APPRECIATION OF EVIDENCE IN CRIMINAL TRIALS

(for Magistrates)

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1.1. Law regarding appreciation of evidence: Proper appreciation of evidence is the most important part of the judicial functioning of a trial Judge or Magistrate and also of the appellate court during the course of trial of a criminal case or disposal of appeal preferred against acquittal or conviction. The soundness of findings of facts and the quality of judgment depend upon whether or not the trial Judge or Magistrate or the appellate Judge is familiar with the laws applicable to the appreciation of different sorts of evidence brought on record. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding upon all courts. The courts in India are therefore bound to follow the law on any subject as interpreted by the Supreme Court. Once a legislative provision is interpreted by the Supreme Court in a particular manner, it is then that interpreted law that has to be followed by the courts as the ultimate and binding law, and not the legislative provisions enacted by the Legislature. Accuracy of findings of fact or judgments will depend on whether or not the same have been recorded or passed as per the law declared by the Supreme Court. It can therefore be unhesitatingly said that without the knowledge of the important and leading judicial pronouncements of the Supreme Court and the High Courts regarding appreciation of evidence, no qualitative judgment can be written by the trial Judges, Magistrates and the appellate courts. Apart from the bare provisions contained in the Evidence Act regarding appreciation of evidence, judicial pronouncements of the Supreme Court have over the years been guiding the

trial and appellate courts to properly analyze and evaluate the evidence led by the parties i.e. the prosecution and the defence during the course of trial of criminal cases and appeals. For proper understanding of various laws relating to appreciation of different sorts of evidence, certain important aspects of the subject are being discussed here with the help of the leading judicial pronouncements of the Hon'ble Supreme Court and the Allahabad High Court.

1.2. Kinds of Evidence (Section 3 of the Evidence Act, 1872): Evidence of following kinds are produced in criminal cases:

(i) Oral Evidence (i.e. statements of witnesses)

(ii) Documentary Evidence (i.e. contents of documents)

(iii) Electronic Records (contents in soft forms or voice in computers, CD, mobile, tape recorder, e-mail and other electronic devices)

(iv) Tangible Objects (like sticks, lathis, bamboos, iron rods, swords, spears, knives, pistols, guns, cartridges, metals, explosives, splinters of bombs and other explosive devices, bones, hairs, ornaments, clothes, ropes, wires,poisons, gases, liquids and other tangible objects etc.)

1.3. Kinds of witnesses: The witnesses which are generally examined before the Courts in criminal trials and whose testimony has to be appreciated by the Courts are of following categories:

(i) Independent Witness

(ii) Direct (Ocular) Witness

(iii) Interested Witness :

(a) Family Member as Witness

(b) Relatives as Witness

(c) Friendly Witness

(iv) Inimical Witness

(v) Hostile Witness

(vi) Injured Witnes

(vii) Sterling Witness. Vide Santosh Prasad Vs. State of Bihar, (2020) 3 SCC 443

(viii) Chance Witness

(ix) Child Witness

(x) Deaf and Dumb Witness

(xi) Tutored Witness

(xii) Habitual Witness

(xiii) Hearsay Witness

(xiv) Planted Witness

(xv) Police Personnel as Witness

(a) Investigating Officer

(b) Chick FIR Registering Constable

(c) Witness to Arrest & Recovery etc.

(d) Official Witness. Vide: Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88

(xvi) Expert Witness

(a) Doctor (Medical Expert)

(b) Hand Writing Expert

(c) Thumb & Finger Print Expert

(d) Typewriter Expert

(e) Voice Expert

(f) Chemical Examiner

(g) Ballistic Expert

(h) Any Other Expert

(xvii) Secondary Witness

(xviii) Approver as Witness

(xix) Accused as Witness

2.1. Kinds of witnesses (credibility wise): As regards the reliability of witnesses, they can be categorized as under :

1. Wholly Reliable

2. Wholly Unreliable

3. Partly Reliable & Partly Unreliable. See :

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537

(ii) State of Rajasthan Vs. Babu Meena, (2013) 4 SCC 206

(iii) Lallu Manjhi Vs. State of Jharkhand, AIR 2003 SC 854

2.2. Mode of appreciation of testimony of eye witnesses etc.: While appreciating the evidence of a witness claiming to have seen the incident, the court should consider and look for the following factors appearing in the entire testimony of the witness **:**

(i) Whether the witness was present on the spot

(ii) Whether the witness had seen the incident

(iii) Credibility of the witness

2.3. General factors appearing in oral testimony of witnesses: Following factors are generally seen in the oral testimony of witnesses examined before the courts:

(i) Contradictions

(ii) Inconsistencies

(iii) Exaggerations

(iv) Embellishments

(v) Contrary statements by two or more witnesses on one and the same fact.

