstantial evidence.—In *Hanumant Govind Nargundkar* v. *State of Madhya Pradesh*,[1] the Supreme Court observed :

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn, should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

Thus in dealing with circumstantial evidence the rule specially applicable to such evidence must be borne in mind. In such cases, there is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of a circumstantial nature the circumstances from which the conclusion of guilt is to be drawn should (1) in the first instance be fully established and (2) all the facts so established should be consistent only with the hypothesis of the guilt of the accused, (3) again, the circumstances should be of a conclusive nature and tendency and (4) they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.[2]

In *Sharad Birdichand Sarda* v. *State of Maharashtra*,[3] the deceased Manju was married to the appellant Sharad Birdichand on 11th February, 1982. The treatment of her husband and his parents was cruel and harsh. She was treated like a labourer. Things did not improve despite her protests to her husband. She wrote her woeful tale to her sister Anju in the letters and also to her friend but requested Anju not to reveal her sad plight to her parents. Nearly

1. AIR 1952 SC 343.
2. Hanumant Govind Nargundkar and another *v.* State of M.P., AIR 1952 SC 343 ; Queen *v.* Horh Nala, 1941 ALJ 416 ; Ram Bharose *v.* State of U.P., AIR 1954 SC 704 ; Mangaleshwar Prasad *v.* State of Bihar, AIR 1954 SC 715 ; Kutuhgli Yadav *v.* State of Bihar, AIR 1954 SC 720 ; Kedar Nath Bhajoria *v.* State of West Bengal, AIR 1954 SC 660 ; Bhagat Ram *v.* State of Punjab, AIR 1954 SC 621 ; Kalua *v.* State of U.P., AIR 1958 SC 180 ; Parshadi *v.* State of U.P., AIR 1957 SC 21 ; AIR 1960 SC 29 ; Chandmal *v.* State of Rajasthan, AIR 1976 SC 917 ; S.P. Bhatnagar *v.* State of Maharashtra, AIR 1979 SC 826 ; Sharad Birdichand Sarda *v.* State of Maharashtra, AIR 1984 SC 1622 ; Lakshmi Raj Seth *v.* State of Tamil Nadu, AIR 1988 SC 1274 ; State of Kerala *v.* Amemu, 1988 Cr.L.J. 107 ; State of U. P. *v.* Ashok Kumar, AIR 1992 SC 840.
3. AIR 1984 SC 1622.

four months after her marriage on 12th June, 1982, she was found dead on her bed. The appellant, Sharad Birdichand Sarda, his brother Rameshwar Birdichand Sarda and their uncle were charged for the offence of murder by poisoning. Accused No. 3 was also charged of offence under Section 201 of I.P.C. read with Section 120-B of I.P.C. On the basis of the letters written by the deceased and her statements to some witnesses and the medical report, the trial Court convicted the appellant and sentenced him to death under Section 302 of I.P.C. and all the three accused to rigorous imprisonment for two years and a fine of Rs. 2,000/- each under Section 120-B, I.P.C., but the Court did not award any sentence under Section 201 read with Section 120-B of I.P.C. The Bombay High Court allowed the appeal of accused Nos. 2 and 3 in full and acquitted them and dismissed the revision application of the State for enhancement of sentences of accused Nos. 2 and 3. The appellant whose conviction and sentence was confirmed by the High Court filed special leave to appeal to the Supreme Court. The Supreme Court gave the benefit of doubt to the accused as the possibility of the deceased having committed suicide by the defence could not be ruled out.

Justice Syed Murtaza Fazal Ali of the Supreme Court held—

"In the cases of murder by administering poison, the Court must carefully scan the evidence and determine the four important circumstances which alone can justify the conviction : (i) There is a clear motive for an accused to administer poison to the deceased; (ii) that the deceased died of poison said to have been administered; (iii) that the accused had the poison in his possession; and (iv) that he had an opportunity to administer the poison to the accused."

"In the instant case, taking an over all picture on this part of the prosecution case the position seems to be as follows :"

"1. If the accused wanted to give poison while Manju was wide awake, she would have put up stiffest possible resistance as any other person in her position would have done. Dr. Banerjee in his postmortem report has not found any mark of violence or resistance even if she was overpowered by the appellant she would have shouted and cried and attracted persons from the neighbouring flats which would have been a great risk having regard to the fact that some of the inmates of the house had come only a short while before the appellant.

2. Another possibility which cannot be ruled out is that potassium cyanide may have been given to Manju in a glass of water if she happened to ask for it. But if this was so, she being a chemist herself would have at once suspected some foul play and once her suspicion would have arisen it would be very difficult for the appellant to murder her."

"3. The third possibility is that as Manju had returned pretty late to the flat and she went to sleep even before the arrival of the appellant and then he must have tried forcibly to administer the poison by the process of mechanical suffocation, in which case alone the deceased could not have been in a position to offer any resistance but this opinion of doctor, has not been accepted by the

High Court, after a very elaborate consideration and discussion of the evidence, the circumstances and the medical authorities, found that the opinion of the doctor that Manju died by mechanical suffocation had not been proved or at any rate it is not safe to rely on such evidence."

"4. The other possibility that may be thought of is that Manju died a natural death. This also is eliminated in view of the report of the Chemical Examiner as confirmed by the postmortem that the deceased died as a result of administration of potassium cyanide."

"5. The only other reasonable possibility that remains is that as the deceased was fed up with the maltreatment by her husband, in a combined spirit of revenge and hostility after entering the flat she herself took potassium cyanide and lay limp and lifeless. When the appellant entered the room he must have thought that as she was sleeping she need not be disturbed but when he found that there was no movement in the body after an hour his suspicion was aroused and therefore he called his brother from the adjacent flat to send for Dr. Lodha."

"In these circumstances, it cannot be said that a reasonable possibility of the deceased having committed suicide as alleged by the defence cannot be safely ruled out or eliminated. It is clear that the circumstances of the appellant having been last seen with the deceased and has administered the poison has not been proved conclusively so as to raise an irresistible inference that Manju's death was a case of blatant homicide."[1]

Circumstantial evidence and Weakness of defence.—Justice Murtaza Fazal Ali in *Sharad Birdichand Sarda* v. *State of Maharashtra*,[2] held—

It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law. However, where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link, it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

Before a false explanation can be used as additional link, the following essential conditions must be satisfied :

1. Various links in the chain of evidence led by the prosecution have been satisfactorily proved;

2. The said circumstance point to the guilt of the accused with reasonable definiteness and ;

1. Fateh Singh Bhagat Singh *v.* State of M.P., AIR 1953 SC 468 ; Shamu Balu Chagule *v.* State of Maharashtra, (1976) 1 SCC 438 and Harijan Meha Jesha *v.* State of Gujarat, AIR 1979 SC 1566 referred to.
2. AIR 1984 SC 1622.

3. The circumstances is in proximity to the time and situation.

If these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend as assurance to the Court and not otherwise. On the facts and circumstances of the present case this does not appear to be such a case. There is a vital difference between an incomplete chain of circumstances and a circumstance, which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. Where the prosecution is unable to prove any of the essential principles laid down in *Hanumant's* case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea.

The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no pure moral conviction.[1]

The conviction can be based solely on circumstantial evidence. The omissions, contradistinctions and discrepancies which do not go to the heart of the matter have not to be given undue importance so as to shake the basic version of prosecution witness.[2]

Five golden principles of circumstantial evidence.—In *Sharad Birdichand Sarda* v. *State of Maharashtra*,[3] the Supreme Court described five golden principles laid down in *Hanumant* v. *State of M.P.*,[4] Panchsheel of the proof of a case based on circumstantial evidence. These rules are as follows:

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahebrao Babade* v. *State of Maharashtra*,[5] where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

1. The King *v.* Horry, (1952) NZLR III quoted with approval. Hanumant *v.* State of M.P., (1952) SCR 1091 ; Dharambir Singh *v.* The State of Punjab, Criminal Appeal No. 98 of 1958 decided on 4.11.58; Chandrakant Nyalchand Seth *v.* The State of Bombay, Criminal Appeal No. 120 of 1957 decided on 19.2.58 ; Tufail *alias* Simmi *v.* State of U.P., (1969) 3 SCC 198 ; Ramgopal *v.* State of Maharashtra, AIR 1972 SC 656 ; Naseem Ahmed *v.* Delhi Administration, (1974) 2 SCR 694/696; Mohan Lal Pangasa *v.* State of U.P., AIR 1974 SC 1144 at p. 1146; Shankarlal Gyarasilal Dixit *v.* State of Maharashtra, (1981) 2 SCR 384 at p. 390 ; and M.C. Agarwal *v.* State of Maharashtra, (1963) 2 SCR 405 at p. 419 referred to. Deonandan Mishra *v.* State of Bihar, (1955) 2 SCR 570 at p. 582 distinguished.
2. Madhu *v.* State of Karnataka, AIR 2014 SC 394.
3. AIR 1984 SC 1682
4. AIR 1952 SC 343.
5. AIR 1973 SC 2622

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that act must have been done by the accused."

