Application of

Scientific Tests in the Investigation of Crimes

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

1(A). Importance of proper & scientific investigation of crimes : The crime scene has to be scientifically dealt with without any error. In criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime. The investigating officer may be guarded against potential contamination of physical evidence which can grow at the crime scene during collection, packing and forwarding. Proper precaution has to be taken to preserve evidence and also against any attempt to tamper with the material or causing any contamination or damage. The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. The investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative

methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc. Whereas forensic evidence is free from those infirmities. Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence and to effectively deal with criminal cases based on scientific evidence. It is not that in all cases the scientific evidence is the sure test, but the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence, cannot be underestimated. Scientific evidence encompasses the so-called hard science, such as physics, chemistry, mathematics, biology and soft science, such as economics, psychology and sociology. Opinions are gathered from persons with scientific, technical or other specialized knowledge, whose skill, experience, training or education may assist the court to understand the evidence or determine the fact in issue. Many a times, the court has to deal with circumstantial evidence and scientific and technical evidence often plays a pivotal role. See : **Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509.**

1(B). **Consequences of deficiency into investigation** : It is often noticed by the courts dealing with the criminal cases that the investigating officers commit many mistakes and latches in the investigation of crimes and such mistakes and shortcomings continue to be unnoticed and unchecked upto the police officers of the higher levels of the police department. Some of the mistakes and the shortcomings often left behind by the investigating agencies is sometimes due to ignorance of exact and real position of law, judicial pronouncements of the courts particularly of the Supreme Court and the own High Court and

sometimes because of neglectful attitude, carelessness and other extraneous reasons. Lack of proper training to augment the efficiency and performance level of the police personnel engaged in the task of investigations and also for non-availability and non-supply of the relevant legal material and the judicial pronouncements of courts to the investigating agencies do hamper the course of proper and effective investigation of crimes. The result of incomplete or defective investigations often results into the acquittal of the accused even if he was involved in commission of heinous offences. With the change of technology and fast pace of development in the pattern of commission of different natures of crimes, the criminals have also not only gone high tech in the commission of the offences but in many cases it is often noticed that the technically educated criminals are much ahead than the police in the commission of offences and getting spared because of the laxity of and ignorance of modern techniques of crime detections on the part of investigating agencies. The fact of the police force being ill equipped and under staffing of the police agency alongwith the lack of proper training particularly relating to the laws concerning the process of investigation are also the major causes attributing towards the incomplete and defective investigations. The shortcomings, loopholes and weaknesses that are left behind by the investigating agencies in the investigation of crimes do make the case set-up by the prosecution in the court is ultimately found on weak footings and the perpetrators of the crimes stand benefited in terms of getting scot-free of their liability. The ultimate sufferer of such weak and defective investigations are not only the victims of the offence or their dependents but society as a whole is the ultimate sufferer of the same. The role of the courts starts and depends upon the edifice of a criminal case built and set-up by the investigating agencies. The fate of the criminals and their cases in the court depends upon the quality of investigations and the evidence collected against them by the investigating agencies during the investigating of crimes. Unless the police personnel

engaged in the task of investigation of crimes are aware of need of collection of relevant and material evidence against the criminals during the investigations and that too keeping in view the nature and magnitude of the offences committed by the offenders, the charge sheet or the case submitted and set-up by the investigating agencies before the court would be weaker and chances of deriving its benefit by the accused would be higher. The task of collection of relevant and material evidence according to the nature and requirement of particular offences is the duty of the investigating agencies and if they have failed in doing that with required level of professionalism and efficiency, the courts during enquiry and trial of such cases set-up on weaker footings can play only very little role in preventing the harm being caused to the cause of justice. The proper investigation of the crimes is therefore all the more necessary for proper prosecution of the accused persons but for success of the investigating agencies in the trial of cases as well. The various factors and causes responsible for weaker, defective and incomplete investigations by the investigating officers can be studied under the heads noted below :

2(A). **Procedures & powers of police officers for investigation of crimes :** Sec. 154 to 176 of the Cr.P.C. provides for the powers and procedures of the investigating officers for conducting investigation of crimes. These sections in Cr.P.C. are as under :

Sec. 154--- Information in cognizable cases.

Sec. 155--- Information as to non-cognizable cases and investigation of such cases.

Sec. 156--- Police officer's power to investigate cognizable case.

Sec. 157--- Procedure for investigation.

Sec. 158--- Report how submitted.

Sec. 159--- Power to hold investigation or preliminary enquiry.

Sec. 160--- Police officer's power to require attendance of witnesses.

Sec. 161--- Examination of witnesses by police.

Sec. 162--- Statements to police not to be signed & used as evidence.

Sec. 163--- No inducement to be offered.

Sec. 164--- Recording of confessions and statements.

Sec. 164-A-- Medical examination of the victim of rape.

Sec. 165--- Search by police officer.

Sec. 166--- When officer-in-charge of police station may require another to issue search-warrant.

Sec. 166-A-- Letter of request to competent authority for investigation in a country or place outside India.

Sec. 166-B-- Letter of request from a country or place outside India to a Court of an authority for investigation in India.

Sec. 167--- Procedure when investigation cannot be completed in twenty-four hours.

Sec. 168--- Report of investigation by subordinate police officer.

Sec. 169--- Release of accused when evidence deficient.

Sec. 170--- Cases to be sent to Magistrate when evidence is sufficient.

Sec. 171--- Complainant and witness not to be required to accompany police officer and not to be subjected to restraint.

Sec. 172--- Diary of proceedings in investigation.

Sec. 173--- Report of police officer on completion of investigation.

Sec. 174--- Police to enquire and report on suicide, etc.

Sec. 175--- Power to summon persons.

Sec. 176--- Inquiry by Magistrate into cause of death.

2(B). IO can summon documents or information u/s 91 CrPC for investigation: When investigating officer is in need of certain documents/information for verification with reference to investigation, it is but proper to produce all materials u/s 91 CrPC. There is no need to approach the High Court to obtain a specific direction for each and everything. See : **CBI Vs. V. Vijay Sai Reddy, (2013) 7 SCC 452.**

3. **Certain major factors responsible for defective or incomplete investigations** : Investigating officers commit many mistakes and leave behind many shortcomings during the investigation of crimes. Certain important causes behind such defective investigations are enumerated as under :

(i) Ignorance of the relevant law relating to investigations.

(ii) Lack of proper training of the investigating officers.

(iii) Non-availability of scientific and technical assistance.

(iv) Work load

(v) Non-professionalism & perfunctory approach towards investigation.

(vi) Delayed reaching to the scene of crime.

(vii) Transfer and change of investigating officers during investigations.

(viii) Investigating agencies being ill equipped.

(ix) Non-accountability of I.Os. in the event of loosing the case.

(x) Extraneous factors.

4. **Certain common faults and shortcomings often committed by investigating officers during investigations** : Some of the common mistakes, negligence and shortcomings into investigation committed by the investigating officers are as under :

5(A). **Blood stained earth & clothes etc. not taking into possession from the spot** : It is often seen that the investigating officers do not collect blood stained earth, clothes and other incriminating articles from the scene of the crimes which costs shadow of doubt on the case of prosecution. However if the case of prosecution is otherwise proved beyond all reasonable doubts by the ocular reliable testimony or by credible circumstantial evidence, the liability for guilt can still be fastened to the neck of the accused even if the blood stained earth, clothes, weapons etc. from the place of occurrence were not taken by the investigating officer into possession and not sent for examination to expert and not produced before the court during trial. See :

1. **State of W.B. vs. Swapan Kumar, 2009 Cr.L.J. 3851 (Cal.—D.B.)**
2. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

5(B) **Blood stained earth & clothes when not sent for chemical examination & its effect?** : Non sending of blood stained earth and clothes of the deceased or injured to chemical examiner for chemical examination is not fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. **Maqbool vs State of A.P., AIR 2011 SC 184.**
2. **Sheo Shankar Singh vs. State of Jharkhand, 2011 CrLJ 2139(SC)**
3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

5(C) **Blood stained earth & clothes when not sent for chemical examination & its effect?** : Non sending of blood stained earth and clothes of the deceased or injured to chemical examiner for chemical examination is not fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. **Maqbool vs State of A.P., AIR 2011 SC 184.**
2. **Sheo Shankar Singh vs. State of Jharkhand, 2011 CrLJ 2139(SC)**
3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

5(D) **Blood stained earth & clothes when not sent for chemical examination & its effect?** : Non sending of blood stained earth and clothes of the deceased or injured to chemical examiner for chemical examination is not fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. **Maqbool vs State of A.P., AIR 2011 SC 184.**
2. **Sheo Shankar Singh vs. State of Jharkhand, 2011 CrLJ 2139(SC)**
3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

5(E). **<u>Non-availability of Blood Group/ Blood Marks/ Blood Stains report and its effect</u> :** If the evidence of eye witnesses is otherwise trust worthy, non-availability or non-ascertain ability of Blood Group/ Blood Marks /Blood Stains report can not be made a basis to discard the witnesses who otherwise inspire confidence of the court and are believed by it. See : **Keshavlal vs. State of M.P., (2002)3 SCC 254.**

6(A). **<u>Incomplete Or Defective Investigation & Its Effect</u> :** Any irregularity or deficiency in investigation by I.O. need not necessarily lead to rejection of the case of prosecution when it is otherwise proved. The only requirement is use of extra caution in evaluation of evidence. A defective investigation cannot be fatal to prosecution where ocular testimony is found credible and cogent :

1. **C. Muniappan Vs. State of TN, 2010 (6) SCJ 822**
2. **Acharaparambath Pradeepan vs. State of Kerala, 2007(57) ACC 293 (SC)**
2. **State of Punjab vs. Hakam Singh, (2005) 7 SCC 408**
3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**
4. **Dashrath Singh vs. State of U.P., (2004) 7 SCC 408**
5. **Visvesaran vs. State, (2003) 6 SCC 73**
6. **State of Rajasthan vs. Teja Ram, 1999(38) ACC 627 (SC)**
7. **Leela Ram vs. State of Haryana, (1999) 9 SCC 525**

6(B). **<u>Weapons of assault, cartridges, empties & pellets when not sent for ballistic examination & its effect?</u>** : Non sending of weapons of assault, cartridges and pellets to ballistic experts for examination would not be fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. **Maqbool vs State of A.P., AIR 2011 SC 184**
2. **State of Punjab vs. Hakam Singh, 2005(7) SCC 408**

3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

6(C). **Investigating Officer when not examined? :** It is always desirable for prosecution to examine I.O. However, non-examination of I.O. does not in any way create any dent in the prosecution case much less affect the credibility of otherwise trustworthy testimony of eye-witnesses. If the presence of the eye-witnesses on the spot is proved and the guilt of the accused is also proved by their trustworthy testimony, non-examination of I.O. would not be fatal to the case of prosecution :

1. **Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068 (SC)**
2. **Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)**
3. **Bahadur Naik vs. State of Bihar, JT 2000 (6) SC 226**
4. **Ambika Prasad vs. State of Delhi Administration, JT 2000 (1) SC 273**
5. **Behari Prasad vs. State of Bihar, JT 1996 (1) SC 93**
6. **Ram Deo vs. State of U.P., 1990(2) JIC 1393 (SC)**

Note: In the case of **Shailendra Kumar vs. State of Bihar, 2002(44) ACC 1025 (SC),** the Hon'ble Supreme Court has held that presence of the I.O. at the time of trial is must. It is the duty of sessions Judge to issue summons to the I.O. if he failed to be present at the time of trial of the case. It is also the duty of the I.O. to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the court to take appropriate action including issuance of BW/NBW, as the case may be. In a murder trial, it is sordid and repulsive matter that without informing the SHO, the matters are proceeded by the courts and the APP and tried to be disposed of as if the prosecution h ad not led any evidence. Addl. Sessions Judge and the APP, by one way or the other, have not taken any interest in discharge of their duties. It

was the duty of the Addl. Sessions Judge to issue summons to the I.O. if he failed to be present at the time of the trial. Presence of I.O. at trial is must.

6(D). <u>When No Map Or Wrong Map Prepared By I.O. or Map Prepared But Not Proved By I.O.</u> :

1. (a) Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)

It was a murder trial u/s. 302/149, 201 IPC. The map of the place of occurrence was not proved by prosecution as the I.O. could not be examined as PW by the prosecution. But the prosecution had proved the place of occurrence by direct and credible testimony of eye witnesses. Upholding the conviction of the accused, the Supreme Court held that since the I.O. was not an eye witness to the incident and the reliable eye witnesses had proved the place of occurrence by their testimony, so non proving the map by I.O. was not fatal to the prosecution case.

(b) In the case of **Girish Yadav vs. State of M.P., AIR 1996 SC 3098,** it has been held by Supreme Court that the recitals in the map would remain hearsay evidence in the absence of examination of the person who is alleged to have given information recorded in the map.

Some other cases which can be referred to on the subject are :

1. **Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068 (SC)**
2. **Ambika Prasad vs. State of Delhi Admn., JT 2000(1) SC 273**
3. **Bahadur Naik vs. State of Bihar, JT 2000(6) SC 226**
4. **Behari Prasad vs. State of Bihar, JT 1996 (1) SC 93**
5. **Ram Deo vs. State of U.P., 1990(2) JIC 1393 (SC)**

6(E). <u>Delayed recording of FIR & statements u/s. 161 Cr.P.C.</u> : In many cases FIRs are registered with unexplained and undue delays which costs shadow of doubt over the case of the prosecution. In cases where the complainants lodge their FIRs with the police with unexplained delays, the investigating officers

must question the informant during investigation about the delay and record his explanatory statement behind the delays in his statement u/s. 161 of the Cr.P.C. It is often seen that a complainant who was not interrogated by the investigating officer on the point of delay during investigations, tries to explain the delay for the first time in the witness box in the court during trial of the case when he is confronted by the defence counsel as cross examiner. Such improvements are new statements which had not been recorded by the investigating officer u/s. 161 of the Cr.P.C. during investigation is looked upon with suspicion by the courts and unless otherwise found cogent and reliable is discarded. It is, therefore obligatory on the part of an investigating officer to put questions to the complainant eliciting from him explanatory information behind the delayed lodging of FIR so that the same be used by the prosecution to satisfy the court during trial of the case as supportive explanation of the depositions of the complainant as prosecution witness before the court. It has been the settled law that if the delay behind registration of FIR is satisfactorily explained by the complainant witness then the delay in lodging FIR does not adversely affect the prosecution case. If causes are not attributable to any effort to concoct a version and the delay is satisfactorily explained by prosecution, no consequence shall be attached to mere delay in lodging FIR and the delay would not adversely affect the case of the prosecution. Delay caused in sending the copy of FIR to Magistrate would also be immaterial if the prosecution has been able to prove its case by its reliable evidence. Certain important judicial pronouncements of the Supreme Court on delayed FIRs and their consequences are as under :

1. **Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543**
2. **State vs. Rajendran, (2009) 3 SCC (Criminal) 957**
3. **N.H. Muhammed vs. State of Kerala, (2009) 3 SCC (Criminal) 982**
4. **Ashok Kumar Chaudhary vs. State of Bihar, 2008 (61) ACC 972 (SC)**

5. **Rabindra Mahto vs. State of Jharkhand, 2006 (54) ACC 543 (SC)**
6. **Ravi Kumar vs. State of Punjab, 2005 (2) SCJ 505**
7. **State of H.P. vs. Shree Kant Shekari, (2004) 8 SCC 153**
8. **Munshi Prasad vs. State of Bihar, 2002(1) JIC 186 (SC)**
9. **Ravinder Kumar vs. State of Punjab, 2001 (2) JIC 981 (SC)**
10. **Sheo Ram vs. State of U.P., (1998) 1 SCC 149**
11. **State of Karnataka vs. Moin Patel, AIR 1996 SC 3041**