2.4. Contradictions & their appreciation: If there are no material discrepancies or contradictions in the testimony of a witness, his evidence cannot be disbelieved merely on the basis of some normal, natural or minor contradictions, inconsistencies, exaggerations, embellishments etc. The distinction between material discrepancies and normal discrepancies are that minor discrepancies do not corrode the credibility of a party's case but material discrepancies do so. See:

(i) Munuwa Vs. State of UP, (2023) 1 SCC 714

(ii) Mustak Vs. State of Gujarat, (2020) 7 SCC 237.

(iii) Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88
(iv) Laltu Ghosh Vs. State of W.B., AIR 2019 SC 1058.
(v) Md. Rojali Ali Vs. State of Assam, AIR 2019 SC 1128.
(vi) Prabhu Dayal Vs. State of Rajasthan, (2018) 8 SCC 127
(vii) State of AP Vs. Pullagummi Kasi Reddy Krishna Reddy, (2018) 7 SCC 623.
(viii) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(ix) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(x) Tomaso Bruno Vs. State of Uttar Pradesh, (2015) 7SCC 178(Three-Judge Bench).
(xi) Vinod Kumar Vs. State of Haryana, (2015) 3 SCC 138
(xii) Ramesh Harijan Vs. State of UP (2012) 5 SCC 777
(xiii) C. Muniappan Vs. State of TN, 2010 (6) SCJ 822
(xiv) Bheru Lal Vs. State of Rajasthan, 2009 (66) ACC 997 (SC)
(xv) Jagat Singh Vs. State of U.P., AIR 2009 SC 958
(xvi) Sanjay Vs. State of U.P., 2008(62) ACC 52 (Allahabad – D.B.)
(xvii) Dimple Gupta (minor) Vs. Rajiv Gupta, AIR 2008 SC 239
(xviii) Kulvinder Singh Vs. State of Punjab, AIR 2007 SC 2868
(xix) Kalegura Padma Rao Vs. State of A.P., AIR 2007 SC 1299
(xx) State of Punjab Vs. Hakam Singh, 2005(34) AIC 929 (SC)
(xxi) Krishna Mochi Vs. State of Bihar, (2002) 6 SCC 81
(xxii) Leela Ram Vs. State of Haryana, (1999) 9 SCC 525.

2.5. **Picking up one word or sentence out of testimony of a witness and deriving conclusion therefrom not proper:** Picking up mere one sentence from here or there and that too made by the witness in response to a question put to him in cross-examination cannot be considered alone**.** Evidence of a witness has to be read as a whole. Words and sentences cannot be truncated and read in isolation. See:

(i) Rakesh Vs State of UP,(2021) 7 SCC 188
(ii) Mustak Vs. State of Gujarat, (2020) 7 SCC 237.

2.6. **Contradictions & their appreciation:** Minor contradictions in the testimonies of the Prosecution Witness are bound to be there and infact they go to support the truthfulness of the witnesses. See :

(i) Munuwa Vs. State of UP, (2023) 1 SCC 714
(ii) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(iii) Ramesh Vs. State of UP, (2009) 15 SCC 513

2.7. Contradictions natural when witnesses examined after lapse of time: When witnesses are examined in the court after a considerable lapse of time, it is neither unnatural nor unexpected that there can be some minor variations in the statements of the prosecution witnesses. See: Dharnidhar Vs. State of U.P., 2010 (6) SCJ 662.

2.8. Contradictions appearing in the deposition of witnesses: Normal contradictions appearing in the testimony of a witness do not corrode the credibility of a party's case but material contradictions do so. See: Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643

2.9. Exaggerated version and false version: difference between: There is a marked differentia between an exaggerated version and a false version. An exaggerated statement contains both truth and falsity, where as a false statement has no grain in it, being the 'opposite' of 'true.It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A court of law being mindful of such distinction is duty bound to dessiminate truth from falsehood and sift the grain from the chaff in case of exaggerations. It is only in case where the grain and chaff are so inextricably interwined that in their separation no evidence survives, that the whole evidence can be discarded. See: Achhar Singh Vs State of Himachal Pradesh, (2021) 5 SCC 543 (Three-Judge Bench)

2.10. Inconsistency & its appreciation: there are minor inconsistencies in the statements of witnesses and FIR in regard to number of blows inflicted and failure to state who injured whom, would by itself not make the testimony of the witnesses unreliable. This, on the contrary, shows that the witnesses were not tutored and they gave no parrot like stereotyped evidence. See: Maqsoodan Vs. State of U.P., (1983) 1 SCC 218 (Three-Judge Bench)

2.11. Consistent version of incident narrated by witnesses to be treated as credible: Where the witnesses give consistent version of the incident, it has been held by the Supreme Court that the consistent testimony of the witnesses should be held credible. See: Nankaunoo Vs. State of UP, (2016) 3 SCC 317 (Three-Judge Bench).