In *Padala Veera Reddy* v. *State of A. P.*,[1] the Supreme Court laid down the following tests to be satisfied when a case rests on circumstantial evidence—

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain to complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of 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.

In *Kusum Ankama Rao* v. *State of A. P.*,[2] the Supreme Court has laid down the conditions precedent for basing conviction on circumstantial evidence as follows:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concurred 'must' or 'should' and not 'may be' established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.[1]

1. AIR 1990 SC 79.
2. AIR 2008 SC 2819.

In *Krishna Ghosh* v. *State of West Bengal*,[2] the accused persons were convicted for offences punishable under Sections 498-A, 302 read with Section 34 of I.P.C. The High Court dismissed the appeal. The appeal was made to the Supreme Court on the ground that the case rested on the circumstantial evidence and circumstances did not establish the guilt. The facts were that deceased woman had died of injuries caused by the physical assault on her whose dead body was found in her matrimonial home. The death took place within one year and four months of her marriage. The accused persons were absconding after the incident which was of considerable importance. The injuries noticed by the witnesses were fit with the evidence of autopsy surgeon. The plea of *alibi* set by the appellant could not be established. The report of the doctor was that the death was due to asphyxia resulting from throttling which was ante mortem and homicidal in nature.

The Supreme Court held the appeal without merit and conviction was held to be proper. Dr. Justice Arijit Pasayat observed :

"There is no doubt that the conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence as far back as in 1952."[3]

In *Pandurang Patil* v. *State of Maharashtra*,[4] it has been held that it is not necessary in all cases that the commission of crime be proved by ocular evidence by examining before the Court those persons who have seen the commission of crime. The principle of *factum probandum* may be proved indirectly by means of certain inferences drawn from *factum probans*, *i.e.*, through evidentiary facts. It is further not necessary that all the eye witnesses should specifically refer to distinct acts of each member. Even if there is discrepancy in this regard, the evidence cannot be rejected.[5]

In *Kalua* v. *State of U.P.*,[6] Kalua was charged with the murder of deceased by shooting him with a pistol. The circumstantial evidence proved were : (*a*) few days before the killing of the deceased the accused had held out a threat against him, (*b*) a cartridge was found near the cot of the deceased, (*c*) a pistol was recovered from his house, (*d*) the fire-arm expert gave his opinion that the cartridge found near the cot of the dead body was fired from the pistol produced by the accused. It was *held*, that there could be no room for thinking in the circumstances established in this case, that

1. Kusum Ankama Rao *v* State of A. P., AIR 2008 SC 2819 at p. 2823.
2. AIR 2009 SC 2279 ; Also see Gamparai Hrudayaraju *v.* State of A.P., AIR 2009 SC 2364 ; Raju *v.* State, AIR 2009 SC 2171.
3. Hanumant Govind Nargundkar *v.* State of Madhya Pradesh, AIR 1952 SC 343 ; Mala Devi *v.* State of Uttarakhand, AIR 2009 SC 655 ; Baladev Singh *v.* State of Haryana, AIR 2009 SC 963 ; State of Goa *v.* Pandurang Mohite, AIR 2009 SC 1066 ; Arun Bhakta *alias* Thulu *v.* State of West Bengal, AIR 2009 SC 1228 ; Mohd. Azad Samin *v.* State of West Bengal, AIR 2009 SC 1307. Also *see* Vithal Eknath Adlinge *v.* State of Maharashtra, AIR 2009 SC 2067.
4. AIR 2004 SC 3562.
5. AIR 2006 SC 831.
6. AIR 1958 SC 180.

anyone else other than the accused might have shot the deceased. He was convicted.

In *Parshadi* v. *State of U.P.*,[1] the accused was tried for the murder of Chimman Lal. It was found that there was motive to commit the murder, that the accused held out threats to the father of the deceased, that the appellant had an access to the deceased, that the clothes of the deceased were handed over by the appellant to the police and that the appellant falsely denied several relevant facts which had been proved. It was found that it was consistent only with the guilt of the accused.

Where it was established that (1) there was bitter enmity with the accused and the deceased, (2) that the accused were carrying the dead body of the deceased, (3) they were also carrying *Bhala* and *Pharsa* at that time, (4) it was also proved that the deceased had injuries caused by the weapons which the accused were carrying. The accused could not explain as to how they happened to carry the dead body. The accused were held guilty.[2]

The circumstances proved were that the accused was seen at the place of occurrence and that he could not explain the injuries on his person. The guilt was not held to be proved.[3]

Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of anyother person. The circumstances, from which inference of guilt of accused is to be drawn, have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.[4]

In *State of U.P.* v. *Ravindra Prakash Mittal (Dr.)*,[5] the accused, the husband of the deceased was charged of committing the murder. The medical evidence revealed the cause of death strangulation in the night or early hours of morning and thereafter her body was set on fire after sprinkling kerosene. The defence plea was that the deceased committed suicide when her husband was not at home. The letters written by the deceased to her near relatives showed that the relations between the husband and wife were not normal. The accused used to return to the house in the drunken state in the night. The evidence was also to the effect that deceased used to cook her food separately on being compelled by the accused. There was no direct evidence to connect the accused with the offence of murder. On the basis of evidence, it was found that on the ill-fated night both the husband and wife took their bed in the room which was in their exclusive possession. Barring the duo, no one was in their room and the deceased was found dead in the early morning. All the external and internal symptoms showed that death was homicidal and not suicidal. The

1. AIR 1957 SC 211.
2. Awadhi Yadawa *v.* State of Bihar, AIR 1971 SC 69.
3. Jagta *v.* State of Haryana, AIR 1974 SC 1545.
4. Shivaji *alias* Dadya Shankar Alhat *v.* State of Maharashtra, AIR 2009 SC 56 at p 61 ; Chhattar Singh *v.* State of Haryana, AIR 2009 SC 378, Asraf SC *v.* State of West Bengal, AIR 2009 SC 27.
5. AIR 1992 SC 2045.

accused was sentenced to imprisonment for life and rigorous imprisonment for 3 years under Sections 302 and 201 of I.P.C. with the direction to run the sentences concurrently. The High Court held the accused not guilty on the basis of circumstances but the Supreme Court agreed with the trial Cou. and held the accused guilty on the basis of circumstances. As regards the cause of death, the High Court rejected the defence version and with it, the Supreme Court agreed. The Supreme Court pointed out two important features to support the conclusion that the death was homicidal—

(1) The dead body was found inside the scorched cot frame, and (2) the back portion of the body was not burnt indicating that the deceased could not have poured the kerosene over her body. Further, had the deceased put her to death by burning herself, she should have involuntarily moved hither and thither under the agony and would not be lying on the back motionless. There was no sign of involuntary movement and any evidence of screaming and shricking by the victim at the time of reeling under the terrible shock and agony on being engulfed in flames.

On the basis of evidence, the defence of *alibi* was found to be false. It was for the respondent to come forward with an acceptable and plausible explanation explaining the circumstances under which the deceased had met with her end when the respondent was in the company of his wife on the previous night and was found in the bed room early morning. The conclusion arrived at by the trial Court was therefore, held to be correct.[1] Justice S. Ratnavel Pandian of the Supreme Court stated the following essential ingredients to prove the guilt of an accused by circumstantial evidence—

(1) The circumstances from which the conclusion is drawn should be fully proved.

(2) The circumstances should be conclusive in nature.

(3) All the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence.

(4) The circumstances should, a moral certainty, exclude the possibility of guilt of any person other than the accused.[2]

In *K. T. Palanisamy* v. *State of Tamil Nadu*,[3] the deceased who was passing through tough times and his son also remained ill for a long time was advised by the appellant to perform poojas on the bed of the river. He went to perform pooja at that place along with the accused persons. The deceased at that time was said to be wearing a gold chain and two gold rings. He did not come back. The wife of the deceased to search her husband sought for the assistance of the appellant who in turn advised to perform a pooja. Then the parents of the deceased and his grand-mother left for the temple to perform the pooja in the company of the appellant but they also did not return home. The

1. Chandra Mohan Tiwari *v.* State of Madhya Pradesh, (1992) 1 JT (SC) 258 followed.
2. Ramanand *v.* State of Himachal Pradesh, (1981) 1 SCC 511 ; Gambhir *v.* State of Maharashtra, (1982) 2 SCC 351 ; Erabhadrappa *v.* State of Karnataka, (1983) 2 SCC 330 and Ram Autar *v.* State of Delhi Adm., 1985 (Supp) SCC 440 referred to.
3. AIR 2008 SC 1095.

crime under Section 302/179 IPC was registered and the alleged confession made by the appellant, a gold chain and ring and some bangles were seized in connection with the murder of the deceased's parents and grand-mother were seized from the vendee and jewellery shop. The appellant was held not guilty of the offence of murder of the deceased due to following reasons—

The dead body of the deceased was not recovered. There was no evidence of death. It was not shown that there was enough water in the river or current in the water so as to take a dead body away. All the prosecution witnesses were related to the deceased therefore the chances of their deposing falsely could not be ruled out.