6(F). **Late recording of statement of witnesses u/s. 161 Cr.P.C.** : If the investigating officer has committed delays in recording the statement of the witnesses u/s. 161 of the Cr.P.C., then it requires an explanation from the investigating officer to the satisfaction of the court as to why he had recorded the statement of the witnesses u/s. 161 Cr.P.C. belatedly. However in the case of late recording of statement u/s. 161 Cr.P.C., if the investigating officer has been able to give a plausible explanation for delay, no adverse inference is to be drawn. See : **State of U.P. vs. Satish, 2005(51) ACC 941 (SC)**

6(G) **Delayed sending of FIR to Magistrate u/s. 157 Cr.P.C.** : According to Sec. 157 Cr.P.C. copy of chick FIR should be sent to the court of Judicial Magistrate having territorial jurisdiction over the concerned police station within 24 hours from the time of recording of the FIR otherwise it requires some explanation as to why the delay was caused in late sending the copy of FIR to the magisterial court concerned. However delay in sending copy of FIR to the area Magistrate is not material where the FIR is shown to have been lodged promptly and investigation had started on that basis. Delay is not material in the event when the prosecution has given cogent and reasonable explanation for it. See :

1. **N.H. Muhammed vs. State of Kerala, (2009) 3 SCC (Criminal) 982**
2. **Moti Lal vs. State of Rajasthan, (2009) 3 SCC (Criminal) 444**

3. **State of Punjab vs. Hakam Singh, (2005)7 SCC 408**
4. **Anil Rai vs. State of Bihar, (2001) 7 SCC 318**

6(H). <u>Delayed FIR in rape cases</u> : Normal rule that prosecution has to explain delay and lack of prejudice does not apply per se to rape cases. See : **State of U.P. vs. Manoj Kumar Pandey, AIR 2009 SC 711 (Three Judge Bench)**

6(I). <u>Recording of hearsay statement of witnesses u/s. 161 Cr.P.C.</u> : According to Sec. 60 of the Evidence Act, a hearsay statement of a witness recorded by the investigating officer u/s. 161 Cr.P.C. cannot be converted by the witness into substantive evidence u/s. 3 of the Evidence Act during trial. The investigating officers should therefore try to avoid recording of hearsay versions of the witnesses and instead prefer to record direct version of the occurrences from the witnesses. Hearsay deposition of a witness is not admissible and cannot be read as evidence. Failure to examine a witness who could be called and examined is fatal to the case of prosecution. See : **Mukul Rani Varshnei vs. Delhi Development Authority, (1995) 6 SCC 120**

6(J). <u>Non recording of complete statement of witnesses u/s. 161 Cr.P.C. & its consequences</u> : Sometimes it is seen that the investigating officers do not record complete statement of the witnesses u/s. 161 Cr.P.C. with the result that such witnesses make improvements and additions covering the unrecorded statements before the court during trial. But such addition in statements and improvements are looked upon with suspicion and are normally discarded as such statements are for the first time made by the witness before the court. The investigating officer should therefore always record complete statements of the witnesses u/s. 161 Cr.P.C. "If the PWs had failed to mention in their statements u/s. 161 Cr.P.C. about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during

trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. See :

1. **Rudrappa Ramappa Jainpur vs. State of Karnataka, (2004) 7 SCC 422**
2. **Vimal Suresh Kamble vs. Chaluverapinake, (2003) 3 SCC 175**

If a relevant fact is not mentioned in the statement of the witness recorded u/s. 161 Cr.P.C. but the same has been stated by the witness before the court as P.W., then that would not be a ground for rejecting the evidence of the P.W. if his evidence is otherwise credit worthy and acceptable. Omission on the part of the police officer would not take away nature and character of the evidence. See : **Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21**

6(K). Delayed recording of statements under 164 Cr.P.C. : Investigating officers should get the statements of the witnesses recorded u/s. 164 Cr.P.C. by the Magistrate at the earliest otherwise it requires an explanation from the I.O. during trial as to why he could not got the statements of the witnesses recorded u/s. 164 Cr.P.C. See : **State vs. Rajendran, (2009) 3 SCC (Criminal) 957**

6(L). Only I.O. can cause the statement u/s. 164 Cr.P.C. to be recorded : During the investigation of any crime the complainant, accused, witnesses or anybody else cannot request the Magistrate for his statement being recorded u/s. 164 Cr.P.C. Only investigating officer is empowered in law to move an application to the Magistrate for recording of statements of the witnesses, accused or of any other person u/s. 164 Cr.P.C. See : **Jogendra Nahak vs. State of Orissa, 1999 (4) Crimes 12 (SC)**

7(A). <u>Delayed inspection of spot by I.Os. & effects thereof</u> : The investigating officers should promptly visit the spot and make inspections of the same otherwise not only the actual position of the spot can be interfered with by the accused or others but the same may also result into alteration of the real scene of the occurrence. The incriminating articles like weapons of assault, cartridges, pellets, clothes and other personal belongings of the victim or the accused can be caused to disappear which may adversely the affect the case of prosecution. See : **State of U.P. vs. Satish, 2005(51) ACC 941 (SC)**

7(B). <u>Precautions in preparation of Map of spot by I.O.</u> : The investigating officer should not only prepare the correct site plan of the place of occurrence but they should also prepare the site plan of the places from where the accused was arrested and some incriminating article was recovered. Since in many cases the investigating officers do not have personal knowledge about the facts of the cases and the places of the occurrence and recovery and they have to borrow their knowledge from the witnesses who had seen the place of occurrence and the incident and as such the testimony of the I.O. on the point of place of occurrence is often 'hearsay' within the meaning of Sec. 60 of the Evidence Act. An investigating officer therefore must record the statement of witnesses who had personal knowledge regarding the place of occurrence. Certain important case laws on the site plans prepared by the investigating officers are quoted below : **Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)**

Note : It was a murder trial u/s. 302/149, 201 IPC. The map of the place of occurrence was not proved by prosecution as the I.O. could not be examined as PW by the prosecution. But the prosecution had proved the place of occurrence by direct and credible testimony of eye witnesses. Upholding the conviction of the accused, the Supreme Court held that since the I.O. was not an eye witness to the incident and the reliable eye witnesses had proved the place of occurrence by their testimony, so non proving the map by I.O. was not fatal to the prosecution case.

7(C). In the case of **Girish Yadav vs. State of M.P., AIR 1996 SC 3098,** it has been held by Supreme Court that the recitals in the map would remain hearsay evidence in the absence of examination of the person who is alleged to have given information recorded in the map.

7(D). Some other cases which can be referred to on the subject are :

1. **Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068 (SC)**
2. **Ambika Prasad vs. State of Delhi Admn., JT 2000(1) SC 273**
3. **Bahadur Naik vs. State of Bihar, JT 2000(6) SC 226**
4. **Behari Prasad vs. State of Bihar, JT 1996 (1) SC 93**
5. **Ram Deo vs. State of U.P., 1990(2) JIC 1393 (SC)**

8(A). **Recovery memo & duty of police officer (u/s. 27, Evidence Act)** : If any thing or weapons etc. are recovered at the instance of the accused only in the presence of police party and there is no public witness to such recovery or recovery memo, the testimony of the police personnel proving the recovery and the recovery memo cannot be disbelieved merely because there was no witness to the recovery proceedings or recovery memo from the public particularly when no witness from public could be found by the police party despite their efforts at the time of recovery. Seizure memo need not be attested by any independent witness and the evidence of police officer regarding recovery at the instance of the accused should ordinarily be believed. The ground realities cannot be lost sight of that even in normal circumstances, members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. See :

1. **Tejpal vs. State of U.P., 2005(53) ACC 319 (Allahabad—D.B.)**
2. **Karanjeet Singh vs. State of Delhi Administration, 2003(46) ACC 876 (SC)**
3. **Praveen Kumar vs. State of Karnataka, 2003(47) ACC 1099 (SC)**
4. **State Govt. of NCT of Delhi vs. Sunil & others, 2001(1) SCC 652**

5. **Revindra Santaram Sawant vs. State of Maharashtra, AIR 2002 SC 2461**

8(B). <u>Non-mentioning of the fact of non-availability of public witnesses in recovery memo & its consequences</u> : A police officer while seizing any property from possession of the accused or on his pointing u/s. 102 Cr.P.C. r/w. Sec. 27 Evidence Act, he should ensure the presence of two respectable persons to witness the recovery proceedings and in case no such witness from the public is available or the place is lonely one where no person from public is present to witness the recovery proceedings, the fact of non-availability of the witnesses from public despite due effort for the same by the police officer must be mentioned in the recovery memo and only thereafter the recovery should be made and witnessed by the police personnel alone. If the presence of the witnesses from public could not be procured by the police officer making the recovery despite due effort and the recovery is made and memo thereof prepared and witnessed only by the police personnel seizing the property, then the recovery proceedings and the recovery memo could be valid as laid down by the Supreme Court in the cases noted below :

1. **Tejpal vs. State of U.P., 2005(53) ACC 319 (Allahabad—D.B.)**
2. **Karanjeet Singh vs. State of Delhi Administration, 2003(46) ACC 876 (SC)**
3. **Praveen Kumar vs. State of Karnataka, 2003(47) ACC 1099 (SC)**
4. **State Govt. of NCT of Delhi vs. Sunil & others, 2001(1) SCC 652**
5. **Revindra Santaram Sawant vs. State of Maharashtra, AIR 2002 SC 2461**

8(C). <u>Police personnel as witness & their reliability</u> : The testimony of police personnel should be treated in the same manner as testimony of any other witness. There is no principle of law that without corroboration by independent

witnesses, the testimony of police personnel cannot be relied on. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good reasons. See :

1. **Tejpal vs. State of U.P., 2005(53) ACC 319 (Allahabad—D.B.)**
2. **Karanjeet Singh vs. State of Delhi Administration, 2003(46) ACC 876 (SC)**
3. **Praveen Kumar vs. State of Karnataka, 2003(47) ACC 1099 (SC)**
4. **State Govt. of NCT of Delhi vs. Sunil & others, 2001(1) SCC 652**
5. **Revindra Santaram Sawant vs. State of Maharashtra, AIR 2002 SC 2461**

8(D). **Identity of the articles recovered & the duty of I.O.** : When the articles recovered can easily resemble with the similar other articles of the same shape, size, make, quality, colour etc., it is then the duty of the I.O. to establish the identity of the recovered articles by recording the statements of the witnesses u/s. 161 Cr.P.C. so that the identify of the recovered article may be established by such witnesses before the court. If the recovery of certain ornaments u/s. 27, Evidence Act and identification thereof is doubtful and such ornaments of silver and of ordinary design are easily available in every house of villages, then in the absence of independent witnesses to recovery, the testimony of only police witness cannot be believed. See :

1. **Bharat vs. State of M.P., 2003 SAR (Criminal) 184 (SC)**
2. **Hardayal Prem vs. State of Rajasthan, 1991 (Suppl.) 1 SCC 148**

9. **Chance witnesses & duty of Investigating Officers.** : If an incident has been witnessed only by chance witnesses, the investigating officer must put questions to such witness and record his statement regarding the reasons for

which the chance witness was present on the spot at the time of the occurrence so that if such chance witness turn up before the court to depose in favour of the prosecution case, he may not be for the first time before the court telling the reasons for his being present on the scene of the occurrence at the time of its happening. However, it is not the rule of law that chance witness cannot be believed. The reason for a chance witness being present on the spot and his testimony requires close scrutiny and if the same is otherwise found reliable, his testimony cannot be discarded merely on the ground of his being a chance witness. Evidence of chance witness requires very cautious and close scrutiny. See :

1. **Jarnail Singh vs. State of Punjab, 2009 (67) ACC 668 (SC)**
2. **Sarvesh Narain Shukla vs. Daroga Singh, AIR 2008 SC 320**
3. **Acharaparambath Pradeepan vs. State of Kerala, 2007(57) ACC 293 (SC)**
4. **Sachchey Lal Tiwari vs. State of U.P., 2005 (51) ACC 141 (SC)**
5. **Chankya Dhibar vs. State of W.B., (2004) 12 SCC 398**
6. **Fateh Singh vs. State of U.P., 2003(46) ACC 862 (Allahabad---D.B.)**

10(A). Illiterate/Rustic/Villager/Lady witnesses & the duty of I.O. : Where the witnesses to any incident of offences are illiterate, semi-literate, rustic, villagers or female witnesses from rural areas, the investigating officers should exercise a little more caution in recording their statements u/s. 161 Cr.P.C. as such witnesses because of their illiteracy and non-exposure etc. have only very little idea of accurately narrating the real version of the happenings with precision. The questions by investigating officers to such witnesses should, as far as possible, be put to them in their language understand and the real account of the happenings should be attempted to be elicited from them. It is impossible for an illiterate villager or rustic lady to state with precision the chain of events as such witnesses do not have sense of accuracy of time etc. Expecting hyper technical calculation regarding dates and time of events from illiterate/rustic/villager witnesses is an insult to justice-oriented judicial system and detached from the realities of life. In the case of rustic lady eye witnesses,

court should keep in mind her rural background and the scenario in which the incident had happened and should not appreciate her evidence from rational angle and discredit her otherwise truthful version on technical grounds. See :

1. **Dimple Gupta (minor) vs. Rahiv Gupta, AIR 2008 SC 239**
2. **State of Punjab vs. Hakam Singh, (2005) 7 SCC 408**
3. **State of H.P. vs. Shreekant Shekari, (2004) 8 SCC 153**
4. **State of Rajasthan vs. Kheraj Ram, (2003) 8 SCC 224**
5. **State of Punjab vs. Hakam Singh, (2005) 7 SCC 408**

10(B).<u>Eye witnesses & independent witnesses & duty of I.Os</u> : If there are more than one eye witnesses and independent witnesses of any incident, the investigating officer should record the statement of all such eye witnesses u/s. 161 Cr.P.C. However if there are several number of such eye and independent witnesses, the investigating officer may prefer to record statements of only some of them and in that event recording of statement of all such witnesses u/s. 161 Cr.P.C. would not be required. If a witness examined in the court is otherwise found reliable and trustworthy, the fact sought to be proved by that witness need not be further proved through other witnesses though there may be other witnesses available who could have been examined but were not examined. Non-examination of material witness is not a mathematical formula for discarding the weight of the testimony available on record however natural, trustworthy and convincing it may be. It is settled law that non-examination of eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of pen :

1. **Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543**
2. **Ashok Kumar Chaudhary vs. State of Bihar, 2008 (61) ACC 972 (SC)**
3. **Chowdhary Ramjibhai Narasanghbhai vs. State of Gujarat, (2004) 1 SCC 184**
4. **Ram Narain Singh vs. State of UP, 2003(46) ACC 953 (All--D.B.)**
5. **Babu Ram vs. State of UP, 2002 (2) JIC 649 (SC)**
6. **Komal vs. State of U.P., (2002) 7 SCC 82**
7. **State of H.P. vs. Gian Chand, 2001(2) JIC 305 (SC)**

8. **Hukum Singh vs. State of Rajasthan, 2000 (41) ACC 662 (SC)**

10(C).<u>**Habitual witness**</u> : Where punch witnesses used to reside near the police colony and had appeared as punch from the year 1978 to 1981, it has been held that simply because such witnesses had appeared as punch witnesses in other cases also, it cannot be concluded that they are habitual punch witnesses and had blindly signed the punchnama. See : **Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543**

10(D).<u>**Injuries of the accused and their explanation**</u> : If the accused has also sustained injuries during the same occurrence and the nature of such injuries on the person of the accused is not artificial and simple but severe in nature, it requires an explanation in the case diary as to how the accused sustained those injuries. The investigating officers should therefore require an explanation from the witnesses in their statements u/s. 161 Cr.P.C. regarding the injuries of the accused otherwise it casts a doubt over the veracity of the case of the prosecution. See :