2.12. Appreciation of evidence when two witnesses make contrary statements on the same fact: One statement by one of witnesses may not be taken out of context to abjure guilt on the part of all accused persons. When the case of the prosecution is based on evidence of eye witnesses, some embellishments in prosecution case caused by evidence of any prosecution witness although not declared hostile, cannot by itself be ground to discard entire prosecution case. On the basis of mere statement of one P.W. on a particular fact, the other P.W. cannot be disbelieved. See:

(i) Bhanwar Singh Vs. State of M.P., AIR 2009 SC 768
(ii) Dharmendrasingh @ Mansing Ratansing Vs. State of Gujarat, (2002) 4 SCC 679

2.13. Doctrine of "falsus in uno, falsus in omnibus" not applicable in Indian judicial system: In India doctrine of falsus in uno, falsus in omnibus does not apply. "Maxim 'falsus in uno, falsus in omnibus' is not applicable in India. It is merely a rule of caution. Thus even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. The court has to separate grain from chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto. A witness may be speaking untruth in some respect and it has to be appraised in each case asto what extent the evidence is worthy of acceptance and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Falsity of

particular material witness on a material particular would not ruin it from the beginning to end. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain untruth or at any rate exaggeration, embroideries or embellishment." Rulings relied upon:

(i) Mahendran Vs. State of Tamil Nadu, AIR 2019 SC 1719.
(ii) State of AP Vs. Pullagummi Kasi Reddy Krishna Reddy, (2018) 7 SCC 623.
(iii) State of Karnataka Vs. Suvarnamma, (2015) 1 SCC 323
(iv) Babu Vs. State of T.N., (2013) 8 SCC 60
(v) Rajendra Singh Vs. State of Uttaranchal, (2013) 4 SCC 713
(vi) Ramesh Harijan Vs. State of UP, (2012) 5 SCC 777
(vii) Janardan Singh Vs. State of Bihar, (2009) 16 SCC 269.
(viii) Ram Rahis Vs. State of U.P., 2008 (61) ACC 925 (All—D.B.)
(ix) State of Maharashtra Vs. Tulshiram Bhanudas Kamble, AIR 2007 SC 3042
(x) Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643
(xi) Sohrab Vs. State of M.P., (1972) 3 SCC 751
(xii) Ugar Ahir Vs. State of Bihar, AIR 1965 SC 277
(xiii) Nasir Ali Vs. State of U.P., AIR 1957 SC 366

2.14. Reaction/conduct/behaviour of witnesses & their appreciation: Where eye witnesses did not come to the rescue of the deceased, it has been held that such reaction, conduct and behavior of the witnesses cannot be a ground to discard their evidence when they are unarmed and the accused are armed with deadly weapons. See:

(i) Viran Gyanlal Rajput Vs State of Maharashtra (2019) 2 SCC 311 (Three- Judge Bench)
(ii) Motiram Padu Joshi Vs. State of Maharashtra, (2018) 9 SCC 429
(iii) Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643

2.15. Conduct of accused when incriminating circumstance against him? : Soon after murder, the accused persons who were the daughter-in-law and grandson of the deceased victim, fled away and were not found in their village. They did not attend the cremation of deceased and prayer ceremony which was held after one week. The Supreme Court held that such conduct of

the accused persons was a strong incriminating circumstance against them u/s 8 of the Evidence Act. See: Darshan Singh Vs. State of Punjab, (2020) 2 SCC78

2.16. Conduct of accused in abscondence admissible in evidence u/s 8 of the Evidence Act: Conduct of accused in abscondence is admissible in evidence u/s 8 of the Evidence Act: See: State NCT of Delhi Vs. Shiv Charan Bansal, (2020) 2 SCC 290.

2.17. Conduct of witness and victim material for evaluation of their evidence: Men may lie but the circumstances do not, is the cardinal principle of evaluation of evidence. Immediate conduct of victim is also important in evaluating the evidence of the witness. See: State of Assam Vs. Ramen Dowarah, (2016) 3 SCC 19 (para 12).