Regarding circumstantial evidence, Justice S. B. Sinha observed:

> "It is now well settled that in a case where an offence is said to have been established on circumstantial evidence alone, indisputably all the links in the chain must be found to be complete ....."[1]

Want of explanation.—It is true, in a case of circumstantial evidence not only should be various links in the chain of evidence be clearly established but the completed chain should be such as to rule out the reasonable likelihood of the innocence of the accused. But in case where the various links have been satisfactorily made out and the circumstance points to the appellants as the probable assailant with reasonable definiteness and in proximity to the deceased as regards time and situation and he offers no explanation which if accepted, though not proved would afford reasonable basis for conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.[2]

Where the deceased died in her bed-room in an unnatural circumstance which was occupied only by her and her husband, the husband was required to offer an explanation in this behalf. Absence of any explanation by the husband would lead to an inference leading to a circumstance against the accused. However, it is not a general law. Much would depend upon the facts and circumstances of each case.[3]

Last seen theory.—In *Kusuma Ankama Rao* v. *State of A. P.*,[4] the accused was having illicit affair with the deceased woman. He inquired the son of the deceased about the whereabout of the deceased. The son of the deceased took the accused to a place where she was working as a labourer. He took her with him asking her son not to follow him. He went with her to a black gram field. They were seen by two other persons while going to the field. His son waited sometime but when she did not come, he went to the hotel where he was working and to the house late night. In the morning, when he did not see her mother, he narrated the facts to his father. Meanwhile, they heard the

1. K. T. Palanisamy *v.* State of Tamil Nadu, AIR 2008 SC 1095 at p. 1097.
2. Deonandan *v.* State of Bihar, AIR 1955 SC 801 ; Mohan Lal *v.* State of U.P., AIR 1974 SC 1144 ; Sharad Birdichand Sarda *v.* State of Maharashtra, AIR 1984 SC 1622.
3. Swamy Shraddhananda *v.* State of Karnataka, AIR 2007 SC 2531.
4. AIR 2008 SC 2819.

people saying that a dead body was lying in the black-gram field. The body was of the deceased and the Investigating Officer on the receipt of FIR conducted Panchnama and held inquest over the report. Meanwhile, the accused confessed his guilt to the village Administrative Officer who after recording and duly attesting his statement took the accused to the police. The conviction of the accused was held to be proper. The High Court of Andhra Pradesh dismissed the appeal. The Supreme Court also dismissed the appeal. On the last seen aspect, the Supreme Court referred to *State of U. P.* v. *Satish*,[1] and *Ramareddy Rajesh Khanna Reddy* v. *State A. P.*,[2] with approval that the last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case, the Courts should look for corroboration.

The witness did not state that he had seen the deceased and accused together but the accused was present at some distance nearby the field where the deceased was working. It was held not to bring the concept of the accused and deceased being seen together last.[3]

The father of the deceased had categorically stated that his son, the deceased, accompanied the accused in the evening and he found the body of his son in the morning. Since the time gap between evidence of last seen and recovery of body was not long, the Court held that the evidence of last seen could not be disbelieved.[4]

In *Krishnan* v. *State of Tamil Nadu*,[5] the deceased was last seen on 4th April, 2004 in the village at a temple. His body was taken from the borewell by the fire service personnel after more than seven days. There was no positive material on record to show that the deceased was last seen together with the accused and intervening period of seven days. There was no body in contact with the deceased. The conviction was held to be not proper.

In *Sangli* v. *State of Tamil Nadu*,[6] the father of the deceased stated that the deceased had received a phone-call who identified himself by his name as appellant and after some conversation the deceased left his house and went out by bicycle informing his parents that he would return soon but he never returned. The deceased was a High School going child and plus 2 student. P.W. 5 was a student of the same school. The accused-appellant who was working for the father of P.W. 5, killed the deceased because he found that the deceased and P.W. 5, were in love with each other. Two knives were recovered at the instance of the accused from his back courtyard. The deceased's bicycle was recovered from the house of P.W. 9 at the instance of the accused. It was a case of blind murder. There was no eye-witness. The accused was roped in the case on the suspicion of triangular love. The father of the deceased admitted that he

1. 2005 (3) SCC 114.
2. 2006 (10) SCC 172.
3. Harishchandra Ladaku Thange *v.* State of Maharashtra, AIR 2007 SC 2957 at p. 2960.
4. Jagroop Singh *v.* State of Punjab, AIR 2012 SC 2600.
5. AIR 2014 SC 2548 at p. 2553.
6. AIR 2014 SC 3756.

had not seen the accused before and he did not recognize his voice and therefore, he could not say that the phone call received was of the accused. The deceased was not seen by any body after leaving the house. In these circumstances, the Court held—Not only the chain of events is incomplete, it becomes somewhat difficult to convict the accused on the basis of aforesaid recoveries. In a case resting completely on circumstantial evidence, the chain of circumstances must be so complete that they lead only to one conclusion, that is the guilt of the accused. It is not safe to record a finding of guilt of the appellant and the appellant is entitled to get the benefit of doubt.[1]

In *Ramesh* v. *State through Inspector of Police*,[2] the appellant was seen by his employee taking the deceased girl aged 8 years, who had gone to his mill to get the grains grinded to the backyard of mill. He sent his employee for lunch. The deceased did not return thereafter. Next morning, her dead body was found. She was raped. Her death occured due to neurogenic shock. The appellant was seen to open his mill at unusual time at 10 p.m. A witness had come to attend the call of nature behind the mill. He saw the appellant near the mill. On being questioned by the witness, the appellant replied that he had opened the mill because the next day was Ramzan and he wanted to finish the work. He was seen throwing garbage in the well. The dead body of the deceased was found in the well. The appellant denied the incriminating circumstances when he was examined under Section 313 of Cr. P.C. On being arrested by the investigation officer, he voluntarily confessed the crime. The investigation officer recorded the same in the presence of witnesses. The appellant took the investigating officer to the place of occurrence. He took the investigating officer to the mill and produced the shawl which was kept under the cover of mahazar which the deceased had worn at the time of occurrence.

The appellant was held guilty by the Trial Court under Sections 376, 302 and 201 I.P.C. The Madras High Court dismissed the appeal. On appeal, the Supreme Court dismissed the appeal and held—

The deceased child was taken to the backyard of the mill. She went missing since then and found dead next morning. He did not explain as to why he took child to the backyard. His confession was corroborated by the recovery of the shawl at the instance of the accused himself in the presence of witnesses. The High Court was justified in holding the accused guilty.[3]

There should not be a long time gap between the deceased and the accused last seen together.[4]

The evidence of the accused last seen with the deceased assumes significant when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal

1. Sangli v. State of Tamil Nadu, AIR 2014 SC 3756 at pp. 3760 , 3761.
2. AIR 2014 SC 2852.
3. Ramesh *v.* State through Inspector of Police, AIR 2014 SC 2852 at pp. 2860, 2861.
4. Nizam *v.* State of Rajasthan, AIR 2015 SC 3430 p. 3435.

as to exclude the possibility of supervening event involving the death at the hands of another.[1]

The deceased was found lying dead in her house in the afternoon. The evidence of the witnesses that the accused persons were last seen in neighbourhood in morning of the incident looking perplexed. The jewellery of the deceased was found in the possession of the accused persons when they alighted from the bus and were arrested. They had no reasonable explanation to offer for their possession of jewellery items.

Held—The last seen evidence cannot by itself establish the guilt of the accused persons under Section 392 of I.P.C. but they are guilty under Section 392 of I.P.C. The recovery of the ornaments of the deceased from the possession of the accused persons, creates a highly suspicious situation but beyond a strong suspicion nothing else follows in the absence of any other circumstance(s) which would suggest the involvement of the accused in the offence/offences alleged. Even with the aid of the presumption under Section 114 of the Evidence Act, the charge of murder cannot be brought home unless there is some evidence to show that the robbery and the murder occurred at the same time *i.e.*, in the cause of the same transaction. No such evidence forthcame. However, on the basis of the presumption permissible under illustration (a) of Section 114 of the Evidence Act, the conviction of the accused under Section 392 of I.P.C. is well founded.[2]

Where the evidence is of the accused last seen with the deceased, the burden is on the accused to discharge his obligation to explain whereabouts of the deceased.[3]

In a murder case, in absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be the basis of conviction. The last seen together and absence of satisfactory explanation would provide additional link to contemplate the claim where other links have been satisfactorily made out and the circumstances point to the guilt of the accused.[4]

Where the allegation against the accused was kidnapping and murder of the deceased and the evidence was that both of them were last seen together in a blue car leaving the temple and thereafter the deceased was not seen until his dead body was found, the evidence was held to be sufficient to answer the circumstances against the accused for establishing last seen theory.[5]

A group of the accused persons were alleged to have attacked the deceased by stabbing on chest and beating by sticks. The eye-witnesses stated