1. **Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543**
2. **Shaikh Majid vs. State of Maharashtra, 2008 (62) ACC 844 (SC)**
3. **Krishan vs. State of Haryana, (2007) 2 SCC (Cri) 214**
3. **Sukumar Roy vs. State of W.B., AIR 2006 SC 3406;**
4. **Bheru Lal vs. State of Rajasthan, 2009 (66) ACC 997 (SC)**
5. **Sucha Singh vs. State of Punjab, 2003(47) ACC 555 (SC)**

10(E). <u>**Chance witnesses & duty of Investigating Officers.**</u> : If an incident has been witnessed only by chance witnesses, the investigating officer must put questions to such witness and record his statement regarding the reasons for which the chance witness was present on the spot at the time of the occurrence so that if such chance witness turn up before the court to depose in favour of the prosecution case, he may not be for the first time before the court telling

the reasons for his being present on the scene of the occurrence at the time of its happening. However, it is not the rule of law that chance witness cannot be believed. The reason for a chance witness being present on the spot and his testimony requires close scrutiny and if the same is otherwise found reliable, his testimony cannot be discarded merely on the ground of his being a chance witness. Evidence of chance witness requires very cautious and close scrutiny. See :

1. **Jarnail Singh vs. State of Punjab, 2009 (67) ACC 668 (SC)**
2. **Sarvesh Narain Shukla vs. Daroga Singh, AIR 2008 SC 320**
3. **Acharaparambath Pradeepan vs. State of Kerala, 2007(57) ACC 293 (SC)**
4. **Sachchey Lal Tiwari vs. State of U.P., 2005 (51) ACC 141 (SC)**
5. **Chankya Dhibar vs. State of W.B., (2004) 12 SCC 398**
6. **Fateh Singh vs. State of U.P., 2003(46) ACC 862 (Allahabad : D.B.)**

11(A).<u>Effect of non recovery of dead body & abscence of PMR</u> : Where murder of deceased by accused persons was proved by direct evidence of mother, sister and neighbourer of deceased, dead body was taken away by the accused and could not be recovered and Post Mortem not done, blood stained mud and Lungi seized by I.O. but not produced, I.O. not examined then the Supreme Court held that non-production of these items did not cause any prejudice to the convicts/appellants and their conviction by trial court based upon direct evidence was proper. See : **Ram Gulam Chowdhary vs. State of Bihar, 2001 (2) JIC 986 (SC)**

11(B).<u>PMR being public document, its certified copy is admissible</u>....Since the PMR, FIR & other such documents or public documents therefore their

certified copies would be admissible in evidence u/s 63 of the Evidence Act. See... **Vimlesh Kumari Vs. Rajendra Kumar, 2010 (4) ALJ (NOC) 422(All)**

11(C).<u>Setting up new prosecution case & benefit of doubt</u> : Introduction of or addition of a new story by prosecution adversely affects and destroys the prosecution case by creating doubt in it and the accused becomes entitled to benefit of doubt. (See **Ram Narain Popli vs. CBI, (2003) 3 SCC 641**)

11(D).<u>Different versions of prosecution & benefit of doubt</u> : If different stories are projected by prosecution, it is unsafe to convict the accused. See : **Vallabhaneni Venkateshwara Rao vs. State of A.P., 2009 (4) Supreme 363**

12. <u>When Some Accused Already Acquitted, Others May Still Be Convicted</u> : Where acquittal of co-accused was recorded on the basis of benefit of dou0bt to some of the accused persons as no positive role by any overt acts was attributed to them, it has been held that same treatment could not have been meted out to all the other accused whose complicity and specific role in the commission of the offence was firmly established by evidence. Law is well settled that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments yet conviction can be recorded in respect of the other accused if the evidence is found cogent and reliable against him. See :

1. **Balraje Vs. State of Maharashtra, 2010 (70) ACC 12 (SC)**
2. **Km. Rinki vs. State of U.P., 2008 (63) ACC 476 (All—D.B.)**
3. **Kallu vs. State of M.P., 2007 (57) ACC 959 (SC)**
4. **Amzad Ali vs. State of Assam, (2003) 6 SCC 270**
5. **Chhidda vs. State of U.P., 2005 (53) ACC 405 (All– D.B.)**
6. **Sardar Khan vs. State of Karnataka, (2004) 2 SCC 442**
7. **Sewa vs. State of U.P., 2002 A.L.J. 481 (All—D.B.)**
8. **Komal vs. State of U.P., (2002) 7 SCC 82**

13. **<u>Injuries of the accused and their explanation</u>** : If the accused has also sustained injuries during the same occurrence and the nature of such injuries on the person of the accused is not artificial and simple but severe in nature, it requires an explanation in the case diary as to how the accused sustained those injuries. The investigating officers should therefore require an explanation from the witnesses in their statements u/s. 161 Cr.P.C. regarding the injuries of the accused otherwise it casts a doubt over the veracity of the case of the prosecution. See :

1. **Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543**
2. **Shaikh Majid vs. State of Maharashtra, 2008 (62) ACC 844 (SC)**
3. **Krishan vs. State of Haryana, (2007) 2 SCC (Cri) 214**
3. **Sukumar Roy vs. State of W.B., AIR 2006 SC 3406;**
4. **Bheru Lal vs. State of Rajasthan, 2009 (66) ACC 997 (SC)**
5. **Sucha Singh vs. State of Punjab, 2003(47) ACC 555 (SC)**

14(A). **<u>Circumstantial evidence & requirements for conviction</u>** :

(A) Circumstantial evidence, in order to be relied on, must satisfy the following tests :

(1) Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.

(2) Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused.

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

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be in consistent with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved. See the following cases : :

1. **Vithal Eknath Adlinge vs. State of Maharashtra, AIR 2009 SC 2067**
2. **State of Goa vs. Pandurang Mohite, AIR 2009 SC 1066**
3. **Prithu vs. State of H.P., AIR 2009 SC 2070**
4. **State of W.B. vs. Deepak Halder, 2009(4) Supreme 393 (Three Judge Bench)**
5. **Baldev Singh vs. State of Haryana, AIR 2009 SC 963**
6. **Smt. Mula Devi vs. State of Uttarakhand, AIR 2009 SC 655**
7. **Arun Bhanudas Pawar vs. State of Maharashtra, 2008 (61) ACC 32 (SC)**
8. **Harishchandra Ladaku Thange vs. State of Maharashtra, 2008 (61) ACC 897 (SC)**
9. **Reddy Sampath Kumar vs. State of A.P., (2005) 7 SCC 603**
10. **Vilas Pandurang Patil vs. State of Maharashtra, (2004) 6 SCC 158**
11. **State of Rajasthan vs. Raja Ram, (2003) 8 SCC 180**
12. **State of Rajasthan vs. Kheraj Ram, (2003) 8 SCC 224**
13. **Saju vs. State of Kerala, 2001 (1) JIC 306 (SC)**

14(B). "Last Seen Together" & its evidentiary value : Circumstances of "last seen together" do not by themselves and necessarily lead to the inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. The time gap between last seen alive and the recovery of dead body must be so small that the possibility of any person other than the accused being the author of the crime becomes impossible. See :

1. **State of Goa vs. Pandurang Mohite, AIR 2009 SC 1066**
2. **Ramreddy Rajeshkhanna Reddy vs. State of A.P., 2006 (10) SCC 172**
3. **State of U.P. vs. Satish, 2005 (3) SCC 114**
4. **Sardar Khan vs. State of Karnataka, (2004) 2 SCC 442**

5. **Mohibur Rahman vs. State of Assam, 2002(2) JIC 972 (SC)**

14(C). <u>Time gap between last seen & death</u> : The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. Where prosecution depends upon theory of "last seen together" it is always necessary that prosecution could establish time of death. See :

1. **Niranjan Panja Vs. State of W.B,(2010) 6 SCC 525**
2. **Vithal Eknath Adlinge vs. State of Maharashtra, AIR 2009 SC 2067**
3. **Ramreddy vs. State of A.P., (2006) 10 SCC 172**
4. **State of U.P. vs. Satish, (2005) 3 SCC 114**

14(D). <u>Sec. 106, Evidence Act & murder in house</u> : The law does not enjoin a duty on prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on prosecution is to lead such evidence which is capable of leading having regard to the facts and circumstances of the case. Here it is necessary to keep in mind sec. 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence.

The burden would be comparative of a lighter character. In view of s. 106 Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish it's case lies entirely upon the prosecution to offer any explanation. See :

1. **Jagdish vs. State of U.P., 2009 (67) ACC 295 (SC)**
2. **Daulatram vs. State of Chhattisgarh, 2008 (63) ACC 121**
3. **Trimukh Maroti Kirkan vs. State of Maharashtra, 2007 (57) ACC 938 (SC)**
4. **Chankya Dhibar vs. State of W.B., (2004) 12 SCC 398**
5. **State of Punjab vs. Karnail Singh, 2003 (47) ACC 654 (SC)**

14(E).Abnormal conduct of accused & Circumstantial evidence.... A criminal trial is not an inquiry into the conduct of an accused for any purpose other than to determine his guilt. It is not disputed piece of conduct which is not connected with the guilt of the accused is not relevant. But at the same time, however, unnatural, abnormal or unusual behavior of the accused after the offence may be relevant circumstance against him. Such conduct is inconsistent with his innocence. So the conduct which destroys the presumption of innocence can be considered as relevant and material. For example, the presence of the accused for a whole day in a specific place and misleading the PWs to search in other place and not allowing them to search in a specific place certainly creates a cast iron cloud over the innocence of the accused persons. See : **Joydeep Neogi vs. State of W.B, 2010(68) ACC 227(SC)**

14(F).Conduct of accused absconding : where the accused had absconded after committing the murder, it has been held that the conduct of the accused in such cases is very relevant u/s 8 of the Evidence Act.See : **Sidhartha Vashisht alias Manu Sharma Vs. State of NCT of Delhi 2010 (69) ACC 833 (SC)**

14(G) .<u>Stricture against ASJ in U.P. for illegally awarding death sentence to three persons on the basis of incomplete chain of circumstantial evidence</u> : Where Additional Sessions Judge had convicted and awarded death penalty to three accused persons on the basis of incomplete chain of circumstantial evidence, a Division Bench of the Allahabad High Court not only set aside the judgment of conviction and sentence of death penalty by acquitting all the three accused persons, but also recorded severe strictures against the ASJ concerned by saying that "the presiding officer of the court below who is a senior officer in the rank of U.P. Higher Judicial Services, it cannot be expected from such officer in convicting the accused persons without any evidence and awarding death penalty to all the three accused persons. This shows that there is lack of knowledge of presiding officer regarding provisions of law, who has not paid attention to several decisions rendered by the Apex Court regarding death penalty." Copy of the judgment of the division bench has also been directed to be sent to the Additional Sessions Judge concerned for perusal and future guidance and one copy of the judgment was also directed to be placed in the character roll of the ASJ concerned. See : **Kiran Pal vs. State of U.P., 2009 (65) ACC 50 (All—D.B.)**

15(A). **Weapons of assault, cartridges & pellets when not sent for ballistic examination & its effect?** : In many criminal cases an explanation from the I.O. may be required for not sending the weapons of assault, pellets or cartridges etc. recovered from the place of occurrence to their experts for examination. However non sending of weapons of assault, cartridges and pellets to ballistic experts for examination would not be fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. **Mano vs. State of T.N., (2007) 13 SCC 795**
2. **State of Punjab vs. Hakam Singh, 2005(7) SCC 408**
3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

15(B) **Weapons of assault, cartridges, empties & pellets when not sent for ballistic examination & its effect?** : Non sending of weapons of assault, cartridges and pellets to ballistic experts for examination would not be fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. **Maqbool vs State of A.P., AIR 2011 SC 184**
2. **State of Punjab vs. Hakam Singh, 2005(7) SCC 408**
3. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**

15(C). **Ballistic expert's non-examination & its effect :** Where the eye witnesses had stated in their depositions before court that the accused had fired at the deceased from double barrel gun but the I.O. stated that the gun seized was not in working condition and therefore he did not find it necessary to send the same to ballistic expert for his opinion, it has been held by the Supreme Court that non-examination of ballistic expert cannot be said to have effected the reliability of eye witnesses. See :

1. **Ramakant Rai vs. Madan Rai, 2004 (50) ACC 65 (SC)**
2. **State of Punjab vs. Jugraj Singh, AIR 2002 SC 1083**

15(D).<u>Police personnel can also be treated as ballistic experts</u> : Police personnel having certificate of technical competency and armour technical course and also having long experience of inspection, examination and testing of fire arms and ammunition must be held to be an expert in arms u/s. 45 of the Evidence Act. See : **Brij Pal vs. State of Delhi Administration, (1996) 2 SCC 676**

15(E).<u>Ballistic experts opinion & its appreciation</u> : Where the ballistic expert had given opinion that the empty cartridges recovered from the spot of occurrence matched with the injury, it has been held that it was a valuable piece of evidence and could not be brushed aside. See : **Leela Ram vs. State of Haryana, (1999) 9 SCC 525**

15(F).<u>Ballistic experts opinion & ocular testimony when contrary</u> : Where the eye witnesses of the murder had stated that the injuries from the firing of the pistol were on leg of the deceased but the post mortem report indicated the injury on part slightly higher than the thigh and there was nothing on record to impeach the testimony of the eye witnesses, it has been held that in the absence of ballistic experts opinion and contradictions regarding the position of injuries, it would not be sufficient to discard the trustworthy testimony of the eye witnesses. See : **Ajay Singh vs. State of Bihar, (2000) 9 SCC 730**

16 (A). <u>Investigating officer & appreciation of his evidence</u>:

<u>Investigating Officer when not examined?</u> : It is always desirable for prosecution to examine I.O. However, non-examination of I.O. does not in any way create any dent in the prosecution case muchless affect the credibility of otherwise trustworthy testimony of eye-witnesses. If the presence of the eye-witnesses on the spot is proved and the guilt of the accused is also proved by their trustworthy testimony, non-examination of I.O. would not be fatal to the case of prosecution : : -

1. **Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068 (SC)**
2. **Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)**
3. **Bahadur Naik vs. State of Bihar, JT 2000 (6) SC 226**
4. **Ambika Prasad vs. State of Delhi Administration, JT 2000 (1) SC 273**
5. **Behari Prasad vs. State of Bihar, JT 1996 (1) SC 93**
6. **Ram Deo vs. State of U.P., 1990(2) JIC 1393 (SC)**

Note: In the case of **Shailendra Kumar vs. State of Bihar, 2002(44) ACC 1025 (SC),** the Hon'ble Supreme Court has held that presence of the I.O. at the time of trial is must. It is the duty of sessions Judge to issue summons to the I.O. if he failed to be present at the time of trial of the case. It is also the duty of the I.O. to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the court to take appropriate action including issuance of BW/NBW, as the case may be. In a murder trial, it is sordid and repulsive matter that without informing the SHO, the matters are proceeded by the courts and the APP and tried to be disposed of as if the prosecution h ad not led any evidence. Addl. Sessions Judge and the APP, by one way or the other, have not taken any interest in discharge of their duties. It was the duty of the Addl. Sessions Judge to issue summons to the I.O. if he failed to be present at the time of the trial. Presence of I.O. at trial is must.