2.18. Points for recording findings of fact by appreciating oral evidence of eye witness: In a criminal trial involving offences against body (like offences u/s 323, 324, 326, 307, 302, 304 IPC etc.), findings of fact on following points, after appreciation of evidence, oral and documentary, should be recorded :

(i) Name, place of residence and age of the prosecution witness claiming to be present on the place of occurrence and having seen the incident

(ii) Date and time of occurrence

(iii) Place of occurrence

(iv) Presence of the witness on the spot together with the distance where he was present with reference to his previous statements.

(v) Whether the witness could have and had seen the occurrence and the assailants and the victim from the place he was standing on.

(vi) Weapons of assault

(vii) Cause of death or source of injuries by appreciating the post mortem report/ injury report/oral evidence of Doctor and the eye witnesses and the inquest report.

(viii) Contradictions, exaggerations, embellishments etc. having appeared on the above mentioned points in the oral evidence of the witness together with a finding whether such contradictions, exaggerations, embellishments etc. are minor or major.

(ix) Overall credibility of the witness.

(x) Now the oral evidence of the second eye witness of the prosecution should be appreciated and finding of fact be recorded in the manner as stated hereinabove.

(xi) Final/conclusive finding of fact whether the charge/guilt could be proved by the prosecution witness beyond all reasonable doubts.

(xii) Any other fact peculiar to the case.

(xiii) If the witness is to be disbelieved on any particular fact, then whether that fact is material for recording a finding of guilt or innocence of the accused. If such fact is found to be material but goes unproved by the witness, what other evidence, oral or documentary, is there on record as led by the prosecution. Such other available oral evidence of other witness on the said unproved fact should now be appreciated and, keeping in view the above parameters, finding of fact should be recorded thereon.

3.1. **Sole witness:** Whether conviction can be based on the evidence of a sole witness? It has been held by the Supreme Court in the cases noted below that in a criminal trial quality of evidence and not the quantity matters. As per **Sec. 134 of the Evidence Act**, no particular number of witnesses is required to prove any fact. Plurality of witnesses in a criminal trial is not the legislative intent. If the testimony of a sole witness is found reliable on the touchstone of credibility, accused can be convicted on the basis of such sole testimony:

(i) Javed Shaukat Ali Qureshi vs State of Gujarat, (2023) 9 SCC 164

(ii) Ravasaheb Vs. State of Karnataka, (2023) 5 SCC 391 (Three-Judge Bench)

(iii) Parvat Singh Vs. State of M.P., (2020) 4 SCC 33

(iv) Sudip Kumar Sen Vs. State of W.B., (2016) 3 SCC 26

(v) State of UP Vs. Satveer, (2015) 9 SCC 44
(vi) Nand Kumar Vs. State of Chhatisgarh, (2015) 1 SCC 776
(vii) Veer Singh Vs. State of UP, (2014) 2 SCC 455
(viii) Avtar Singh Vs. State of Haryana, AIR 2013 SC 286
(ix) Prithipal Singh Vs. State of Punjab, 2012 (76) ACC 680(SC) 2011 CrLJ 283 (SC)
(x) Jarnail Singh Vs. State of Punjab, 2009(1) Supreme 224
(xi) Raj Narain Singh Vs. State of U.P., 2009 (67) ACC 288 (SC)
(xii) Ramesh Krishna Madhusudan Nayar Vs. State of Maharashtra, AIR 2008 SC 927
(xiii) Ramjee Rai Vs. State of Bihar, 2007(57) ACC 385 (SC)
(xiv) Namdeo Vs. State of Maharashtra, 2007 (58) ACC 414 (SC)
(xv) Syed Ibrahim Vs. State of A.P., AIR 2006 SC 2908
(xvi) Chacko Vs. State of Kerala, 2004(48) ACC 450 (SC)
(xvii) Chowdhary Ramjibhai Narasanghbhai Vs. State of Gujarat, (2004)1 SCC 184
(xviii) Chittarlal Vs. State of Rajasthan, (2003) 6 SCC 397

3.2. Related witnesses & interested witnesses: The testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim of the offence. In such a case, court has to adopt a careful approach in analyzing the evidence of such witness and if the testimony of the related witness is otherwise found credible accused can be convicted on the basis of testimony of such related witness. See the cases noted below:

(i) Ramji Singh Vs. State of UP, (2020) 2 SCC 425
(ii) Laltu Ghosh Vs. State of W.B., AIR 2019 SC 1058.
(iii) Md. Rojali Ali Vs. State of Assam, AIR 2019 SC 1128.
(iv) State of MP Vs. Chhaakki Lal, AIR 2019 SC 381.
(v) Motiram Padu Joshi Vs. State of Maharashtra, (2018) 9 SCC 429
(vi) Ganpathi Vs. State of Tamil Nadu, (2018) 5 SCC 549
(vii) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(viii) Dhari & Others Vs. State of UP, AIR 2013 SC 308
(ix) Shyam Babu Vs. State of UP, AIR 2012 SC 3311
(x) Shyamal Ghosh Vs. State of WB, AIR 2012 SC 3539
(xi) Dayal Singh Vs. State of Uttaranchal, AIR 2012 SC 3046
(xii) Amit Vs. State of UP, AIR 2012 SC 1433
(xiii) State of Haryana Vs. Shakuntla & Others, 2012 (77) ACC 942 (SC)