1. Ganpat Singh *v.* State of M.P., AIR 2017 SC 4839 p. 4842; Also *see* Bodhraj *alias* Bodha *v.* State of J. & K., AIR 2002 SC 3164 ; Jaswant Gir *v.* State of Punjab, (2005) 12 SCC 438; Tipparam Prabhakar *v.* State of A.P., (2009) 13 SCC 534 ; Rishipal *v.* State of Uttarakhand, AIR 2013 SC 3641; Krishnan *v.* State of T.N., AIR 2014 SC 2548 ; Kirti Pal *v.* State of W.B., 2015 AIR SCW 3545 ; State of Karnataka *v.* Chand Basha, 2015 AIR SCW 5370; Rambraksh *v.* State of Chhattisgarh, AIR 2016 SC 281; Anjan Kumar Sharma *v.* State of Assam, AIR 2017 SC 2617.
2. Raj Kumar *v.* State (NCT of Delhi), AIR 2017 SC 614 p. 617.
3. Dilip Mallick *v.* State of W.B., AIR 2017 SC 1133 p. 1135.
4. Anjan Kumar Sarma *v.* State of Assam, AIR 2017 SC 2617 p. 2620; State of Goa *v.* Sanjay Thakran, AIR 2007 SC (Supp) 61 Para 29 referred to.
5. Charandas Swamy *v.* State of Gujarat, AIR 2017 SC 1761 p. 1779.

that the injuries were inflicted by the accused persons. There was evidence that all the accused persons participated in beating the deceased and there was no evidence on record to prove that there was an attempt by A-4 having participated in the unlawful assembly which resulted in the death of the deceased that he made any attempt to either stop the incident from taking place, or having found out that he could not prevent it or dissociated himself from the assembly. The injuries according to medical evidence were sufficient to cause death in ordinary course. This act, therefore, reflected a common object. He was held liable to be convicted under Section 326/149 of I.P.C.[1]

The accused, husband, alongwith other co-accused persons was alleged to have committed murder of his wife by strangulating her neck with rope. The deceased was last seen in the company of the accused persons. Her gold ornaments and other articles recovered at the instance of the accused persons were identified by her parents in test identification parade. A piece of rope, stick and knife recovered were proved by the evidence of Panch witnesses. The medical evidence proved ligature marks on neck of the deceased. The friendship between the accused and other accused persons was established. The theory that the accused, husband had given lift to three unknown persons in the car who robbed and assaulted them was held to be unbelievable. The accused persons' conviction under Sections 302 read with 34 of I.P.C. was held to be proper.[2]

Conviction cannot be recorded only on the basis of the accused last seen with the deceased. Normally, "last seen theory" comes into play when the time gap between the accused last seen with the deceased and death of the deceased is so small that it is impossible that any person other than the accused committed the crime. For recording conviction, the last seen together itself is not sufficient. The prosecution has to complete the chain of circumstances and to bring home the guilt of the accused.[3]

Last Seen evidence—Shifting burden of proof.—In *Ashok* v. *State of Maharashtra*,[4] the accused appellant was alleged to have committed murder of his wife and two daughters aged 5-1/2 years old and 3-1/2 years old. He was convicted under Sections 302, 201 and 498-A of I.P.C. It was alleged whenever the further of the wife of the accused visited his house he found that the accused had left to sleep with his wife and the father of the accused and the accused used to talk secretly. The father of the accused used to taunt that his son's wife had a squint in her eye and he could have got a better earning lady as his wife. The Trial Court convicted the accused for the offences under Sections 302, 201 and 498-A of I.P.C. and the High Court of Bombay, Nagpur Bench upheld the conviction. The accused's version was that on the fateful day after taking half day leave, he came to his house. He asked his wife to prepare dinner. He went to a nearby village with his wife and two daughters to

1. Kattukulangara Madhavan (Dead) Thr. L.Rs. *v.* Majeed with Kattukulangara Madhavan (Dead) Thr. L.Rs. *v.* Siddik with State of Kerala *v.* Aboobacker *alias* Arabi Aboobacker, AIR 2017 SC 2004.
2. Shantanu Sitaram *alias* Anil Divakar *v.* State of Maharashtra, AIR 2017 SC 4970 pp. 4972-4973.
3. Rambrakshj *alias* Jalim *v.* State of Chhattisgarh, AIR 2016 SC 2381 p. 2385.
4. 2015 Cri LJ 2036 (SC).

buy clothes and other things. On his way back, the fuel in his bike exhausted so he dropped them at H.P. Gas Station where there was a hotel also and he went to get the fuel at a petrol pump which was at walking distance and returned within 15-20 minutes but he did not find them there. Thinking they might have headed towards village, he went there but did not find them. He lodged a missing report next morning at 9.30 A.M . Three days after the incident, the dead body of a daughter of the accused was found in a river in a decomposed state. According to post mortem report, the death was caused by throttling. The next day, body of his wife was found in the same state from the river and the post-mortem examination revealed the same medical evidence. The conviction was based on circumstantial evidence. After about one month the FIR was lodged against the accused. The Trial Court attributed the motive for the crime that the aunt of the wife of the accused had Rs. 2 lakh in her bank account and she being issueless had nominated her and the accused had made the demand of this money from his wife who refused to ask her aunt. The Trial Court's reasoning was that accused was last seen with his wife and two daughters. The onus of proof was on the accused due to admission of last seen evidence. The Supreme Court allowed the appeal and held—

The last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused etc., non-explanation of death of the deceased, may lead to a presumption of guilt.[1] The question of burden of proof shifting to accused to explain the happening of the incident does not arise. The parents of the wife of the accused did not make any complaint or F.I.R. after recovery of her dead body. There was no explanation of delay in lodging F.I.R. The accused had put a very consistent story at all stages of the case starting from the missing report to the Section 313 statement without any inconsistency which sounds a plausible story and the prosecution has done nothing to really counter this version. The motive of the accused to get Rs. 2 lakh from the aunt of his wife is logically flawed since her death would not make the accused rightfully claimant. Moreover the motive does not explain the murder of two daughters. It was but natural for the accused to search and try to find out his family before going to the police. It was not unnatural to have a registered a missing report the very next morning. Leaving the wife and daughters at gas agency is not so unusual as it would depend from person to person. The only thing proved was demand of dowry by the accused and in-laws. The allegation that the accused would not sleep with his deceased wife on the visit of the parents is the only allegation against the accused.[2]

Circumstantial evidence—Chain.—In *Liyakat* v. *State of Uttaranchal*,[3] the parents of the deceased child of one and half year left the

1. Ashok *v.* State of Maharashtra, 2015 Cri LJ 2036 at p. 2039; Trimukh Marotiu *v.* State of Maharashtra, (2006) 10 SCC 106; Ram Gulab Chaudhary *v.* State of Bihar, AIR 2001 SC 2842; Mika Ram *v.* State of H.P., AIR 1972 SC 2077; Kanhaiya Lal *v.* State of Rajasthan, AIR 2014 SC (Supp) 788; Babu Bhai Patel *v.* State of Gujarat, (2013) 7 SCC 45, referred to.
2. Ashok *v.* State of Maharashtra, 2015 Cri LJ 2036 at pp. 2040, 2041 (SC).
3. AIR 2008 SC 1537.

child in the custody of the accused persons on their offer to look after the child when the parents of the child went to feed fertilizers to the crops standing in the field. When they returned, they could not find the child. They searched the whole day but could not find him. The next morning, they searched the house or hut of the accused persons and saw in the northern corner of the hut foot of small child protruding out of the ground. The father reported to the police. The police recovered the body of the buried child from the northern corner of the hut. Since the accused persons were absolutely silent and no explanation was offered as to how the body came to be buried in their hut which was in their exclusive possession. They were held guilty for murder. Dr. Arijit Pasayat J. of the Supreme Court observed:

> "It has been rightly noted by the Trial Court and High Court that the accused persons were absolutely silent and no explanation was offered as to how the body came to be buried in their hut which was in their exclusive use."
>
> "Similarly the non-explanation of this vital circumstance adds to the chain of circumstances. It is now settled law that if the deceased was in the custody or in the company of the accused, then the accused must supply some explanation regarding the disappearance of the deceased".[1]

Chain of events not laid down with precision.—In a claim of maintenance by an illegitimate child alleged to be of the respondent, the claim was supported by the evidence of the mother and several other villagers. In the birth register, the name of the respondent was shown as her father. In the admission form of the school, the name of the father was kept blank as expected from an unwed mother. The evidence of the illiterate villagers that the claimant's mother and respondent had lived in her house long before could not be rejected on the ground that she had been in Sri Lanka at the relevant time and therefore, could not have been host as the chain of events with precision cannot be laid down by the illiterate villagers with no sense of time.[2]

Appreciation of evidence.—Suspicion, howsoever grave, cannot take place of proof of conviction.[3]

Appreciation of evidence.—In the instant case,[4] the allegation was that the police officials recovered charas along with a pass book containing the name of 'KR' the driver of the vehicle, who fled away but latter on arrested. The car was alleged to be of 'GS' to whom it had been sold by 'SR' although the Registration Certificate was still in the name of 'SR'. 'KR' and 'GS' were prosecuted for the offences under Sections 20 and 29 of N.D.P.S. Act for having contraband. The Trial Court on the basis of evidence acquitted both 'GS' and 'KR' but the High Court held 'KR' guilty. The Supreme Court acquitted K.R. also and aplied the judgement of the Trial Court because recovery was made in the absence of independent witnesses and no test identification was

1. Liyakat *v.* State of Uttaranchal, AIR 2008 SC 1537 at p. 1541 ; State of Rajasthan *v.* Raja Ram, 2003 (8) SCC 180.
2. Dimple Gupta *v.* Rajiv Gupta, AIR 2008 SC 239 at p. 241.
3. Aji Kumar *alias* Aji *v.* State of Kerala, AIR 2017 SC 695.
4. Khekh Ram v. State of H.P., AIR 2017 SC 5255 p. 5267.

carried out. The Police officials and Investigating Officer could not establish the identify of the 'KR' because his arrest was made on the basis of the pass book and not on the basis of his spot identification. The photographs taken from the digital camera to correlate seized article did not record the date of procedure—some photographs were without date and some photographs were with different date.