(B). Incomplete Or Defective Investigation & Its Effect : Any irregularity or deficiency in investigation by I.O. need not necessarily lead to rejection of the case of prosecution when it is otherwise proved. The only requirement is use of extra caution in evaluation of evidence. A defective investigation cannot be fatal to prosecution where ocular testimony is found credible and cogent :

1. **C. Muniappan Vs. State of TN, 2010 (6) SCJ 822**
2. **Acharaparambath Pradeepan vs. State of Kerala, 2007(57) ACC 293 (SC)**
3. **State of Punjab vs. Hakam Singh, (2005) 7 SCC 408**
4. **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654**
5. **Dashrath Singh vs. State of U.P., (2004) 7 SCC 408**
6. **Visvesaran vs. State, (2003) 6 SCC 73**
7. **State of Rajasthan vs. Teja Ram, 1999(38) ACC 627 (SC)**

8. **Leela Ram vs. State of Haryana, (1999) 9 SCC 525**

(C). **Non-availability of Blood Group/ Blood Marks/ Blood Stains report and its effect :** If the evidence of eye witnesses is otherwise trust worthy, non-availability or non-ascertainability of Blood Group/ Blood Marks /Blood Stains report can not be made a basis to discard the witnesses who otherwise inspire confidence of the court and are believed by it. See : **Keshavlal vs. State of M.P., (2002)3 SCC 254.**

17(A) When No Map Or Wrong Map Prepared By I.O. or Map Prepared But Not Proved By I.O. :

1. **(a) Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)**

It was a murder trial u/s. 302/149, 201 IPC. The map of the place of occurrence was not proved by prosecution as the I.O. could not be examined as PW by the prosecution. But the prosecution had proved the place of occurrence by direct and credible testimony of eye witnesses. Upholding the conviction of the accused, the Supreme Court held that since the I.O. was not an eye witness to the incident and the reliable eye witnesses had proved the place of occurrence by their testimony, so non proving the map by I.O. was not fatal to the prosecution case.

(b) In the case of **Girish Yadav vs. State of M.P., AIR 1996 SC 3098,** it has been held by Supreme Court that the recitals in the map would remain hearsay evidence in the absence of examination of the person who is alleged to have given information recorded in the map. Some other cases which can be referred to on the subject are :

1. **Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068 (SC)**
2. **Ambika Prasad vs. State of Delhi Admn., JT 2000(1) SC 273**
3. **Bahadur Naik vs. State of Bihar, JT 2000(6) SC 226**
4. **Behari Prasad vs. State of Bihar, JT 1996 (1) SC 93**
5. **Ram Deo vs. State of U.P., 1990(2) JIC 1393 (SC)**

18. When TIP Not done :

18(A) **<u>TIP not a right of the accused (Sec. 9, Evidence Act)</u>** : - Test Identification Parade is not a right of the accused under the provisions of the Identification of Prisoners Act, 1920. Investigating Agency is not obliged to hold TIP. Question of identification arises where accused is not known to the witness. See the cases noted below :

1. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
2. **Heera vs. State of Rajasthan, AIR 2007 SC 2425**
3. **Simon vs. State of Karnataka, (2004) 2 SCC 694**
4. **Malkhan Singh vs. State of M.P., 2003(47) ACC 427 (SC)**
5. **Visveswaran vs. State, 2003 (46) ACC 1049 (SC)**

18(B) **<u>TIP not a substantive evidence</u> :** TIP does not constitute substantive evidence. Court can accept evidence of identification of the accused without insisting on corroboration. See **: -**

1. **Santosh Devidas Behade vs. State of Maharashtra, 2009 (4) Supreme 380**
2. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
3. **Malkhan Singh vs. State of M.P., 2003(47) ACC 427 (SC)**

18(C) **<u>Delayed TIP</u> :** Under the facts of the cases, delayed holding of TIP has been held by the Supreme Court in the cases noted below not fatal to the prosecution. But TIP should be conducted as soon as possible after arrest of the accused as it becomes necessary to eliminate the possibility of accused being shown to witnesses prior to parade. See :

1. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
2. **Anil Kumar vs. State of U.P., (2003) 3 SCC 569**
3. **Pramod Mandal vs. State of Bihar, 2005 SCC (Criminal) 75**

18(D) **<u>Identification by voice</u> : -** Where the witnesses claiming to have identified the accused from short replies given by him were not closely acquainted with the accused, the identification of the accused by voice by the witnesses has been held unreliable. See : **Inspector of Police, T.N. vs. Palanisamy @ Selvan, AIR 2009 SC 1012**

19(A). <u>First time identification of the accused by witnesses in the court</u> : Where the accused was not known to the witnesses from before the incident, first time identification of the accused by the witnesses in the court during trial has been held by the Supreme Court as sufficient and acceptable identification of the accused. See :

1. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
2. **Heera vs. State of Rajasthan, AIR 2007 SC 2425**
3. **Ashfaq vs. State Govt. of NCT of Delhi, (2004) 3 SCC 116**
4. **Simon vs. State of Karnataka, (2004) 2 SCC 694**
5. **Dana Yadav vs. State of Bihar, 2003(47) ACC 467 (SC)**
6. **Munna vs. State (NCT) of Delhi, 2003 (47) ACC 1129 (SC)**

20. <u>Evidentiary value of charge-sheet u/s. 173(2) Cr.P.C.</u> : A charge sheet submitted by an investigating officer u/s. 173(2) Cr.P.C. is a public document within the meaning of Sec. 35 of the Evidence Act but it does not imply that all that is stated in the charge sheet as having been proved. All that can be said is that it is proved that the police had laid a charge sheet in which some allegations have been made against the accused. See : **Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three Judge Bench)**

21. <u>Effect of non-production of case diary or general diary</u> : The question of drawing adverse inference against the prosecution for non-production of case diary or general diary would have arisen had the court passed an order after being satisfied that the prosecution intended to suppress some facts which were material for purposes of arriving at the truth or otherwise of the prosecution cases. It no such application had been filed by the accused for summoning of the CD or GD and no order thereupon had been passed by the court, the question of drawing any adverse inference against the prosecution would not arise. See : **Ashok Kumar vs. State of Tamil Nadu, AIR 2006 SC 2419**

22. <u>Benefit Of Doubt & meaning of reasonable doubt</u> : (A) Doubts would be called reasonable if they are free from a zest for abstract speculation. Law

cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust commonsense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. See : **Chhotanney vs. State of U.P., AIR 2009 SC 2013**

22(B) "Reasonable doubt"—what means? : - A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial, if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. Vague hunches cannot take the place of judicial evaluation. See :

1. **Sucha Singh vs. State of Punjab, (2003) 7 SCC 643**
2. **State of U.P. vs. Ashok Kumar Srivastava, AIR 1992 SC 840**
3. **Inder Singh vs. State of Delhi Administration, AIR 1978 SC 1091**)

22(C) Caution in extending benefit of doubts : Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicious and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the

guilty escape is not doing justice according to law. (See **Gurbachan Singh vs. Satpal Singh, AIR 1990 SC 209**)

22(D) **No PMR for non recovery of dead body & benefit of doubt :** Where murder of deceased by accused persons was proved by direct evidence of mother, sister and neighbourer of deceased, dead body was taken away by the accused and could not be recovered and Post Mortem not done, blood stained mud and Lungi seized by I.O. but not produced, I.O. not examined then the Supreme Court held that non-production of these items did not cause any prejudice to the convicts/appellants and their conviction by trial court based upon direct evidence was proper. See : **Ram Gulam Chowdhary vs. State of Bihar, 2001 (2) JIC 986 (SC)**

22(DD) **PMR being public document, its certified copy is admissible** : Since the PMR, FIR & other such documents or public documents therefore their certified copies would be admissible in evidence u/s 63 of the Evidence Act. See... **Vimlesh Kumari Vs. Rajendra Kumar, 2010 (4) ALJ (NOC) 422(All)**

22(E) **Setting up new prosecution case & benefit of doubt :** Introduction of or addition of a new story by prosecution adversely affects and destroys the prosecution case by creating doubt in it and the accused becomes entitled to benefit of doubt. (See **Ram Narain Popli vs. CBI, (2003) 3 SCC 641**)

22(F) **Different versions of prosecution & benefit of doubt :** If different stories are projected by prosecution, it is unsafe to convict the accused. See : **Vallabhaneni Venkateshwara Rao vs. State of A.P., 2009 (4) Supreme 363**

23. When Some Accused Already Acquitted, Others May Still Be Convicted :

Where acquittal of co-accused was recorded on the basis of benefit of dou0bt to some of the accused persons as no positive role by any overt acts was attributed to them, it has been held that same treatment could not have been meted out to all the other accused whose complicity and specific role in the commission of the offence was firmly established by evidence. Law is well

settled that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments yet conviction can be recorded in respect of the other accused if the evidence is found cogent and reliable against him. See : -

1. **Balraje Vs. State of Maharashtra, 2010 (70) ACC 12 (SC)**
2. **Km. Rinki vs. State of U.P., 2008 (63) ACC 476 (All—D.B.)**
3. **Kallu vs. State of M.P., 2007 (57) ACC 959 (SC)**
4. **Amzad Ali vs. State of Assam, (2003) 6 SCC 270**
5. **Chhidda vs. State of U.P., 2005 (53) ACC 405 (All– D.B.)**
6. **Sardar Khan vs. State of Karnataka, (2004) 2 SCC 442**
7. **Sewa vs. State of U.P., 2002 A.L.J. 481 (All—D.B.)**
8. **Komal vs. State of U.P., (2002) 7 SCC 82**

24. Delayed FIR, Delayed Forwarding of the FIR to the Magistrate & Delayed Recording Of Statement Of PWs by I.O. U/s. 161 Cr.P.C.—Effect thereof? : (A) Delay in lodging of FIR—if causes are not attributable to any effort to concoct a version and the delay is satisfactorily explained by prosecution, no consequence shall be attached to mere delay in lodging FIR and the delay would not adversely affect the case of the prosecutn. Delay caused in sending the copy of FIR to Magistrate would also be immaterial if the prosecution has been able to prove its case by its reliable evidence : -

1. **Ashok Kumar Chaudhary vs. State of Bihar, 2008 (61) ACC 972 (SC)**
2. **Rabindra Mahto vs. State of Jharkhand, 2006 (54) ACC 543 (SC)**
3. **Ravi Kumar vs. State of Punjab, 2005 (2) SCJ 505**
4. **State of H.P. vs. Shree Kant Shekari, (2004) 8 SCC 153**
5. **Munshi Prasad vs. State of Bihar, 2002(1) JIC 186 (SC)**
6. **Ravinder Kumar vs. State of Punjab, 2001 (2) JIC 981 (SC)**
7. **Sheo Ram vs. State of U.P., (1998) 1 SCC 149**
8. **State of Karnataka vs. Moin Patel, AIR 1996 SC 3041**

(B) Delayed sending of FIR to Magistrate u/s. 157 Cr.P.C. : Delay in sending copy of FIR to the area Magistrate is not material where the FIR is shown to have been lodged promptly and investigation had started on that basis. Delay is not material in the event when the prosecution has given cogent and reasonable explanation for it. See :

1. **Anil Rai vs. State of Bihar, (2001) 7 SCC 318**

2. **State of Punjab vs. Hakam Singh, (2005)7 SCC 408**

(C) **Sec. 376 IPC and Delayed FIR** : - Normal rule that prosecution has to explain delay and lack of prejudice does not apply per se to rape cases. See :

1. **State of U.P. vs. Manoj Kumar Pandey, AIR 2009 SC 711 (Three Judge Bench)**
2. **Santosh Moolya Vs. State of Karnataka, (2010) 5 SCC 445**

25. (A) Doctor's opinion as medical expert u/s. 45 Evidence Act & its evidentiary value? : --As per Sec. 45, Evidence Act a doctor is a medical expert. It is well settled that medical evidence is only an evidence of opinion and it is not conclusive and when oral evidence is found to be inconsistent with medical opinion, the question of relying upon one or the other would depend upon the facts and circumstances of each case. See : -- **Mahmood vs. State of U.P., AIR 2008 515**

(B) **Court not bound by the opinion of Medical Expert :** If the opinion given by one Doctor is bereft of logic or objectivity or is not consistent with probability, the court has no liability to go by that opinion merely because it is said by a doctor. The opinion given by a medical witness need not be the last word on the subject and such an opinion shall be tested by the Court. See....**State of Haryana Vs. Bhagirath, AIR 1999 SC 2005**

(C) **Discussion of injuries must in judgments :** Vide **(i) C.L. No. 13/VII-47, dated 3.3.1982, (ii) C.L. No. 4/2003, dated 20.2.2003 & (iii) C.L. No. 33, dated 28.9.2004,** the Hon'ble Allahabad High Court has directed all the trial judges and magistrates in the State of U.P. that the Post Mortem Report and medical examination reports **must** be quoted in the judgments and properly discussed failing which High Court shall take serious note of the omissions.

(D) **Medical evidence when showing two possibilities** : Where medical evidence shows two possibilities, the one consistent with the reliable direct evidence should be accepted. See : **Anil Rai vs. State of Bihar, (2001) 7 SCC 318**

(E) **<u>Conflict between ocular and medical evidence—How to reconcile?</u> :** If the direct testimony of eye witnesses is reliable, the same cannot be rejected on hypothetical medical evidence and the ocular evidence, if reliable, should be preferred over medical evidence. Opinion given by a medical witness (doctor) need not be the last word on the subject. It is of only advisory character. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. If one doctor forms one opinion and another doctor forms a different opinion on the same fact, it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with the probability, the court has no liability to go by the opinion merely because it is said by the doctor. Of course, due weight must be given to the opinions given by persons who are experts in the particular subject. See : -

1A. Abdul Sayeed Vs. State of M.P, (2010) 10 SCC 259
1. Chhotanney vs. State of U.P., AIR 2009 SC 2013
2. Mallappa Siddappa vs. State of Karnataka, 2009 (66) ACC 725 (SC)
3. Mahmood vs. State of U.P., AIR 2008 SC 515
4. Vishnu vs. State of Maharashtra, 2006 (54) ACC 554 (SC)
5. State of Punjab vs. Hakam Singh, (2005) 7 SCC 408
6. Anwarul Haq vs. State of U.P., 2005 (4) SCJ 516
7. Anil Rai vs. State of Bihar, (2001) 7 SCC 318
8. State of Haryana vs. Bhagirath & others, (1999) 5 SCC 96
9. Adya Singh vs. State of Bihar, 1998 (37) ACC 527 (SC)
10. State of U.P. vs. Harban Sahai, 1998 (37) ACC 14 (SC)

(F) Where the eye witnesses of the murder had stated that the injuries from the firing of the pistol were on leg of the deceased but the post mortem report indicated the injury on part slightly higher than the thigh and there was nothing on record to impeach the testimony of the eye witnesses, it has been held that in the absence of ballistic experts opinion and contradictions regarding the position of injuries, it would not be sufficient to discard the trustworthy testimony of the eye witnesses. See : **Ajay Singh vs. State of Bihar, (2000) 9 SCC 730**

(G) **<u>When PW & PMR contrary on number of gun shots fired & gun shot injuries</u> :** Where the PW had stated that only single shot from double barreled

gun was fired but medical evidence clearly showing that the deceased had suffered multiple gun shot injuries, it has been held that a single shot can cause multiple injuries & in such cases there can be no inconsistency in between the medical evidence and the ocular evidence See... **Om Pal Singh Vs. State of UP, AIR 2011 SC 1562**

(H) **<u>when direction of bullet changes inside of body on being hit to bones</u> :** Where there was difference in the ocular & medical evidence regarding the direction of the gun shot injuries/pellets, it has been held that once pellets hit a hard substance like hummers bone they can get deflected in any direction and it can not be said that there is any inconsistency between medical ocular evidence. See : **2011 CrLJ 280 (SC)**

26(A).<u>Effect of non-production of Case Diary or General Diary</u> : The question of drawing adverse inference against the prosecution for non-production of case diary or general diary would have arisen had the court passed an order after being satisfied that the prosecution intended to suppress some facts which were material for purposes of arriving at the truth or otherwise of the prosecution cases. It no such application had been filed by the accused for summoning of the CD or GD and no order thereupon had been passed by the court, the question of drawing any adverse inference against the prosecution would not arise. See : **Ashok Kumar vs. State of Tamil Nadu, AIR 2006 SC 2419**