In *State of Uttarakhand* v. *Jairnail Singh*,[1] the allegation was that the accused assaulted victims using country made pistol out of minor altercation. The informant the brother of the injured did not mention name of the accused in application made to Chief Medical Superintendent of the hospital where the injured was examined. According to the prosecution, the Investigating Officer recovered an unlicensed country made pistol, the weopon used, from the pocket of the accused next day.

The brother of the victim, who was one of the eye-witnesses and the accused were known to each other, did not mention the name of the accused in his aplication immediately after the incident to the Chief Medical Superintendent and instead mentioned therein some *Sardars*. Recovery of weapon next day looked improbable as to why the accused would keep the pistol all along in his pocket after incident for such a long time and roam all over. The weapon alleged to be used in the commission of the offence was not sent for forensic examination with a view to find out whether it was capable of being used to open fire and, if so, whether the bullet/pellet used could be fired from such gun. The seized articles, such as blood-stained shirt and soil were also not sent for forensic examination. The prosecution stated the shot was hit from a very short distance but according to medical evidence, in such case, a particular mark where the bullet hit should have been but no such mark was noticed on the body of the victim. Due to there infirmities, the accused was held not guilty.[2]

The accused-appellant was alleged to have killed the deceased woman, while taking to her sister. On being asked by the deceased's son, the accused told that she had stayed back at the house of her sister. After the date of the incident, the accused absconded. The Court held that it was a pointer to a strong suspicion that the appellant was responsible for the death of the deceased but the strong suspicion in itself was not sufficient to lead the conclusion to the guilt of the accused established beyond reasonable doubt. The material contradictions, in the case of prosecution would entitle the appellant to the benefit of doubt since the prosecution failed to establish a complete chain of circumstances and to exclude every hypothesis other than guilt of the appellant.[3]

Circumstantial evidence—Chain of circumstances not established.—In the instant case of murder, the accused-appellant was alleged to have a manufactured boby trap bomb, converted into it a parcel and

1. AIR 2018 SC (Cri) 143.
2. State of Uttarakhand *v.* Jaimail Singh, AIR 2018 SC (Cri) 143 pp 146, 147.
3. Ganpat Singh *v.* State of M.P., AIR 2017 SC 4839 p. 4843.

sent the same to the deceased which was placed on the stair-case of the house of the deceased. When it was opened by the deceased, it triggered of resulting in an explosion and his instantaneous death.

The motive of murder was stated that wife of the accused already a divorcee after divorcing him married to the deceased and was living with him but she denied her marriage with the deceased and said that she was living in the protection of the deceased. The Court held that prosecution failed to prove motive, access of accused to hand grenade, presence of the accused near spot of occurrence, statement made by him to be voluntary, the type-writer allegedly used by the accused for typing address on parcel. The motive being presumptive evidence only, a weak evidence by itself could not form a chain of circumstances so complete that the only inference possible would be the guilt of the appellant to rule out his innocence.[1]

In *Kanakarajan* alias *Kanakan* v. *State of Kerala*,[2] which was a murder case, the FIR alleged that the accused persons due to past enmity attacked deceased with deadly weapons in a temple compound where ox-procession was going on. The prosecution did not examine credible independent witnesses when it was their own case that there were several shops in the vicinity and several people were present. The police constables present at spot were also not examined. The Punch witness for recovery of weapon turned hostile. The evidence of the prosecution witnesses could not be safely relied because it was not consistent, cogent and corroborated by other evidence. There was no evidence to show any results of forensic examination of the weapon recovered. There was no examination of injuries on the person of the accused who died on next day under suspicious circumstances. Non-conduction of the test identification parade was also a glaring aspect and of relevance when two prosecution witnesses cited as eye-witnesses to the incident deposed that they had not mentioned the name of the accused and that they did not know the accused. Therefore, the case was held to be filled with infirmities and lacunas and in these circumstance the only possible and probable course left open was to grant benefit of reasonable doubt to the appellant.

Where natural and unnatural sexual acts were established on the deceased, a minor girl by the accused from the D.N.A. profiles obtained from two sources (accused and deceased) found to have matched and the post-mortem report, the accused was held to be guilty under Sections 376(2)(f), 377 and 325, I.P.C.[3]

In a murder case, 17 persons were out of the alleged to have assaulted the informant's party with lathis and farsis. Out of the three independent eye-witnesses, two of were not examined and the one independent witness who was examined turned hostile. The Court held the prosecution story doubtful.[4]

1. H.D. Sikand *v.* C.B.I., AIR 2017 SC 164 p. 172; Sharad Birdhichand *v.* State of Maharashtra, (1984) 4 SCC 116 and R. *v.* Hodge, 168 ER 1163 (1838) referred to. Also see State of Himachal Pradesh v. Raj Kumar, AIR 2018 SC 329 p. 131.
2. AIR 2017 SC 2779.
3. Raj esh *v.* State of M.P., AIR 2017 SC 532 p. 536.
4. Hakeem Khan *v.* State of M.P., AIR 2017 SC 1723 p. 1726.

De novo re-appreciation of evidence is not permissible in appeal to the Supreme Court under Article 134 of the Constitution unless the findings of the High Court are wholly perverse or against the evidence.[1]

Non-explanation of injuries on accused by the prosecution.—Non-explanation of an insignificant injury by the prosecution on the person of only one accused does not dislodge the prosecution story. It is well settled that the prosecution is not called upon to explain each and every injury on the person of an accused.[2]

Circumstantial and hearsay evidence.—Circumstantial evidence is not to be confused with hearsay or secondary evidence. The circumstantial evidence, is always direct and primary. The circumstantial evidence is merely a direct evidence indirectly applied, and the direct evidence when closely analysed is found to possess the inferential quality.[3]

(2) Real or personal evidence.—Real evidence is that which is addressed to the sense of the tribunal, as where the object is presented for the inspection of the court. The seriousness of injuries may well be appreciated by the court seeing the injured man. So all the instruments by which offence is alleged to have been committed, all clothes of parties (wet with blood), from which inference may be drawn may be produced at the trial of the case. A court may inspect the locality of the offence to appreciate the evidence. It is alleged that *B* was murdered in front of his house. *C*, *D* and *E* allege that they saw the murder being committed from their houses. The accused contends that the place of murder is not visible from the houses of *C*, *D* and *E*. The court may make the local inspection and thereby know for itself if the witnesses were in a position to see. For obvious reasons there is no class of evidence so convincing and satisfactory to a court as that which is addressed directly to the sense of the court.

Personal evidence is that which is afforded by human agency. *A* is charged with the murder of *B*. Witnesses come and depose before the court to the effect that they saw *A* killing *B*. Here the evidence reaches the court through human agency.

Non-recovery of weapon used at the place of occurrence cannot be a factor to reject the prosecution case as framed against the accused.[4]

(3) Original evidence.—By original evidence is meant the production of the thing proved in its original form, *e. g.*, *L* bases his claim on a sale-deed. The sale-deed is the original evidence.

(4) Unoriginal or second-hand evidence.—Unoriginal evidence is that which derives its force from other. In the above example if instead of the original sale-deed a copy is produced, it would be unoriginal evidence of the deed.

1. Pooranlal *v.* State of M.P., AIR 2017 SC 5048 p. 5052.
2. Chandrappa *v.* State of Karnataka, AIR 2008 SC 2323 at p. 2328.
3. Gulab Chand *v.* Kudi Lal, AIR 1959 MP 151.
4. Md. Jamiluddin *v.* State of West Bengal, AIR 2014 SC 2587; Ram Singh *v.* State of Rajasthan, (2012) 12 SCC 339.

(5) Substantive and non-substantive.—Substantive evidence is that on which reliance can be placed for the decision of a case. A non-substantive evidence is that which either corroborates the substantive evidence to increase its credibility or which contradicts a substantive evidence to discredit it.

(6) Positive and negative evidence.—Positive evidence tends to prove the existence of a fact whereas by a negative evidence non-existence of a fact is proved. But it should be borne in mind that negative evidence is ordinarily no good evidence.[1]

(7) Prosecution evidence and defence evidence—Prosecution witness.—A prosecution witness is that which is the witness of prosecution story. He supports the prosecution case by the testimony as the witness of crime or as expert witness or as an investigating agent etc.

(8) Defence Witness.—Like prosecution witness, the defence witness supports the defence version to shake the reliability of prosecution story.

Proof and evidence.—Evidence of fact and proof of a fact both are not synonymous terms. Proof is the effect of evidence. Proof considered as the establishment of material facts in issue in each particular case by proper and legal means to the satisfaction of the court is effected by—

(*a*) evidence or statements of witnesses, admissions of confessions of the parties, production of documents ;

(*b*) presumptions ;

(*c*) judicial notice ; and

(*d*) inspection.

Standard of proof in Civil and Criminal Cases.—There is the marked difference as to the standard of proofs in Civil and Criminal cases. In the former, a mere preponderance of probability, due reference being had to the burden of proof, is a sufficient basis of decision. But in criminal proceedings a much higher degree of proof is needed before a person is convicted. In civil cases the burden may lie on either of the parties.

The pursuation of guilt ought to amount to a moral certainty. It is better that ten guilty men should escape than that one innocent should suffer.

Presumption of innocence.—In criminal cases, the presumption is that the accused is innocent till the contrary is established. It is often said that it is better that ten guilty men should escape than that one innocent man should suffer. Greatest possible care should be taken by the Court in convicting the accused. If there is an element of reasonable doubt as to the guilt of the accused the benefit of that doubt must go to him. A mere suspicion, however, strong cannot take the place of evidence.[2]

Suspicion, however grave, cannot take place of proof.[3]

1. Rahim Khan *v.* Khurshed, AIR 1957 SC 290, para 40.
2. Sarvan Singh *v.* State of Punjab, AIR 1957 SC 637.
3. Raj Kumar Singh *v.* State of Rajasthan, AIR 2013 SC 3150 at p. 3156.

Suspicion, howsoever grave, cannot take place of proof. There is a large difference between something that 'may be' proved and something that 'will be proved'.[1]

Defect in investigation.—Where the prosecution adduces evidence to establish the guilt of the accused beyond reasonable doubt, the Court cannot acquit the accused on the ground of some defects in the investigation. If the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, the accused is entitled to acquittal.[2]

Distinction between Facts and Evidence

Facts	Evidence
1. Facts are those things which are in existence of which a man is conscious of.	1. Evidence is the means (witness or document) by which the relevant facts are brought before court.
2. Facts can be positive or negative.	2. Evidence can be oral or documentary.
3. Facts can be physical or psychological.	3. Evidence is only expression of facts. Psychological facts are evidence only when they are expressed by means of expression.
4. All facts are not evidence unless they are allowed to be produced before court in any legal proceedings.	4. All evidence are facts in some way or the others.

"Proved."—"Proof does not mean proof to rigid mathematical demonstration, because that is impossible. It means such evidence as would induce a reasonable man to come to a conclusion".[3] All that can be done is to adduce such evidence as that the mind of the tribunal is satisfied that the fact is so. In the ordinary affairs of life, the courts do not require demonstrative evidence. The true question in trials of facts is not whether it is possible that the testimony may be false but whether there is sufficient probability of its truth. "The law does not demand that you should act upon certainties alone.....in our lives, in our acts, in our thoughts, we do not deal with certainties : we ought to act upon just and reasonable convictions founded upon just and reasonable grounds". The word "proof" seems properly to mean "anything which serves either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition". Absolute certainty amounting to demonstration is seldom to be had in the affairs of life and we are frequently obliged to act on degrees of probabilities which fall very short of it indeed.

1. Sujit Biswas *v.* State of Assam, AIR 2013 SC 3817 at p. 3821.
2. Ganga Singh *v.* State of M.P., AIR 2013 SC 3008 at p. 3013.
3. State of West Bengal *v.* Orilal Jaiswal, AIR 1994 SC 1418.

Practical good sense and prudence consists mainly in judging a right whether in each particular case the degree of probability is so high as to justify one in regarding it as certainty and acting accordingly".[1]

In *M. Narsingha Rao* v. *State of Andhra Pradesh*,[2] the Supreme Court held that a fact is said to be proved when after considering the matter before it the Court either believes it to exist or considers its existence so probable that a prudent man ought, under circumstances of particular case, to act upon supposition that it exists. This is the definition of the word 'proved' in Evidence Act. What is required is production of such materials on which the Court reasonably acts to reach the supposition that the fact exists. Proof of facts depends upon degree of possibility of having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

The extent to which a particular evidence aids in proving the fact in controversy is called as probative force. This probative force must be sufficient to induce the court either (*a*) to believe in the existence of the fact sought to be proved, or (*b*) to consider its existence so probable that a prudent man ought to act upon the supposition that it exists. The test is of probability upon which a prudent man may base his opinion.[3] In other words, it is the estimate which a prudent man makes of the probabilities having regard to what must be his duty as a result of his estimate.[4] "On the question of standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials, and that is contained in the definition of 'proved' and 'disproved' in Section 3 of the Evidence Act. The test in each case is, would a prudent man, after considering the matters before him deem the fact in issue proved or disproved ? The court can never be bound by any rule but that which coming from itself dictates a conscientious, and prudent exercise of its judgment".[5]

In criminal cases, the standard of proof required is proof beyond reasonable doubt, yet it need not be absolute. Concept of probability cannot be expressed with mathematical precision as it involves subjective element and it rests on common sense.[6] The burden of proof in criminal trial never shifts. It is settled principle of criminal jurisprudence that the more serious is the offence the stricter is degree of proof, since a higher degree of assurance is required to convict the accused.[7]

Proof and suspicion.—It must be borne in mind that suspicion and conjecture cannot take the place of legal proof.

Matters before it.—In order to decide as to whether a particular fact is proved, the court has to consider the 'matter' before it. The section does not say the 'evidence' before it. Thus the expression, "matters before it" in this

1. Hawkins *v.* Powells Coal Co., 1 QB 988.
2. AIR 2001 SC 318.
3. Pershady *v.* State, AIR 1955 All. 443.
4. Government of Bombay *v.* Sakur, AIR 1947 Bom. 38.
5. Westone and others *v.* Peary Mohan Das, ILR 40 Cal. 898.
6. State of M.P. *v.* Dharkole, 2005 SCC (Cri) 225.
7. Mousam Singh Roy *v.* State of West Bengal, (2003) 12 SCC 377.

definition includes materials which do not fall within the definition of 'evidence' as given in Section 3. The result of local enquiry by a court, material objects brought before the court, the demeanour of witnesses, admission by parties, confessions by the accused, statement of the accused, Commissioner's reports, are not evidence according to the definition given in Section 3. But they are all matters before the court to be considered while coming to conclusion.

"Disproved and not proved".—The definition of the word 'disproved' is a converse of the definition of the word 'proved'. The expression 'not proved' indicates a state of mind in between the two, that is, when one cannot say whether a fact is proved or disproved. It negatives both proof and disproof.

Section 3 of Evidence Act, while explaining the meaning of 'proved', 'disproved' and 'not proved' provides, the standard of proof. This standard should be of ordinary prudence in person, who will judge its existence or non-existence from the standard of circumstances before him (the person of ordinary prudence).

In *Naval Kishor Somani* v. *Poonam Somani*,[1] Andhra Pradesh High Court held that a fact which is proved does not necessarily mean that it is false one. The expression 'proved' is followed by expression disproved. This is followed by definition of 'not proved'. The fact is said to be not proved when it is neither proved nor disproved. On the other hand the fact is said to be disproved when after considering the matters before it the court either believes that it does not exist or considers its non-existence. So probable that a prudent man ought, under the circumstances of this case, to act upon the supposition that it does. The word 'disprove' is akin to the word 'false'. What is disproved is normally taken to be false thing. It will be thus seen that a fact proved is not necessarily a fact disproved. A fact which is 'not proved' may be false or true. A doubt lingers about its truth merely because it is not proved or may not jump to the conclusion that it is disproved. A fact is disproved normally by the person who claims that alleged fact is not true. For proving a fact, burden is always on the person who alleges that the fact is not true.

This section uses a kind of phraseology so that one can find out two states of mind. Firstly, this that about which he arrives at the firm and fixed decision. In other words, he believes firmly on the existence of that fact. Secondly, in which he does not believe in the firmness. In other words, he does not feel the existence of the fact with firm decision but he feels the probableness of the existence of that fact on the standard of a person of ordinary prudence who will work on presumptions (not on certainty). To say that a fact is proved before it, it is necessary that one has to arrive at the required standard of the existence or non-existence of fact and the standard will be the standard of man of ordinary prudence.

A fact is said to be disproved when the Court believes that the fact in question does not exist and that the Court believes the non-existence of that fact from the standard of man of ordinary prudence.