26(B). <u>Evidentiary value of charge-sheet u/s. 173(2) Cr.P.C.</u> : A charge sheet submitted by an investigating officer u/s. 173(2) Cr.P.C. is a public document within the meaning of Sec. 35 of the Evidence Act but it does not imply that all that is stated in the charge sheet as having been proved. All that can be said is that it is proved that the police had laid a charge sheet in which some allegations have been made against the accused. See : **Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three Judge Bench)**

26(C). <u>Charge sheet when only strong suspicion about the complicity of the accused</u> : Charge can be framed even on the basis of strong suspicion founded upon materials before the court which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. The investigating officers therefore can submit charge sheet against accused persons where no direct or circumstantial evidence is found during the investigations but there are still strong reasons to suspect the complicity of the accused in the commission of the offence. See :

(1) **Rakesh vs. State of U.P., 2009 (67) ACC 191 (All)**
(2) **Sanghi Brohters Pvt. Ltd. vs. Sanjay Chaudhary, (2008) 10 SCC 681**
(3) **Palwinder Singh vs. Balwinder Singh, 2009(65) ACC 399 (SC)**
(4) **Liyaqat v. State of U.P. 2008 (62) ACC 453 (Allahabad)**
(5) **Sachin Saxena alias Lucky v. State of U.P., 2008 (62) ACC 454 (Allahabad)**
(6) **Subhash Sharma v. State of U.P., 2007 (57) ACC 1039 (Allahabad)**
(7) **Ajeet Singh v. State of U.P., 2007 (57) ACC 1031 (Allahabad)**
(8) **Rajbir Singh v. State of U.P., 2006 (55) ACC 318 (SC)**
(9) **Superintendent and Remembrancer of legal Affairs, West Bengal v. Anil Kumar Bhunja, AIR 1980 SC 52**
(10) **State of Bihar v. Ramesh Singh, AIR 1977 SC 2018**

26(D).<u>Further investigation u/s. 173(8) & duty of I.Os.</u> : Law does not mandate taking of prior permission from the Magistrate to carry out further investigation after filing of the charge sheet. Conducting further investigation u/s. 173(8) Cr.P.C. is a statutory right of police. See :

1. **State of A.P. vs. A.S. Peter, AIR 2008 SC 1052**
2. **Hasanbhai Quereshi vs. State of Gujarat, (2004) 5 SCC 347**
3. **Dinesh Dalmia vs. CBI, AIR 2008 SC 78**

26(E). <u>Non-submission of charge sheet by I.O. within 60/90 days & personal liability of I.O. (Sec. 167(2) Cr.P.C.)</u> : Presiding Officers should write to SSP against the Investigating Officers failing in submitting police report (charge sheet) u/s. 173(2) Cr.P.C. within 60 or 90 days. Vide **C.L. No.52/2007Admin(G), dated 13.12.2007**, the Allahabad High Court has

issued following directions for compliance by the Judicial Officers of the State of U.P. :

"The Hon'ble Court has noticed that the delay takes place in submission of Police Report before the Magistrate on account of various reasons such as the investigating officer being biased in favour of accused, investigating officer being transferred from one police officer to another on account of their transfer. Such delay at times results in the **accused getting undue advantage of being set at liberty due to non filing of Police report within the time stipulated u/s. 167(2)(b) Cr.P.C.** The Hon'ble Court has been pleased to recommend that all the criminal courts shall write to SP/SSP. Concerned for necessary action against an investigating officer if he is found to be wanting in discharge of his duties deliberately in submitting the Police report within time as per mandate u/s. 167(2)(C) of Cr.P.C."

27(A). TIP not a right of the accused (Sec. 9, Evidence Act) : - Test Identification Parade is not a right of the accused under the provisions of the **Identification of Prisoners Act, 1920**. Investigating Agency is not obliged to hold TIP. Question of identification arises where accused is not known to the witness. See the cases noted below :

1. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
2. **Heera vs. State of Rajasthan, AIR 2007 SC 2425**
3. **Simon vs. State of Karnataka, (2004) 2 SCC 694**
4. **Malkhan Singh vs. State of M.P., 2003(47) ACC 427 (SC)**
5. **Visveswaran vs. State, 2003 (46) ACC 1049 (SC)**

27(B). TIP not a substantive evidence : TIP does not constitute substantive evidence. Court can accept evidence of identification of the accused without insisting on corroboration. See **: -**

1. **Santosh Devidas Behade vs. State of Maharashtra, 2009 (4) Supreme 380**
2. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**

3. **Malkhan Singh vs. State of M.P., 2003(47) ACC 427 (SC)**

27(C). <u>Delayed TIP</u> : - Under the facts of the cases, delayed holding of TIP has been held by the Supreme Court in the cases noted below not fatal to the prosecution. But TIP should be conducted as soon as possible after arrest of the accused as it becomes necessary to eliminate the possibility of accused being shown to witnesses prior to parade. See :

1. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
2. **Anil Kumar vs. State of U.P., (2003) 3 SCC 569**
3. **Pramod Mandal vs. State of Bihar, 2005 SCC (Criminal) 75**

27(D) <u>First time identification of the accused by witnesses in the cour</u> : Where the accused was not known to the witnesses from before the incident, first time identification of the accused by the witnesses in the court during trial has been held by the Supreme Court as sufficient and acceptable identification of the accused. See :

1. **Mahabir vs. State of Delhi, AIR 2008 SC 2343**
2. **Heera vs. State of Rajasthan, AIR 2007 SC 2425**
3. **Ashfaq vs. State Govt. of NCT of Delhi, (2004) 3 SCC 116**
4. **Simon vs. State of Karnataka, (2004) 2 SCC 694**
5. **Dana Yadav vs. State of Bihar, 2003(47) ACC 467 (SC)**
6. **Munna vs. State (NCT) of Delhi, 2003 (47) ACC 1129 (SC)**

28. <u>Death by poisoning/preservation of viscera & duty of I.O.</u> : In the case of death by poisoning, prosecution is required to prove following ingredients against the accused : --

(1) that the death took place by poisoning

(2) that the accused had poison in his/their possession

(3) that the accused had an opportunity to administer the poison.

See : **Moinuddin vs. State of U.P., 2004 (50) ACC 244 (Allahabad—D.B.)**

Note: In this case the poison (powder) recovered by police at the instance of the accused while in police custody was described as "Potash" but an analysis by chemical examiner was found to be "Sodium Cyanide". Conviction recorded by trial court was, therefore, set aside by High Court. The investigating officers should therefore must obtain viscera report from the toxicologist and produce it in the court alongwith the charge sheet otherwise the cause of death not being known and proof, liability of the accused cannot be held.

28(A) Death by poisoning & circumstantial evidence : Where accused doctor made his father-in-law and mother-in-law and their 3 minor children believe that they were suffering from AIDS when it was not so and killed them in order to grab their property by giving poisonous injection under pretext of giving treatment, he was convicted for murder on the basis of circumstantial evidence. **See :Reddy Sampath Kumar Vs. State of AP, AIR 2005 SC 3478**

29(A). Articles as source of light not taken into possession & not produced in court : Where the offences like highway robbery, dacoity etc. or other offences committed in the darkness of night, poor light or no light, the investigating officers while interrogating the witnesses and recording their statements u/s. 161 Cr.P.C., should also question the witnesses as to how they could have identified the accused persons despite their being no source of light or in poor light or no light. If any source of light like lantern, earthen lamp (Dhibri), torch or electrical bulbs etc. were there the same should be not only noted in their statements but their position should also be indicated in the map of the spot. However as regards the question of identifying the assailants/accused persons in poor visibility or no visibility, if the witnesses belong to villages or such rural areas etc. where people are generally accustomed to do their work and live in darkness in the absence of electricity or other devices as source of light, the identity of the accused who are already known to the victims for the witnesses

prior to the occurrence can be established by the deposition of such witnesses during trial of the case. But the investigating officers should endeavour to record some statements of the witnesses u/s. 161 Cr.P.C. on the same. In criminal trials, argument by defence is often advanced that because of poor light, no light or darkness or night, the PWs could not have identified the accused. But in the cases noted below, the Hon'ble Supreme Court has clarified that a witness who is accustomed to live in darkness, poor light or no light, can identify the accused even in such conditions : -

29(B). It was a trial u/s. 302/34 IPC. Accused were known to PWs. Occurrence had taken place at about 11.00 p.m., two days prior to the new moon day. Parties were used to living in the midst of nature and accustomed to live without light. Further, they were close relatives and living in the neighbouring huts. In view of these facts, the defence contention that the ocular witnesses could not have witnessed the occurrence was rejected by the apex court and conviction upheld. See : **Sheoraj Bapuray Jadhav vs. State of Karnataka, (2003) 6 SCC 392**

29(C). It was a murder trial. The victim had himself signed the FIR, made statements u/s. 161 Cr.P.C. and died on way from police station to hospital. Occurrence had taken place at about 8.00 to 9.00 p.m. in the night. Victim and the witnesses had recognized the accused even in the night. Accused had challenged the deceased with insulting utterances before firing at him. The victim and the eye witnesses who were present at about 8 to 10 steps away from the place of occurrence, had, therefore, full opportunity to identify the accused. Conviction was upheld. See : **Gulab Singh vs. State of U.P., 2003(4) ACC 161 (Allahabad : D.B.)**

29(D). It was a criminal trial u/s. 302/149, 201 IPC. Place of occurrence was varandah of the deceased. Lanterns (two) were said to be kept and lighting on the varandah near the place of occurrence. Mother, sister and neighbourer of the deceased, being eye witnesses, h ad deposed during trial to have identified the accused persons in such poor light. Accused were convicted by the trial court.

Argument of the accused/appellants before Supreme Court was that the two lanterns said to be kept on the varandah (place of occurrence) were neither seized nor produced before the court and even if it is supposed that the lanterns were there on the floor of the varandah, the lanterns could cast their light near the floor and, therefore, it was not possible for the eye witnesses to have identified the accused persons in such poor light even if the place of occurrence was varandah or courtyard. The Supreme Court rejected the argument and held "as the incident took place in village and the visibility of villagers are conditioned to such lights and it would be quite possible for the eye witnesses to identify men and matters in such light." See-- **Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)**

29(E). In this case, the deceased was murdered by the accused in the night while issuing copies of voter list and caste certificates and the hurricane lamp said to be lighting near the place of occurrence was not seized and produced by the investigating officer. The defence argument was that the eye witnesses could not have identified the accused as the hurricane lamp said to be the only source of light was not produced by the prosecution in the court. The Supreme Court, upholding the conviction by rejecting the argument, held that it could legitimately be inferred that there would be some source of light to enable the deceased to perform his job. See-- **B. Subba Rao vs. Public Prosecutor, High Court of A.P., 1998 (1) JIC 63 (SC)**

29(F). "The visible capacity of urban people who are acclimatized to fluorescent light is not the standard to be applied to villagers whose optical potency is attuned to country made lamps. Visibility of villagers is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such lights." See-- **Kalika Tewari vs. State of Bihar, JT 1997(4) SC 405**

29(G). Where the murder had taken place at night and the source of light was not indicated in the FIR and the accused and the eye witnesses were closely related, it has been held by the Supreme Court that the evidence of eye witnesses cannot be discarded. See-- **State of U.P. vs. Sheo Lal, AIR 2009 SC 1912**

29(H). Where the witness had stated that he had seen the attack in the light of scooter head light, it has been held that mere absence of indication about source of light in FIR for identifying assailants does not in any way affect the prosecution version. See : **S. Sudershan Reddy vs. State of A.P., AIR 2006 SC 2716**

30. <u>Signatures of the witnesses or the accused on the statements recorded by police to be avoided</u> : In view of the provisions u/s. 162 Cr.P.C., obtaining signatures of the witnesses on their statements recorded u/s. 161 Cr.P.C. should normally be avoided by the investigating officers. However if the investigating officer has obtained such signature of the witnesses on their statements, the same would not be vitiated and would be still read. Obtaining signature of the accused on seizure memo u/s. 27 Evidence Act does not tantamount to illegality and the proceedings of seizure do not get vitiated by that. The Bar contained u/s. 162 Cr.P.C. operates against the investigating officer and not against the court. See :

1. **Govinda vs. State of U.P., 2008 (61) ACC 486 (All)**
2. **Meenu Kumari vs. State of Bihar, (2006) 4 SCC 359**
3. **State of Rajasthan vs. Teja Ram, 1999 (38) ACC 627 (SC)**

31(A). <u>Dead body & its identification</u> : Whenever question of identity of dead body of the deceased is involved, the investigating officer should exercise a little more caution and every attempt should be made to secure the identity of the dead body from such witnesses who are generally known to the deceased and also from his near and dear ones. Securing identity of the dead body from

strangers or from such persons who had generally no acquaintance with the deceased should be avoided. See : **N.H. Muhammed vs. State of Kerala, (2009) 3 SCC (Criminal) 982**

31(B). **<u>Inquest report & duty of I.O. (Sec. 174 Cr.P.C.)</u>** : Delay in preparing inquest report also casts doubt on the genuineness of the entries contained in the inquest report and the investigating officers should therefore prepare the inquest report at the earliest possible opportunity. The causes behind delayed preparation of inquest report should be explained by the I.O. in his depositions before the court. See :

1. **Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543**
2. **Moti Lal vs. State of Rajasthan, (2009) 3 SCC (Criminal) 444**

31(C). **<u>Object of preparing Inquest report u/s. 174 Cr.P.C.</u> :** The whole purpose of preparing an inquest report u/s. 174 (1) Cr.P.C. is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating in what manner, or by what weapon or instrument, if any, such wounds appear to have been inflicted. In other words, for the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. In dealing with S. 174, Cr.P.C. in **Podda Narayana vs. State of A.P.,** (1975)4 SCC 153; (AIR 1975 SC 1252), Supreme Court held that the object of the proceedings there under is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. According to Supreme Court the question regarding the details how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings. With the above observation Supreme Court held that the High Court was right (in that

case) that the omissions in the inquest report were not sufficient to put the prosecution out of Court. **George vs. State of Kerala, AIR 1998 SC 1376**. (See : **2007 Cr.L.J. 2740 (SC)**

31(D). **<u>Inquest report u/s 174 CrPC not substantive evidence</u>...** inquest report is not substantive evidence. But it may be utilised for contradicting witnesses of inquest. Any ommission to mention crime number, names of accused penal provisions under which ofences have ben committed are not fatal to prosecution case. Such ommissions do not lead to inference that FIR is ante-timed and evidence of eyewitnesses cannot be discarded if their names do not figure in inquest report. The whole purpose of preparing an inquest report u/s 174 CrPC is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the diseased and stating as in what manner or by what weapon or instrument such wounds appear to have been inflicted. For the purpose of holding the inquest it is neither necessary nor obligatory on the part of the IO to investigate into or ascertain who were the persons responsible for the death. The object of the proceedings u/s 174 CrPC is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and if so what was its apparent cause. The question regarding the details of how the diseased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings i.e. the inquest report is not the statement of any person wherein all the names of the persons accused must e mentioned. omissions in the inquest report are not sufficient to put the prosecution out of court. The basic purpose of holding inquest is to report regarding the apparent cause of death namely whether it is suicidal, homicidal, accidental or by some machinery etc. It is therefore not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses cannot be discarded if their names do not figure in the inquest report prepared

at the earliest point of time. See : **Brahma Swaroop vs. State of U.P., AIR 2011 SC 280.**

31(E).<u>Inquest Report & Discrepancies or Omissions In Preparation Thereof --- Effect</u>? : Argument advanced regarding omissions, discrepancies, overwriting, contradiction in inquest report should not be entertained unless attention of author thereof is drawn to the said fact and opportunity is given to him to explain when he is examined as a witness. Necessary contents of an inquest report prepared u/s. 174 Cr.P.C. and the investigation for that purpose is limited in scope and is confined to ascertainment of apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. Details of overt acts need not be recorded in inquest report. Question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who were the witnesses of the assault is foreign to the ambit and scope of proceedings u/s. 174 Cr.P.C. There is no requirement in law to mention details of FIR, names of accused or the names of eye-witnesses or the gist of their statements in inquest report, nor is the said report required to be signed by any eye witness. See : **Radha Mohan Singh alias Lal Saheb vs. State of U.P., 2006 (54) ACC 862 (Supreme Court— Three Judge Bench**

31(F).<u>Decomposed dead body & its identification by clothes</u> : Where the decomposed dead body of the deceased was identified by two fellow labourers by clothes which the deceased was bearing at the time of the incident, it has been held by the Supreme Court that the identity of the dead body of the deceased was established. See : **Jarnail Singh vs. State of Punjab, 2009 (67) ACC 668 (SC)**

31(G).<u>Medical science not perfect to declare exact timing of death</u> : Medical science has not reached such perfection so as to enable a medical practioner to

categorically indicate the exact timing of death. (See **Ramjee Rai vs. State of Bihar, 2007 (57) ACC 385 (SC).** In this case the prosecution version was that the occurrence resulting into the death of the deceased and injuries to two surviving injured took place in between 6-7 a.m. (morning) on 6.9.77. But the two doctors as PWs (doing autopsy and examining the remaining two injured) deposed in their examination-in-chief that death of the deceased was possible on 6.9.77 at 7-7 a.m. but in cross-examination they deposed "that it may be possible that the deceased died in the mid-night of 5/6.9.77". The Supreme Court has, under these facts, clarified that the doctor can never be absolutely certain on point of time so far as duration of injuries are concerned.