1. AIR 1999 AP 1.

Now, we come to third phrase not proved where the fact is deemed to be not proved from the standard of a person of ordinary prudence. In other words, the man of ordinary prudence neither believes that the fact exists nor he believes that the fact does not exist. Thus the phrase NOT PROVED means neither the fact is proved with certainty nor the fact is believed to exist. The phrase NOT PROVED is between the phrase proved and disproved. And the phrase not proved is the result of careful scrutiny of the person of ordinary prudence that the fact neither exists with certainty nor its non-existence is proved with certainty. It is the provision between existence and non-existence of the fact in the mind of a man of ordinary prudence.[1]

Falsus in uno falsus in omnibus.—This maxim means if a thing is false in respect of one, it must be taken to be false in respect of all. This is some times argued that if a part of the evidence given by a witness has been disbelieved the whole of it should be disbelieved as a rule of law. The maxim does not occupy the status of law in India. This maxim has not received general acceptance in different jurisdiction in India ; nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.[2] Because two of the four accused have been acquitted, though evidence against them was the same as against the appellant would not entitle them to acquittal only on that ground.[3] The witnesses were disbelieved with regard to some accused but they were believed with regard to others. No rule of law was held to have been violated.[4]

In the case of *N. Jayaraman* v. *State of Tamil Nadu*,[5] it was clear that due to mutual enmity amongst Trade Unions the deceased was injured and because of these injuries the deceased died. The prosecution case was that every accused caused the injury. But four accused were released and two were convicted.

It was held by Supreme Court that only because the testimony of some of the witnesses was not sufficient for conviction, the testimony of every (all) witnesses should be rejected, this is not correct and the phrase *falsus in uno falsus in omnibus* is not applied in toto.

In *Harischandra and others* v. *State of Delhi*,[6] the Supreme Court said :

"While appreciating the evidence of witness in a criminal trial, especially in case of eye witness, the maxim *falsus in uno falsus in omnibus* cannot apply and the court has to make effort to sift grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of evidence is found acceptable, remaining part of the evidence has to be

1. Vijaya Singh *v.* State of U. P., AIR 1990 SC 1450.
2. Nisar Ali *v.* State of U.P., AIR 1957 SC 366 ; In re Srisevuga Moopan, AIR 1957 Mad. 750.
3. Gurcharan *v.* State of U.P., AIR 1956 SC 360
4. Gallu Shah *v.* State of Bihar, AIR 1958 SC 813 ; Ram Ratan *v.* State of Rajasthan, AIR 1962 SC 424; Jagdish *v.* State, AIR 1957 All. 532.
5. AIR 1993 SC 777.
6. AIR 1996 SC

scrutinised with the care and the court must try to see whether the acceptable part of evidence gets corroborated from other evidence on record so that the acceptable part can be relied on."

The Supreme Court further said when in a murder trial the evidence of injured eye witness regarding involvement of accused in question was corroborated by earliest recorded statement, one of them at hospital and also by the medical evidence, it could not be held that their statement could not be relied on regarding the accused in question on the ground that such statement were not relied as regarding the other accused who were acquitted by trial court and their acquittal were not interfered with by High Court. It was more so when such acquittal of other accused was based on the ground that there was no clear evidence regarding involvement of those accused and that in FIR it was mentioned that they were standing on the road outside the house in which occurrence took place.

'Falsus in uno falsus in omnibus' (false in one thing, false in every thing) which is not a rule of law but a rule of caution has no application in India.[1] It has not come to occupy the status of law in India. In case, the major portion of evidence is found to be deficient but if the residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of other co-accused persons, he can be convicted. It is the duty of the Court to separate the grain from chaff. Where chaff can be separated from the grain, it would be open to the Court to convict an accused notwithstanding the fact that the evidence has been found to be deficient to prove the guilt of other accused persons.[2]

Falsity of particular material witness or material particular would not ruin it from the beginning to the end. It is the duty of the Court to separate the grain from the chaff and the witnesses cannot be branded as liars. It is open to the Court to convict the accused notwithstanding the fact that the other accused persons are acquitted because of the evidence found to be insufficient. The maxim *falsus in uno falsus in omnibus* is merely a rule of caution. All that it amount to is that testimony in such cases may be disregarded and not discarded. It is only when it is not feasible to separate truth from falsehood due to grain and chaff being 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, the only available cause is to discard the evidence in toto.[3]

1. Kalegura Padma Rao *v.* The State of A. P., AIR 2007 SC 1299 at p. 1302 ; State of Maharashtra *v.* Tulshiram Bhanudas Kamble, AIR 2007 SC 3042; Kulwinder Singh *v.* State of Punjab, AIR 2007 SC 2868 at p. 2869.
2. Poonam Chandraiah *v.* State of A. P., AIR 2008 SC 3209 at p. 3211; see also Bathula Nagamalleswar Rao *v.* State Rep. by Public Prosecutor, AIR 2008 SC 3227; Dinesh Kumar *v.* State of Rajasthan, AIR 2008 SC 3259 ; Dalbir Singh *v.* State of Haryana, AIR 2008 SC 2389 at p. 2391.
3. Bur Singh *v.* State of Punjab, AIR 2009 SC 157 at p. 160; Sohrab s/o Beli Neyata *v.* State of M. P., (1972) 3 SCC 751; Ugar Ahir *v.* The State of Bihar, AIR 1965 SC 277 ; Zwinglee Ariel *v.* State of Madhya Pradesh, AIR 1954 SC 15 and Balaka Singh *v.* State of Punjab, AIR 1975 SC 1962 referred to ; Also *see* Jayaseelam *v.* State of Tamil Nadu, AIR 2009 SC 1901 at p. 1904.

Single Witness.—Under Section 134 of the Evidence Act, no particular number of witnesses is required to prove a case. There is no such rule which says that conviction cannot be based on testimony of only one eye witness if his testimony has passed the test of veracity (credibility). Where the only one eye witness is fully reliable there is no difficulty for the court to base conviction on his testimony only.[1]

Conviction on cogent and reliable evidence.—In a murder case where, some accused persons are acquitted because they had either not been identified by the eye-witnesses or had no role to play in the attack on the deceased but there is the cogent and reliable evidence that the other had attacked, he is not entitled to claim acquittal.[2]

SECTION 4.—"May presume".—Whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it ;

"Shall presume".—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;

"Conclusive proof".—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

COMMENTS

Presumption.—Every fact, on the basis of which a party to a proceeding wants to take judgment, must be proved. No court can while deciding a case, place reliance on a fact unless and until it has been proved according to the rules laid down in the Evidence Act. But the Law of Evidence has provided that a court can take into consideration certain facts even without calling for proof of them, *i.e.*, the court may presume certain things. The word 'presumption' means things taken for granted. In the Law of Evidence the word 'presumption' is used to designate an inference, affirmative or negative, of the existence of some fact, drawn by a judicial tribunal by a process of probable reasoning from some matter of fact either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. The inferences or presumptions are based upon the wide experience of a connection existing between two facts. Presumptions are drawn from the course of nature for instance, that the night will follow day, the summer will follow the winter, death ensues from the mortal wound and the like. They may also be drawn from the course of human affairs, from the usage of the society and transactions in business, *e.g.*, (*i*) A watch of Ram is stolen and soon after it is recovered from the possession of Shyam. There shall be a natural inference (presumption) that Shyam either stolen the watch himself or received it from some thief knowing it to be stolen, (*ii*) From the fact that a letter has been posted, the natural inference (presumption) would be

1. Anil Phukan *v.* State of Assam, AIR 1993 SC 1462.
2. Surjit Sarkar *v.* State of West Bengal, AIR 2013 SC 807.

that it reached the addressee, (*iii*) *A* files a suit against *B* alleging that *B* borrowed Rs. 400 on the foot of the pronote. *B* admits that he executed the pronote : from it the natural presumption would arise that *B* borrowed a sum of Rs. 400 from *A*.

Kinds of presumption.—Presumptions are of three kinds : (1) Presumption of fact or natural presumption, (2) Presumption of law (rebuttable and unrebuttable), and (3) Mixed presumptions or presumption of law and fact.

(1) Presumption of fact.—Presumptions of fact are inferences which are naturally drawn from the observation of the course of nature and the constitution of human mind. The examples given above are the examples of the presumption of fact. Section 114 of the Act and the illustrations under the section are examples of presumption of facts. Sections 86, 87, 88 and 90 also deal with the presumption of fact. These presumptions are generally rebuttable.

(2) Presumption of law.—As mentioned above the presumptions of Law are of two kinds : (i) irrebuttable or conclusive, (ii) the rebuttable presumption of law.