31(H). Asphyxia / Strangulation / Throttling / Hanging & Ligature Mark : How to judge medical evidence thereon? : In the murder trial of **Thaman Kumar vs. State of Union Territory of Chandigarh, (2003) 6 SCC 380,** rope of cloth was alleged to have been used for strangulation of the throat of the deceased. Width of the ligature mark was not tallying with the diameter of the rope (rope formed by twisting the cloth). There was difference between the width of the ligature mark stated by the PW and the testimony of doctor. The width of the ligature mark would very depend upon the type of the cloth, how tightly and strongly it was rolled over and was converted into a rope and how soon it was removed. In the present case, the cotton cloth was used in strangulation and was removed immediately as witnesses reached the spot and caught hold of the assailants. In such circumstances, the ligature mark could be much smaller and need not tally with the diameter of the rope. If direct evidence (ocular testimony) is satisfactory and reliable, same cannot be rejected on hypothetical medical evidence. In this case **Modi's Medical Jurisprudences 22nd Edition, page 263** has been quoted in regard to "Deaths from Asphyxia, Strangulation, Ligature marks".

31(I). Strangulation of neck by electric cord and ligature mark : See : Santosh Kumar Singh Vs. State through CBI, (2010) 9 SCC 747.

32(A).Recording of DD by magistrate not required : Recording of DD by Magistrate is not mandatory and the same can be recorded by any person. See--

1. **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**
2. **Balbir Singh vs. State of Punjab, AIR 2006 SC 3221)**

32(B). Dying Declaration when recorded by police : DD recorded by police in presence of other prosecution witnesses is valid. Such DD is reliable and cannot be doubted on the ground that the statement not produced to police but produced before the court directly for the first time. See : **Doryodhan vs. State of Maharashtra, 2003(1) JIC 184 (SC)**

32(C).Presence of Magistrate at the time of recording of DD not required : Presence of Magistrate is also not necessary, although to assure authenticity it is usual to call a Magistrate, if available to record DD. Person who records a DD must essentially be satisfied that the deceased was in a fit state of mind. See : **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**

32(D).Whether corroboration of DD is required? : if a DD is found to be reliable then there is no need for corroboration by any witness and conviction can be sustained on its basis alone. See :

1. **Jayabalan vs. U.T. of Pondicherry, 2009 (7) Supreme 270**
2. **Bijoy Das vs. State of West Bengal, (2008) 4 SCC 511**
3. **Bapu vs. State of Maharashtra, (2006) 12 SCC 73**
4. **Ravi vs. State of Tamilnadu, (2004) 10 SCC 776)**

32(E). Reasons behind holding DD reliable : A DD made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding the circumstances leading to his death. But at the same time the DD like any other evidence has to be tested on the touchstone of credibility to be acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of

the statement by cross-examination. The DD, if found reliable can form the base of conviction. A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Matthew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice." See :

1. **Narain Singh vs. State of Haryana, (2004) 13 SCC 264**
2. **Babulal vs. State of M.P., (2003) 12 SCC 490**

32(F).<u>Oath to Declarant not required</u> : Administering oath to the declarant before recording his/her DD is not required in law. See : **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**

32(G).<u>Form of Dying Declaration</u> : No statutory form for recording DD is necessary. A DD can be made verbally or in writing and by any method of communication like signs, words or otherwise provided the indication is positive and definite. See : **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**

32(H). **Verbal Dying Declaration** : A DD can be made by the declarant even verbally. Reducing the DD to writing is not mandatory. See : **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**

32(I). **Dying declaration by signs & gestures etc.** : A DD can be made verbally or in writing and by any method of communication like signs, words or otherwise provided the indication is positive and definite. See : **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**

32(J). **Certificate of Doctor regarding mental fitness of declarant of DD not required : -** Certificate by doctor asto mental fitness of the deceased not necessary because certificate by doctor is only a rule of caution. Voluntary and truthful nature of the declaration can be established otherwise also. See : **Laxman vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench)**

32(K). **Contradictory dying declarations & their appreciation :** Where there are different contradictory dying declarations, the accused is entitled to benefit of doubt and acquittal. See : **Sanjay vs. State of Maharashtra, AIR 2007 SC 1368**

32(L). **Dying Declaration when implicating co-accused :** Where the accused committed suicide and made statement in his suicide note implicating other co-accused, it has been held that the same would not be admissible u/s. 32(1). Evidence Act See : **Anil vs. Administration of Daman & Diu, 2007(57) ACC 397 (SC)**

32(M). **Suspicious Dying Declaration :** Where DD is suspicious, it should not be acted upon without corroborative evidence. See : **Rasheed Beg vs. State of M.P., (1974) 4 SCC 264**

32(N). **When maker of DD is unconscious :** Where the deceased was unconscious and could never make any DD the evidence with regard to it is to be rejected. See : **Kake Singh vs. State of M.P., 1981 Supp SCC 25**

32(O). **Successive Dying Declarations & their appreciation :** Where there are more than one statement in the nature of DD, one first in point of time must be

preferred. Of course, if the plurality of DD could be held to be trustworthy and reliable, it has to be accepted. See : **Mohanlal Gangaram Gehani vs. State of Maharashtra, (1982) 1 SCC 700**

32(P).Value of Dying Declaration when the declarant survives : D.D. or statement made by a person becomes relevant u/s. 32 of the Evidence Act only if he later dies. If he survives thereafter, his statement is admissible u/s. 157 Evidence Act as a former statement made by him in order to corroborate or contradict his testimony in court. It is well settled that when a person who has made a statement, may be in expectation of death, is not dead, it is not a dying declaration and is not admissible u/s. 32 of the Evidence Act. Such statement recorded by a Magistrate as DD would be treated as statement recorded u/s. 164 Cr.P.C. See :

1. **Gajula Surya Prakasarao vs. State of A.P., 2009 (7) Supreme 299**
2. **State of U.P. vs. Veer Singh, 2004 SCC (Criminal) 1672**
3. **Maqsoodan vs. State of U.P., (1983) 1 SCC 218 (Three-Judge Bench)**
4. **Sunil Kumar vs. State of M.P., AIR 1997 SC 940**

33(A).Sanction for prosecution & production of relevant documents before sanctioning authority : After completion of investigation and before submission of charge0 sheet to the court for trial, sanction for prosecution of the accused for offences under Acts like Arms Act, 1959, NDPS Act, 1985, Prevention of Corruption Act, 1988 and u/s. 197 Cr.P.C. for the prosecution of public servants is required from the sanctioning authority but at the time of obtaining sanction order from the concerned authority, the investigating officer do not produced the entire case diary or the relevant documents before the authority concerned whereas it is quite obligatory on the part of the sanctioning authority to apply his mind to the entire papers/material collected by the investigating officer during investigation before according sanction otherwise the order of the authority granting sanction for the prosecution of the accused may be held invalid and the accused may be benefited out of the latches on the part of the investigating officer.

33(B).<u>Sanction of Prosecution without application of mind</u> : Where the accused public servant/Pharmacist was prosecuted and convicted for offences u/s 161 I.P.C. and Sec. 5/2 of the P.C. Act 1947 but there was no application of mind by the sanctioning authority, the conviction was set aside on the ground of non-application of mind before according sanction by the sanctioning authority. Order granting sanction should be demonstrative of fact of proper application of mind. The sanctioning authority must judge whether the public servant should receive the protection under the P.C. Act 1988 or not. See :

(i) **State of Karnataka V. Ameer Jan, 2007 (59) ACC 811 SC)**

(ii) **Bishambhar Dayal Srivastava V. State of U.P., 1994(1) Crimes, 712 (All)**

(iii) **Ramesh Lal Jain v. Naginder Singh Rana,(2006)1 SCC 294**

33(C) .<u>Sanction for prosecution of retired public servant not required:</u> If the alleged act of corruption was committed by the Minister during his tenure as such Minister, sanction u/s 19 of the P.C. Act 1947 for his prosecution after he ceased to be a Minister was not required. See : **Habibulla Khan V. State of Orissa, AIR 1995 S.C. 1123.**

33(D).<u>Trap without sanction illegal</u> : Where a lineman of Electricity Board had demanded illicit money from consumer and trap was laid by Police Inspector on earlier two occasions with prior permission of Judicial Magistrate but the accused did not turn up and then the trap laid down on third occasion by the Police Inspector was without prior permission of the Judicial Magistrate, the same was held illegal. See : **Vishnu Kondaji Jadhav V. State of Maharashtra, AIR 1994 SC 1670.**

33(E).<u>Sanction subsequent to discharge of accused</u> : If the accused was discharged for want of sanction (under POTA), court can proceed subsequent to obtaining sanction. See : **Balbir Singh V. State of Delhi, 2007 (59) ACC 267 (SC)**

33(F).<u>Sanction by incompetent authority</u> : Sanction granted by an officer not competent to do so is a nullity. If the officer granting sanction was not conferred the delegated powers of the sanctioning authority, the same is nullity.

Sanction must be granted by an officer competent to remove the accused from office. See : **State Inspector of Police V. Surya Sankaram Karri, 2006 (46) AIC 716 (SC).**

33(G) .<u>Sanction order to be speaking</u> : When the sanction order for prosecution of the accused under the P.C. Act is eloquent and speaks for itself, it is valid. See : **C.S. Krishnamurthy V. State of Karnataka, 2005(3) SCJ 660**

33(H).<u>No sanction required for offence u/s. 12 of the P.C. Act, 1988</u> : Abetment of any offence punishable u/s. 7 or 11 is in itself a distinct offence. Sec. 19 of the P.C. Act, 1988 specifically omits Sec. 12 from its purview. Courts do not take cognizance of an offence punishable u/s. 7, 10, 11, 13, 15 alleged to have been committed by a public servant except with the previous sanction of the government. No such sanction is required in cases of offence punishable u/s. 12 of the P.C. Act, 1988. See : **State Through CBI vs. Parmeshwaran Subramani, 2009 (67) ACC 310 (SC)**

33(I). <u>Relevant date for sanction of prosecution</u> : The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Sec. 6 of the P.C. Act 1947 is the date on which the Court is called upon to take cognizance of the offence of which he is accused. See : **R.S. Nayak V. A.R. Antulay, AIR 1984 S.C. 684. (Five Judge Bench).**

34(A).<u>Scientific tests & their different kinds</u> : In modern times for proper and effective investigation of crimes, several scientific tests are also applied which give sufficient lead not only to the investigating agency in working out the critical criminal cases but also helps in tracing and apprehending the real perpetrator of the crimes. Some of the main scientific tests generally applied in detecting the crimes and criminals are as under :

(i) DNA (Deoxyribo Nucleic Acid)

(ii) RNA (Ribo Nucleic Acid)

(iii) Lie-Detector Test

(iv) Polygraph Test
(v) Brain-Mapping Test (P300)
(vi) Narco Analysis Test (Also known as Truth Serum Test)
(vii) Voice Analysis Test
(viii) Finger Print Test
(ix) Handwriting Test
(x) Typewriter Test

34(B).<u>Pre-conditions for the admissibility of scientific evidence</u> : The admissibility of the result of a scientific test will depend upon its authenticity. Whether the brain mapping test is so developed that the report will have a probative value so as to enable a court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court. Referring to the **US Supreme Court decisions in the cases of Frye vs. United States, (293F1013 DCcir 1923) and Daubart vs. Merryll Dow Pharmaceuticals Inc., 113SCt. 2786 (1993)**, it has been ruled by the Supreme Court of India that the pre-conditions for the admissibility of the scientific evidence (u/s. 45 of the Evidence Act) are as under--

(i) Whether the principle or technique has been or can be reliably tested?
(ii) Whether it has been subject to peer review or publication?
(iii) It's known for potential rate of error?
(iv) Whether there are recognized standards that control the procedure of implementation of the technique?
(v) Whether it is generally accepted by the Community?
(vi) Whether the technique has been introduced or conducted independently of the litigation? See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 Cr.L.J. 2533 (SC—Three Judge Bench)**

35 A. <u>Magistrate competent to order taking of Specimen Finger Prints or Handwritings etc. from Accused</u> : U/s 5 & 6 of the Identification of Prisoners Act, 1920, a first class Magistrate is competent to order taking of specimen fingerprint, handwriting, thumb impression, impressions of foot, impression of palm or fingers, showing parts of the body by way of identification for an investigation or proceedings under the Cr.P.C. and the same would not be hit by Art. 20(3) of the Constitution as "being witness against himself". See :

1. **State through SPE & CBI vs. M. Krishna Mohan, AIR 2008 SC 368**
2. **State of Bombay vs. Kathi Kalu, AIR 1961 SC 1808 (Eleven Judge Bench)**

35B. <u>Delayed seizure of incriminating articles, non-sending thereof to finger print expert same day and his non-examination as witness before court renders his evidence incredible:</u> Delayed seizure of incriminating articles, non-sending thereof to the finger print expert same day, non-explanation for such delay and non-examination of the finger print expert as witness before the court renders his evidence incredible. See: Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench)

35 **C. <u>Taking finger print of accused without magisterial order held doubtful:</u>** In the case noted below, alleged Tumblers bearing finger print of the accused was found at the scene of the crime. His finger prints were taken by the investigating officer u/s 4 of the Identification of Prisoners Act, 1920. Since the attesting witnesses of packing and sealing of tumblers were not independent witnesses and the finger print of the accused was obtained by the police without magisterial order, the Supreme Court held that the finger prints of the accused upon the tumblers were doubtful. See: State of MP Vs. Markand Singh, AIR 2019 SC 546.

36. <u>Power of court to order narco analysis or brain mapping tests etc.</u> : The discovery of the truth is the desideratum of investigation, and all efforts have to be made to find out the real culprit, because, a guilty person should not be

allowed to escape from the liability of the guilt. Courts have, therefore, to adopt a helpful attitude, in all efforts, made by the prosecution for discovery of the truth. If the Narco Analysis and Brain Mapping Test can be helpful in finding out the facts relating to the offence, it should be used and utilized and the Courts should be used and utilized and the Courts should not obstruct the conduct of the exercise. See :

1. **Abhay Singh vs. State of U.P., 2009 (65) ACC 507 (All)**
2. **Santokben vs. State of Gujarat, 2008 Cr.L.J. 68 (Gujarat)**
3. **Dinesh Dalmia vs. State, 2006 Cr.L.J. 2401 (Madras)**

37(A).<u>DNA & other scientific tests when can be ordered by courts?</u> : DNA Test is not to be directed as a matter of routine and only in deserving cases such direction can be given. See :

1. **Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**
2. **Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449**

37(B).<u>DNA profiling test of the person of victim of rape (Sec. 164-A (2) (iii) Cr.P.C. w.e.f. 2006)</u> : (A) An investigating officer, u/s. 164-A(2)(iii) Cr.P.C., can get a victim of rape not only medically examined by a registered medical practitioner but can also get the material taken from the person of the woman (victim of rape) through a registered medical practitioner for DNA profiling. But according to the provisions under sub sections (4) & (7) to Sec. 164-A Cr.P.C. the woman (victim of rape) cannot be subjected to DNA test without her consent and in case of the woman being minor or otherwise incompetent to give consent then with the consent of some person competent to give consent on her behalf.

37(C).<u>Precautions & procedure in conducting DNA Test</u> : While conducting DNA test precautions are required to be taken to ensure preparation of high-molecular-weight DNA complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct

bands with appropriate control. See : **Pantangi Balarama Venkata Ganesh vs. State of A.P., 2009 (5) Supreme 506**

37(D) .<u>DNA report in the face of other evidence</u> : Where in a murder trial the conviction of the accused was not based on expert evidence alone but on other evidence available on record as well, it has been held by the Supreme Court that the use of the word 'similar' and not 'identical' in his report by the DNA expert is not material. See : **Pantangi Balarama Venkata Ganesh vs. State of A.P., AIR 2009 SC 3129**

37(E).<u>Evidentiary value of DNA test report</u> : (A) Referring to the U.S. Supreme Court decision rendered in the case of R. vs. Watters, (2000) All.E.R. (D) 1469, the Supreme Court of India has ruled that the DNA evidence may have a great significance where there is supporting evidence, dependent, of course, on the strength of that evidence. In every case one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole, it does amount to a prima facie case. See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 Cr.L.J. 2533 (SC—Three Judge Bench)**

Where DNA report, being the solitary piece of evidence against an accused of offence of rape, had gone negative, it has been held that the DNA report conclusively excludes possibility of involvement of the accused in the commission of offence of rape. See : **2009 ACC Summary 22 (Gujarat High Court)**

37(F).<u>DNA Test to decide paternity when can be ordered by court?</u> : As regards the scientific tests of blood or DNA Test for determining the paternity or legitimacy of a child, the Supreme Court has laid down following guidelines for the purpose :

(1) That courts in India cannot order blood test as a matter of course;

(2) Wherever applications are made with such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s. 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis. See— **Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**

38(A). Determination of paternity by blood grouping test : The blood grouping test is a perfect test to determine questions of disputed paternity of a child and can be relied upon by courts as circumstantial evidence. But no person can be compelled to give a sample of blood for blood grouping test against his will and no adverse inference can be drawn against him for his refusal. See : **Hargovind Soni vs. Ramdulari, AIR 1986 MP 57**

In the case of **Raghunath Eknath Hivale vs. Shardabai Karbharikale, AIR 1986 Bom. 386,** it has been held by the Bombay High Court that blood grouping tests have their limitation. They cannot possibly establish paternity as they can only indicate its possibilities.

38(B). Legitimacy of child : Section 112 of the Evidence Act lays down that if a person was born during the continuance of a valid marriage between his mother and any man or within two hundred and eighty days after its dissolution and the mother remains unmarried, it shall be taken as conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. This rule of law based on the dictates of justice has always made the courts inclined towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimation of

the child would result in rank injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman. See :

1. **Dukhtar Jahan (Smt.) vs. Mohammed Farooq, AIR 1987 SC 1049**
2. **Amarjit Kaur vs. Harbhajan Singh, (2003) 10 SCC 228**

38(C).<u>**Whether DNA & RNA Tests are conclusive for determination of paternity etc.?**</u> **:** Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements like **Deoxyribo Nucleic Acid (DNA)** as well as **Ribo Nucleic Acid (RNA)** tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Sec. 112 of the Evidence Act e.g. if a husband and wife were living together during the time of conception but the <u>**DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable**</u>. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated herein. It is for the parties to place evidence in support of their respective claims (regarding paternity) and establish their stands. The view that the documents produced by the party regarding succession certificate (paternity) are not sufficient or relevant for the purpose of adjudication of paternity and <u>**DNA Test is conclusive, is erroneous**</u>. See :

1. **Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449**
2. **Kamti Devi vs. Poshi Ram, (2001) 5 SCC 311**

38(D).<u>Evidentiary Value of Blood Test for Determining Paternity</u> : Medical science is able to analyze the blood of individuals into definite groups; and by examining the blood of a given man and a child to determine whether the man could or could not be the father. Blood tests cannot show positively that any man is father, but they can show positively that a given man could or could not be the father. It is obviously the latter aspect that proves to be most valuable in determining paternity, that is, the exclusion aspect, for offence it is determined that a man could be the father, he is thereby automatically excluded from considerations of paternity. When a man is not the father of a child, it has been said that there is atleast a 70 percent chance that if blood tests are taken they will show positively he is not the father, and in some cases the chance is even higher, between two given men who have had sexual intercourse with the mother at the time of conception, both of whom undergo blood tests will show that one of them is not the father with the irrestitible proof that the other is the father. The position which emerges on reference to these authoritative texts is that depending on the type of litigation, samples of blood, when subjected to skilled scientific examination, can sometimes supply helpful evidence on various issues, to exclude a particular parentage set up in the case. But the consideration remains that the party asserting the claim to have a child and the rival set of parents put to blood test must establish his right so to do. The court exercises protective jurisdiction on behalf of an infant. It would be unjust and not fair either to direct a test for a collateral reason to assist a litigant in his or her claim. The child cannot be allowed to suffer because of his incapacity; the aim is to ensure that he gets his rights. If in a case the court has reason to believe that the application or blood test is of a fishing nature or designed for some ulterior motive, it would be justified in not acceding to such a prayer. See : **Bharti Raj vs. Sumesh Sachdeo, AIR 1986 All 259**

38(E).Proof of "Access" or "Non access" by husband or wife to each other (Sec. 112 Evidence Act) : Sec. 112, Evidence Act requires the party disputing the paternity to prove non-access in order to dispel the presumption. "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual "cohabitation". The effect of Section 112 Evidence Act is that: there is a presumption and a very strong one though a rebuttable one. Conclusive proof means as laid down under Section 4 of the Evidence Act. See :

1. **Shyam Lal vs. Sanjeev Kumar, AIR 2009 SC 3115**
2. **Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**

38(F).Drugs generally applied for tests like Narco-analysis & Polygraph etc. : Following drugs are generally used on the subject for conducting the tests like narco analysis, lie detector and polygraph etc. to extract truth or confession--

(1) Sodium Pentothal,
(2) Seconal
(3) Hyoscine (scopolamine)
(4) Sodium Amytal
(5) Phenobarbital

38(G).Plea Of Health Hazard Not Tenable Against The Proposed Scientific Tests Like Polygraph, Narco Analysis & Brain Mapping etc. : Directing scientific tests like polygraph, narco analysis or brain mapping of an accused is not violative of the provisions of Art. 20(3) of the Constitution. Such tests on accused to bring out clinching evidence by extracting truth from him would not amount to breaking his silence by force and intrusion of his constitutional right to remain silent. Plea that such tests would cause health hazard to accused is also not tenable. Scientific tests like polygraph, narco analysis and brain mapping etc. are **like taking MRI or CT Scan** of a person. Scientific value of such tests and credibility thereof can be evaluated only during course of trial.

There is a hue and cry from public and human rights activists that the investigating sleuths adopt third degree methods to extract information from accused. But it is high time that the investigating agencies should take recourse to scientific methods of investigation. See :

1. **Arun Gulab Gavali vs. State of Maharashtra, 2006 Cr.L.J. 2615 (Bombay—D.B.)**
2. **Dinesh Dalmia vs. State, 2006 Cr.L.J. 2401 (Madras)**

39(A).History & Method of Brain Mapping Test (P300) : The brain mapping test which is also known as P300 was for the first time developed in 1995 by famous neurologist Dr. Lawrence A. Farwell who was the Director & the Chief Scientist "Brain Wave Science" IOWA. In this method, called the **"Brain wave finger printing"**; the accused is first interviewed and interrogated to find out whether he is concealing any information. Then sensors are attached to the subject's head and the person is seated before a computer monitor. He is then shown certain images or made to hear certain sounds. The sensors monitor electrical activity in the brain and register P300 waves, which are generated only if the subject has connection with the stimulus i.e. picture or sound. The subject is not asked any questions. Dr. Farwell has published that a MERMER (Memory and Encoding Related Multifaceted Electro Encephalographic Response) is initiated in the accused when his brain recognized noteworthy information pertaining to the crime. These stimuli are called the "target stimuli". In nutshell, Brain finger printing test matches information stored in the brain with information from the crime scene.

39(B). Brain Fingerprinting Test : Central brain controls the outer brain parts. This control is disturbed by deception. An instrument called "Automatic Response Indicator" can record these disturbances. This device or system is known as "Automatic Response Indicator System". A device called Electroencephalograph (EEG) has been developed which can record cognitive process of recognition. For example, if weapon of an offence is recognized by

the culprit the instrument would show the change in the brain wave patterns. This technique is also called Brain Printing or Brain Fingerprinting. EEG is also called BEAM, i.e., Brain Electrical Activity Mapping. It is a neurophysiologic measurement of electrical activity of brain. Electro-signals are called brain waves and it is recorded by EEG. The brain produces other electrical activities also such as responses to sound, light, touch etc. but Alpha, Beta, Delta and Theta are the standard bands of the frequency spectrum that constitute EEG activity. Electronecephalography is the science of recording and analyzing brain's electrical activity. Certain electrodes are attached to the scalp of the person. These electrodes are attached to EEG. EEG is an amplifier and converts electrical impulses into vertical moments of a pen over a sheet of paper. This recording is called electroencephalogram. Recording is made in different ways. For example, by coupling a simple electrode with an indifferent or neutral lead or between two areas of the brain through bipolar technique. The combination of recorded impulses is called a montage. By recording in different ways the scientists have been able to detect and treat various diseases such as epilepsy, cerebral tumor, encephalitis and stroke and also fainting (syncope), sleep disorders, coma and brain death can be monitored and diagnosed with the help of EEG. This technique has proved beneficial in study of brain from various angles and in different conditions. It is also used for determining whether brain has dies or not. It is said to be non-invasive and can detect convert responses to stimuli. Even a change on a millisecond level is recorded by means of Electroencephalograph. It helps monitor clinical depression treatment. Other methods of brain mapping take minutes and seconds but by mean of EEG it ss done is sub-milliseconds. This is the only method to record brain activity directly. Other methods rely on blood flow or metabolism.

39(C).<u>Reliability Of Brain Mapping Test</u> : The admissibility of the result of a scientific test will depend upon its authenticity. Whether the brain mapping test is so developed that the report will have a probative value so as to enable a

court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court. See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 Cr.L.J. 2533 (SC—Three Judge Bench)**

40. **<u>History & Method of Polygraph Test</u> :** The polygraph test was invented by Robert House of the U.S.A. in 1922. The subject is applied sedative drugs and under its influence questioning of the subject is done by the expert. Under the influence of the drug administered to the subject, he cannot create a lie as he has no power to think or reason. Under the influence of such drugs the subject cannot innovate and he would be speaking only the truth.

41(A).<u>History & method of Narco Analysis Test</u> : Narco analysis test is also known as Truth Serum Test. Narco+Analysis=Narco-analysis means psycho analysis using drugs to induce a state akin to sleep. In narco analysis test when the drug like sodiumamytal is used as a truth drug on the suspect for determination of facts about the crime, it is called an **"Amytal Interview"**. It is believed that if a person is administered a drug which suppresses his reasoning power without affecting memory and speech, he can be made to tell the truth. Some drugs have been found to create this 'twilight state' in some persons. These drugs are being administered in some countries including India. The term narcoanalysis was introduced in 1936 for the use of narcotics to induce a trance like state wherein the person is subjected to various queries. Under the influence of the drug, the subject talks freely and is purportedly deprived of his self-control and will power to manipulate his answers. The underlying theory is that a person is able to lie by using his imagination. In the narcoanalysis test, the subject's imagination is neutralized and reasoning faculty affected by making him semi-conscious. The subject is not in a position to speak up on his own but can answer specific and simple questions. In this state it becomes difficult for him to lie and his answers would be restricted to facts he is already aware of. His

answers are spontaneous as a semi-conscious person is unable to manipulate his answers. Truth Serums (or sera) are no serum at all. They are drugs sometimes used clinically. A few of the bestknown drugs are Seconal, Hyoscine (scopolamine), Sodium Pentothal, Sodium Amytal, Phenobarbital. Most commonly used drug for truth serum test is an anesthetic and sedative drug, Sodium Pentothal which when administered intravenously can make a person garrulous and confessional. Injected in continuous small dosages it has a hypnotizing effect on a person who responds loquaciously when questioned. The narcoanalysis test is conducted by mixing 3 grams of Sodium Pentothal or Sodium Amytal dissolved in 3000 ml of distilled water. Depending on the person's sex, age, health and physical condition, this mixture is administered intravenously alongwith 10% of dextrose over a period of 3 hours with the help of an anaesthetist. **Wrong dose can send the subject into coma or even result in death**. The rate of administration is controlled to drive the accused slowly into a hypnotic trance. The effect of the biomolecules on the bio-activity of an individual is evident as the drug depresses the central nervous system, lowers blood pressure and slows the heart rate, putting the subject into a hypnotic trance resulting in a lack of inhibition. The subject is then interrogated by the investigating agencies in the presence of the doctors. The revelations made during this stage are recorded both in video and audio cassettes. The report prepared by the experts is what is used in the process of collecting evidence. This procedure is conducted in government hospitals after a court order is passed instructing the doctors or hospital authorities to conduct the test. Personal consent of the subject is also required.

41(B).Admissibility Of The Result Of Narco Analysis Test : The Supreme Court of India (in the case noted below), while dealing with the question of admissibility and reliability of the result of the narco analysis test, has not given any conclusive opinion regarding the admissibility and the reliability of the result

(report) of the narco analysis test. See : **Ram Singh vs. Sonia, 2007 AIR SCW 1278.**

42(A).<u>Lie Detector or Polygraph Test & its advantages</u> : (A) "Lie detector" or "polygraph" is a device which records tracings of several different pulsations as arterial and venous pulse waves and the apex beat of heart. "Lie detector" or "lie detecting machine" is an instrument for detecting physiological evidence of the tension that accompanies. Any device which records involuntary bodily responses associated with conscious lying is called lie detector machine. Polygraph is a combination of technologies. In Medieval England, truth was tested by putting a suspect under water or throwing him in fire considering that if he is truthful God will save him. Another test was that the suspect would have to carry a red-hot iron bar for nine paces and if he was burnt he was deemed guilty and was immediately hanged. Sometimes the accused was tied with the sack of sand and thrown in the river. If he sank he was considered truthful and if he floated he was thought guilty and was then hanged. In both the cases the accused had to die. These practices of lie detection were banned by law in England in 1215. The earliest scientific method of detecting deceptions or lies was developed in 1895 by Cesare Lombroso, an Italian Criminologist and in 1921 Dr. John A. Larson developed the earliest version of polygraph. The test of polygraph was for the first time judicially noticed in USA in 1923 in the case of Frye vs. United States. Polygraph instrument is stated to record with 100% accuracy the physiological changes in breathing, perspiration, blood pressure and pulse rate to determine a truth or a lie. If the instrument is faulty it will not record changes correctly. The polygraph test cannot take place of a thorough investigation. Before making request for polygraph test, the investigating officer must exhaust all avenues of investigation. The polygraphic test can check truthfulness of witnesses' statement, it can induce criminals to confess to crimes committed by them, it replaces third degree methods used during police interrogations, it can help in discriminating the innocent from the guilty and it

can also be used to check honesty and integrity of employees or candidates, to employment or persons subjected to the polygraph test.