(i) Irrebuttable.—The conclusive or irrebuttable presumptions of law are those legal rules which are not overcome by any evidence that the fact is otherwise. A well-known instance of an irrebuttable presumption of law can be found in Section 82 of the Indian Penal Code, wherein it is laid down that "Nothing is an offence which is done by a child under seven years of age". There the rules of estoppel are the other examples of this sort of presumption. Sections 115, 116 and 117 of the Act deal with the estoppel. There is said to be an estoppel where a party is not allowed to say that a certain statement of fact in nature whether in reality it is true or not. If in a criminal case it is proved that the accused is below seven years in age he shall be presumed innocent, no evidence will be allowed to prove that the accused was guilty. Where a man having no title obtains possession of land under lease by a man in possession who assumes him to give a title as a tenant he cannot deny his landlord's title. Thus it is clear that this kind of presumption of law is conclusive.

(ii) Rebuttable presumption.—This kind of presumption arises when presumptions of law are certain legal rules, defining the amount of evidence requisite to support a particular allegation, which facts being proved, may be either explained away or rebutted by evidence to the contrary, but are conclusive in absence of such evidence. Legal presumptions of this kind are definitions of the quantity of evidence sufficient to make a *prima facie* case : in other words of the circumstances under which the burden of proof lies on the opposite party. A few examples will suffice. Thus a man is presumed innocent until he is proved guilty ; a child if born in a legal wedlock shall be presumed to be legitimate and one who questions his legitimacy must disprove it ; if a child is born during divorce he must be presumed illegitimate unless the contrary is proved ; again the presumption of law is that a man is alive unless nothing has been heard about him for 7 years when the presumption is that he is dead. Sections 107, 108, 112 are the examples of this presumption.

The distinction between presumption of fact and Presumption of Law is that the former is discretionary while the latter is mandatory.[1]

Distinction between Presumption of Fact and Presumption of Law

Presumption of Fact	Presumption of Law
1. Presumption of fact is based on logic, human experience and law of nature.	1. Presumption of law is based on provisions of law.
2. Presumption of fact is always rebuttable and goes away when explained or rebutted by establishment of positive proof.	2. Presumption of law is conclusive unless rebutted as provided under rule giving rise to presumption.
3. The position of presumption of fact is uncertain and transitory.	3. The position of presumption of law is certain and uniform.
4. The court can ignore presumption of fact however strong it is.	4. The court cannot ignore presumption of law.
5. The presumptions of fact are derived on basis of law of nature, prevalent customs and human experience.	5. Presumption of law are derived on established judicial norms and they have become part of legal rules.
6. The Court can exercise its discretion while drawing presumption of fact *i.e.* presumption of facts is discretionary presumption.	6. Presumption of law is mandatory *i.e.* court is bound to draw presumption of law.

(3) Mixed presumptions.—Mixed presumptions of law and fact are chiefly confined to the English law of real property so it is not necessary to presume subject here. The Indian Evidence Act has made provisions for the presumptions of fact and the presumptions of law. In certain sections of the Evidence Act it has been provided that "the court may presume" certain facts. In some other sections the words "the court shall presume a fact" has been used. There are certain sections in which it is said that a certain fact is conclusive proof of a certain another fact. Section 4 of the Evidence Act controls these sections and gives a direction to courts as to how to proceed under those sections of the Evidence Act.

"May presume".—Whenever it is provided that the court may presume a fact, the court may take notice of the fact without calling for its proof or may call upon a party to prove that fact. Here the court has discretion to presume a fact or not to presume it. Section 90 of the Evidence Act provides that when a document purporting to be thirty years old is produced from a proper custody, the court may presume that the document was signed and written by the person by whom it purported and is said to have been written and signed. Generally

1. Gitika Bagchi *v.* Subbrao Bagchi, AIR 1996 Cal. 246.

when a document is filed in a case it is to be proved by adducing evidence as to who wrote the deed and who signed it. Unless and until it is done, the document cannot be read in evidence. If a document produced before the court is thirty years old, the court may dispense with the proof of it and read the document in evidence without calling for the proof of it. The court may also call for the proof of it and may order that the document will not be read in evidence without being proved. Section 88 of the Evidence Act lays down that when a telegram has been received the court may presume that the message forwarded from a Telegraph Office to a person is the same which was delivered for transmission at the office from which the message was sent.

"Shall presume".—Whenever there is a provision to the effect "that the court shall presume a fact" the court cannot exercise its discretion. It is compelled to take the fact as proved, *i.e.*, it shall have to presume the fact. But in this case the court will be at liberty to allow the opposite party to adduce evidence to disprove the fact so presumed and if the opposite party is successful in disproving it, the court shall not presume the fact. In the Indian Evidence Act the words "shall presume" indicate that presumption therein is unrebuttable. Section 89 of the Evidence Act provides "that the court shall presume that every document, called for and not produced after notice to produce, attested, stamped and executed in the manner required by law".

Expressions "shall" and "may" explained.—According to Section 4 wherever the expression "may presume" has been used in the Act, a discretion has been given to the Court to presume a fact or refuse to raise such a presumption. If the Court finds that it is a fit case for raising presumption, in that event, such facts stand proved unless and until it is disproved by the other side. According to this section, in cases where a discretion lies with the Court and it refuses to exercise discretion, then it may call upon the parties to prove the fact by leading evidence. In those sections where the expression has been used that the Court "shall presume", in that event no discretion has been left with the Court and there is legislative command to it to raise a presumption and regard such fact as proved unless and until it is disproved. In such an eventuality, the question of calling upon the parties to formally prove document does not arise.[1]

Presumption and proof distinguished.—Proof considered as the establishment of material facts in each particular case by proper and legal means to the satisfaction of the court is effected by (*a*) evidence or statement of fact, admission or confession of the party as also production of the document ; (*b*) presumption ; (*c*) judicial notice and inspection, etc.

Every fact on which judicial judgment may be given must be proved. But the Law of Evidence has provided that court can take into consideration certain facts without calling for proof of them, *i.e.*, the court may presume certain things. The word presumption means a thing taken for granted. In the Law of Evidence the word "presumption" is used to designate an inference, affirmative or negative of the existence of certain facts drawn by a judicial tribunal. Thus

1. Haradhan Mahatha *v.* Dukhu Mahatha, AIR 1993 Pat. 129.

proof is the final stage in a proceeding which is arrived at by evidence or presumption. Presumption is one of the means of effecting proof.

Conclusive proof.—Whenever it is mentioned that a fact is a "conclusive proof" of another fact, the court has no discretion at all. It cannot call upon a party to prove that fact nor can it allow the opposite party to adduce evidence to disprove the fact. Section 41 of the Evidence Act provides *inter alia* that a final judgment, order or decree of a competent court in exercise of matrimonial jurisdiction is a conclusive proof of that legal character. For example, suppose *A* files a suit in a court of law for declaration that *B* is his legally married wife. The court gives a decree in favour of *A* and declares that *B* is his wife. After a few years in the lifetime of *A*, *B* files a suit against *D* for the property of one *C*, alleging that she is widow of *C*. In this case there will be an issue whether *B* is the wife of *C*. *D* files the copy of the judgment of the previous case (*A* versus *B*). This judgment will prove that *B* is legally married wife of *A*. Now that *B* is legally married wife of *A* is a conclusive proof of the fact that she is not the wife of *C*. Therefore, after the judgment mentioned above has been filed, the court cannot allow *B* to adduce evidence to prove that she is wife of *C* and not of *A*.

"Conclusive proof" in Section 4 of the Evidence Act shows that by declaring certain fact to be conclusive proof of another an artificial probative effect is given by the law to certain facts and no evidence is allowed to be produced with a view to combating that effect. These cases generally occur when it is against the policy of Government or the interest of society that a matter may be further open to dispute.[1]

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1. Din Dayal *v.* State, AIR 1959 All. 420 ; Gopal Krishna *v.* Secretary, Board of Revenue, AIR 1954 Mad. 362.

CHAPTER II

OF THE RELEVANCY OF FACTS

SECTION 5.—Evidence may be given of facts in issue and relevant facts.—Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(*a*) *A* is tried for the murder of *B* by beating him with a club with the intention of causing his death.

At *A*'s trial the following facts are in issue :—

A's beating *B* with the club ;

A's causing *B*'s death by such beating ;

A's intention to cause *B*'s death.

(*b*) A suitor does not bring with him and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

COMMENTS

Scope.—This section declares that in a suit or proceeding evidence may be given of the existence or non-existence of (1) facts in issue, and (2) of such other facts as are declared to be relevant in the following sections (Sections 6 to 55).

"And of no others."—This section excludes everything which is not declared relevant under any of the Sections 6 to 55.[1] All evidence tendered must be shown to be admissible under some of the following sections of the Chapter. A party trying to adduce a particular evidence has to show that the evidence desired to be adduced is relevant under one or more of the Sections 6 to 55.[2] Evidence excluded by Evidence Act as inadmissible should not be admitted merely because it may be essential for ascertainment of truth.[3] Any fact intended to be established has to be found to be relevant under a provision

1. R. *v.* Panchu, ILR 47 Cal. 671 ( ) ; R. *v.* Abdullah, ILR 7 All. 385 (FB).
2. Dwijesh *v.* Naresh, AIR 1945 C . 492.
3. Nanday *v.* Rakhala Anande, AIR 1941 PC 17.