42(B). **<u>Power of court to order Polygraph Test</u> :** Court can order an accused to be subjected to polygraph test. See—**Ram Chandra vs. State of Maharashtra, (2005) CCR 355 (Bombay High Court—D.B.)**

43(A). **<u>Identification by voice</u> :** Where the witnesses claiming to have identified the accused from short replies given by him were not closely acquainted with the accused, the identification of the accused by voice by the witnesses has been held unreliable. See : **Inspector of Police, T.N. vs. Palanisamy @ Selvan, AIR 2009 SC 1012.**

43(B). **<u>Voice Analysis Test</u> :** In the case noted below, the Bombay High Court has laid down that taking a voice sample of an accused as sample for comparing and identifying it with a tape recorded or telephonic conversation is not violative of the fundamental rights of the accused guaranteed under Art. 20(3) of the Constitution. See : **CBI vs. Abdul Karim Ladsab Telgi, 2005 Cr.L.J. 2868 (Bombay) :** Popularly known as multi-crore fake stamp paper case.

44. **<u>Preconditions for admissibility of tape recorded conversation</u> :** A tape recorded statement is admissible in evidence, subject to the following conditions :

(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. See : -

1. **Ram Singh & others vs. Col. Ram Singh, 1985 (Suppl) SCC 611**
2. **State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 :** (known as Parliament attack case)

45(A).<u>Tape recorded conversation & its admissibility in Evidence (S. 7, Evidence Act)</u> : Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. A tape recorded statement is admissible in evidence subject to the following conditions :

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. See :

1. **State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 : - (known as Parliament attack case)**
2. **Ram Singh & others vs. Col. Ram Singh, 1985 (Suppl) SCC 611**
3. **R.M. Malkani vs. State of Maharashtra, AIR 1973 SC 157**

45(B).<u>Admissibility of Conversation on telephone or mobile</u> : Call records of (cellular) telephones are admissible in evidence u/s. 7 of the Evidence Act. There is no specific bar against the admissibility of the call records of telephones or mobiles. Examining expert to prove the calls on telephone or mobile is not necessary. Secondary evidence of such calls can be led u/s. 63 & 65 of the Evidence Act. The provisions contained under the Telegraph Act, 1885 and the Telegraph Rules, 1951 do not come in the way of accepting as evidence the call records of telephone or mobile. See : **State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 : (known as Parliament attack case) Call details of Mobile strong evidence against accused :** Call detail records between the accused persons prior to and after execution of the crime would constitute strong material for framing the charge against all the accused persons See: **State NCT of Delhi Vs. Shiv Charan Bansal, (2020) 2 SCC 290**

45(BB).Call details of Mobile strong evidence against accused : Call detail records between the accused persons prior to and after execution of the crime would constitute strong material for framing the charge against all the accused persons See: **State NCT of Delhi Vs. Shiv Charan Bansal, (2020) 2 SCC 290**

45(C). <u>Admissibility and Evidentiary Value of Tape recorded conversation (S. 7, Evidence Act)</u> : (A) With the introduction of **<u>Information Technology Act, 2000</u>** "electronic records" have also been included as documentary evidence u/s. 3 of the

Evidence Act and the contents of electronic records, if proved, are also admissible in evidence. Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. See : **R.M. Malkani vs. State of Maharashtra, AIR 1973 SC 157.**

46(A). **Necessary qualifications of an expert u/s. 45, Evidence Act** : Sec. 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law or of science or of art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. See :

1. **Ramesh Chandra Agrawal vs. Regency Hospital Ltd., 2009 (6) Supreme 535**
2. **State of H.P. vs. Jai Lal, (1999) 7 SCC 280**

46(B). **Opinion of an expert not to be relied on unless examined as witness in court** : Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See--**State of Maharashtra vs. Damu, AIR 2000 SC 1691**

47(A). **Tracker & sniffer dog & its use** : - During investigation of crimes, the police officers are sometimes completely clueless and the help of tracker and sniffer dog is taken for the detection of the criminals and the incriminating articles. But

the indications and leads given by such tracker and sniffer dog is often not recorded in form of report by the master of the dog. The proceedings and the activities of the dog should also be videographed and produced alongwith the report prepared by the dog's master before the court. The videographed contents in the C.D. are admissible in evidence as Sec. 3 of the Evidence Act, as amended since the year 2006, includes electronic records as well with in the definition of word ' evidence'. The statement of the master of the dog u/s 161 Cr.P.C. should also be recorded by the investigating officers so that he may be examined by the prosecution during trial in support of the report prepared by him regarding the leads given by the dog. As regards the evidence relating to the sniffer dog, the law is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused. See : **Dinesh Borthakur vs. State of Assam, AIR 2008 SC 2205**

47(B).Tracker dogs' performance report & its evidentiary value : There are inherent frailties in the evidence based on sniffer or tracker dog. The possibility of an error on the part of the dog or its master is the first among them. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, the fact that from scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Investigation exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them. See : **Gade Lakshmi Mangaraju vs. State of A.P., 2001 (6) SCC 205**

47(C). Objections generally raised against the evidence of tracker & sniffer dog : There are three objections which are usually advanced against reception of the evidence of dog tracking. First since it is manifest that the dog cannot go into the box and give his evidence on oath and consequently submit himself to

cross-examination, the dog's human companion must go into the box and the report the dog's evidence and this is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inference. See : **Abdul Rajak Murtaja Defedar vs. State of Maharashtra, AIR 1970 SC 283 (Three Judge Bench)**

48. **Cases involving fraud/forgery/embezzlement etc. & duty of I.Os. in collection of evidence during investigation :** Since the offences like fraud, forgery and criminal breach of trust and embezzlement of government money do often relate to and emanate from documents, the investigating officers should therefore must collect all the relevant records relating to such offences and submit the same to the court u/s. 173(2) Cr.P.C. The oral statements of the accused and the witnesses recorded u/s. 161 Cr.P.C. in such cases have only little significance.

49. **Disclosures to Media regarding the leads into investigations** : A recent disturbing trend is often seen that the investigating officers often rush to media and make disclosures regarding the leads received or the progress and plan make towards the investigation of the offences. This practice is not only contrary to law but it may also severely and adversely affect the investigation as from such disclosures to the media, the perpetrators of the offences may get alert, destroy and tamper with the evidence, cause harm and threat to the witnesses and may even flee beyond the reach of investigating agencies which would only cause the object of criminal justice being defeated. It is therefore always necessary to avoid the exposures to the media in the matters of investigation of crimes by the investigating agencies.

50. **Investigation by incompetent I.O. & its effect** : If an investigation of offence u/s. 156(2) Cr.P.C. has been conducted by some police officer of inferior rank or of a police station within whose local territorial jurisdiction, the offence had

not been committed, even then such investigation cannot be called into question on the ground of incompetence of the investigating officer. See : -

1. **Jai Prakash Dubey vs. State of U.P., 2008 Cr.L.J. (NOC) 920 (All)**
2. **Union of India Vs. Prakash P. Hinduja, AIR 2003 SC 2612**

51(A).<u>Arrest & duty of arresting officer</u> : Arrest of a citizen by the police and the treatment with him thereafter by the police has always been the area of concern for the courts. In the case of **Joginder Kumar v. State of U.P., (1994) 4 SCC 260**, the Hon'ble Supreme Court has clarified that an accused named in a FIR should not be arrested soon after the registration of the FIR. He should be arrested by the investigating officer only after collecting some evidence showing his involvement in the commission of the offence.

In the famous cases of **D.K. Basu v. State of West Bengal, (1997) 1 SCC 416** and **A.K. Jauhari v. State of U.P., (1997) 1 SCC 416,** the Hon'ble Supreme Court has issued following guidelines for the arresting officers to be observed at the time of arrest of a person and treatment thereafter with him…..

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) The police officers carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable member of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and

is being detained at a particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district and the police station of the area concerned telegraphically within a period of 8 to 10 hours after the arrest.

(5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requires, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and it's copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director Health Services of the state or union territory concerned. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the Memo Of Arrest referred to above should be sent to the Ilaka Magistrate for his record.

(10) The arrestee may be permitted to meet his Lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody

of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and the police control room it should be displayed on a conspicuous notice board.

51(B). **<u>Liability for contempt of the Arresting Officer for non-observance of Supreme Court guidelines</u>** : A full bench of the Allahabad High Court has in the matter of **Ajeet Singh v. State of U.P., 2006 (6) ALJ 110 (Full Bench),** held that any violation of the guidelines issued by Hon'ble Supreme Court in the cases of **D.K. Basu and A.K. Jauhari** would not only provide a ground to the accused to question the correctness of his arrest but the arresting officer would also stand exposed to the contempt proceedings for non observance of the aforesaid guidelines of the Hon'ble Supreme Court. The guidelines issued by Hon'ble Supreme Court in the cases of D.K. Basu and A.K. Jauhari in the year 1997 have now been incorporated in **Sec. 50-A of the Cr.P.C.** through the amendments since June, 2006. Under the newly added **Sec. 50-A (4),** a duty has been cast upon the Magistrates to ensure at the time of production of the arrested accused before them that the guidelines contained in **Sec. 50-A of the Cr.P.C.** have been complied with by the arresting officer. The introduction of these provisions in the Cr.P.C. through amendment is aimed at protecting the human rights of the arrestee from the tortures and atrocities committed by the police.

51(C). **<u>Custodial tortures & deaths & liability of police officers</u>** : Torture of an accused in police custody, custodial deaths and atrocities on prisoners in jails have also been one of the major area of concern as regards the human rights. The Hon'ble Supreme Court has in a plethora of cases (noted below) clarified that if a person in the custody of police is subjected to any torture, inhuman treatment or violence or custodial death takes place then courts can not only take appropriate action against the responsible police officer but can also

provide **compensation** to the dependents of the deceased or the victim of the illegal torture or violence :

1. **Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble, (2003)7 SCC 749**
2. **Raghbir Singh v. State of Haryana, (1980) 3 SCC 70**
3. **Gauri Shankar Sharma v. State of U.P., AIR 1990 SC 709**
4. **Bhagwan Singh v. State of Punjab, (1992)3 SCC 249**
5. **Nilabati Behera v. State of Orissa, AIR 1993 SC 1960**
6. **Pratul Krishna v. State of Bihar, 1994 Supp. (3) SCC 100**
7. **Kewalpati v. State of U.P., (1995) 3 SCC 600**
8. **Inder Singh v. State of Punjab, (1995) 3 SCC 702**
9. **State of M.P. v. Shyam Sunder Trivedi, (1995)4 SCC 262**
10. **D.K. Basu v. State of W.B., (1997) 1 SCC 416**
11. **Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96**
12. **State of Maharashtra v. Christian Community Welfare Council, (2003) 8 SCC 546**
13. **Sube Singh v. State of Haryana, 2006(54) ACC 873 (SC)**

With the introduction of a new **Sec. 176 (1-A)** in the Cr.P.C. by the Parliament with effect from June, 2006, a duty has been cast upon the Judicial 0Magistrates exercising local territorial jurisdiction to conduct judicial inquiry in the matters of **fake encounters, custodial deaths or extra judicial killings** caused by the police and subject to the result of the inquiry to take appropriate further legal action in such matters against the responsible police officer or the arresting officer.

51(D). CJM / ACJM / MM / JM to inquire into the custodial deaths (Sec. 176 Cr.P.C.) : Vide C.L. No. 2/2010 Admin.(G-II), dated 7.1.2010, the Allahabad High Court has issued following directions to the Magistracy in U.P. for conducting inquiry in relation to custodial deaths in their local territorial jurisdiction : "Upon consideration of Letter No. 7165(VI)/Sama-1, dated 04.03.2009 of Inspector General, Prisons Administration & Reforms Services, U.P., Lucknow, the Hon'ble High Court has directed that powers of enquiry on death during custody as provided under Section 176 of the Code of Criminal

Procedure be exercised by the Chief Judicial Magistrate/Chief Metropolitan Magistrate/Addl. Chief Judicial Magistrates/ Judicial Magistrates of your Judgeship and copy of the enquiry report alongwith list of evidence collected therein be sent to the Deputy Inspector General, Prisons of the region concerned to take necessary action."

51(E).Handcuffing of arrestees & duty of police officers : Putting hand-cuff or bar-fetters on the person of the accused or the prisoners, keeping the prisoner into solitary confinement or subjecting them to any barbarous treatment or any other sort of inhuman treatment has also been deprecated by the Supreme Court as being violative of the fundamental rights under Article 21 of the Constitution and various guidelines have been issued in this regard to the effect that without the prior permission of the courts no authority including jail authorities would hand-cuff or fetter the prisoners. Any violation of the guidelines issued by Hon'ble Supreme Court to that effect has been declared punishable as contempt of court in the following cases….

1. **Altemesh Rein Advocate, Supreme Court of India v. Union of India, AIR 1988 SC 1768**
2. **Prem Shanker Shukla v. Delhi Administration, AIR 1980 SC 1535**
3. **State of Maharashtra v. Ravikant S. Patil, (1991) 2 SCC 373**
4. **Sunil Batra v. Delhi Administration, (1978) 4 SCC 494**
5. **Sunil Gupta v. State of MP, (1990) 3 SCC 119**
6. **Rudal Shah v. State of Bihar, (1983) 4 SCC 141**
7. **Citizen for Democracy through it's President v. State of Assam, AIR 1996 SC 2193**
8. **D.K. Basu v. State of W.B., (1997) SCC 416**
9. **A.K. Jauhari v. State of U.P., (1997) SCC 416**
10. **In re; M.P. Dwivedi and others, AIR 1996 SC 2299**
11. **R.P. Vaghela v. State of Gujarat, 2002(2) JIC 951 (Gujarat) (FB)**
12. **Charles Shobraj vs. Superintendent, Central Jail, Tihar, New Delhi, AIR 1978 SC 1514**
13. **Kishor Singh vs. State of Rajasthan, AIR 1981 SC 625**

A duty has been imposed upon the courts that no undertrial prisoner is produced before the courts hand-cuffed or fettered. In the case of **M.P. Dwivedi & others, AIR 1996 SC 2299**, a judicial magistrate who had failed to

take suitable action against the police constables producing the accused hand-cuffed in his court, was summoned by the Supreme Court and was severely reprimanded for not having observed the guidelines issued by the Hon'ble Supreme Court in relation to the hand-cuffing of the accused persons. The judicial magistrate, in this case, was being sent to jail by the Supreme Court but on request having been made by the senior advocates of the Supreme Court then present in the court room and looking into the fact that the concerned judicial magistrate was a new entrant in the judicial service and was not aware of the pronouncements of the Hon'ble Supreme Court on the subject, was spared with the warning not to commit such omissions in future and the court strongly disapproving his conduct directed the observations of the Supreme Court to be kept on his personal service record.

52. **Photostat/secondary documents & duty of investigation officers** : In many cases, the investigating officers submit with the charge sheet only secondary/photostat copies of the relevant documents and not the primary/original documents. In the absence of satisfactory explanation u/s. 63, 65, 66 of the Evidence Act for not producing the original documents, such secondary documents are found in admissible in evidence and they leave behind a gap and shortcoming in the case of the prosecution. It is therefore always desirable that the investigating officers should always try to procure only original documents relating to the case and submit the same to the court with the charge sheet. In case of photostat copy of a document, before it is admitted in evidence, it has to be explained as to what were the circumstances under which photocopy was prepared and who was in the possession of the original document at the time when it's photocopy was taken and this should be above suspicion. See : **Ashok Dulichand vs. Madahavalal, AIR 1975 SC 1748.**

******