(xiv) Surendra Pal Vs. State of U.P,(2010) 9 SCC 399
(xv) Prithi Vs. State of Haryana,(2010) 8 SCC 536.
(xvi) Balraje Vs. State of Maharashtra,(2010) 6 SCC 673
(xvii) Dharnidhar Vs. State of U.P., 2010 (6) SCJ 662.
(xviii) Jayabalan Vs. U.T. of Pondicherry, 2010(68) ACC 308 (SC)
(xix) Santosh Devidas Behade Vs. State of Maharashtra, 2009 (4) Supreme 380
(xx) Bheru Lal Vs. State of Rajasthan, 2009 (66) ACC 997 (SC)
(xxi) Sonelal Vs. State of M.P., AIR 2009 SC 760
(xxii) Gali Venkataiah Vs. State of A.P., AIR 2008 SC 462
(xxiii) Ashok Kumar Chaudhary Vs. State of Bihar, 2008(61) ACC 972 (SC)
(xxiv) Namdeo Vs. State of Maharashtra, 2007 (58) ACC 414 (SC)
(xxv) State of Maharashtra Vs. Tulshiram Bhanudas Kamble, AIR 2007 SC 3042
(xxvi) S. Sudershan Reddy Vs. State of AP, AIR 2006 SC 2616
(xxvii) State of U.P. Vs. Sheo Sanehi, 2005(52) ACC 113 (SC)
(xxviii) Anil Sharma Vs. State of Jharkhand, (2004) 5 SCC 679
(xxix) Chowdhary Ramjibhai Narasanghbhai Vs. State of Gujarat, (2004) 1 SCC 184
(xxx) Amzad Ali Vs. State of Assam, (2003) 6 SCC 270
(xxxi) Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643
(xxxii) Komal Vs. State of U.P., (2002) 7 SCC 82
(xxxiii) Bhagwan Singh Vs. State of M.P., 2002 (44) ACC 1112 (SC)

3.3. Interested witness: Who is? : A 'related witness' is not equivalent to an 'interested witness'. A witness may be called 'interested' only when he or she derives some benefit from the result of the litigation in the decree in a civil case or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be an 'interested witness'. See:

(i) Ramji Singh Vs. State of UP, (2020) 2 SCC 425
(ii) Ganpathi Vs. State of Tamil Nadu, (2018) 5 SCC 549
(iii) State of Rajasthan Vs. Kalki, (1981) 2 SCC 752

4. Inimical witnesses: Enmity of the witnesses with the accused is not a ground to reject their testimony and if on proper scrutiny, the testimony of such witnesses is found reliable, the accused can be convicted. However, the possibility of falsely involving some persons in the crime or exaggerating the

role of some of the accused by such witnesses should be kept in mind and ascertained on the facts of each case. See :

(i) Dilawar Singh Vs. State of Haryana, (2015) 1 SCC 737
(ii) Dhari Vs. State of UP, AIR 2013 SC 308
(iii) Ramesh Harijan Vs. State of UP, (2012) 5 SCC 777
(iv) Dharamveer Vs. State of U.P, AIR 2010 SC 1378
(v) State of U.P. Vs. Sheo Sanehi, 2005 (52) AC 113 (SC)
(vi) Anil Rai Vs. State of Bihar, (2001) 7 SCC 318

5.1. Independent witnesses & effect of their non-examination: 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. Court can convict an accused on statement of s sole witness even if he is relative of the deceased and non examination of independent witness would not be fatal to the case of prosecution. Non- examination of independent eye witnesses is inconsequential if the witness was won over or terrorised by the accused. See:

(i) Surider Kumar Vs. State of Punjab, (2020) 2SCC 563
(ii) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(iii) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(iv) Sadhu Saran Singh Vs. State of UP, (2016) 4 SCC 357
(v) Kripal Singh Vs. State of Haryana, AIR 2013 SC 286
(vi) Sandeep Vs. State of UP (2012) 6 SCC 107
(vii) Mano Dutt & Another Vs. State of UP, 2012 (77) ACC 209 (SC)
(viii) Dharnidhar Vs. State of U.P, (2010) 7 SCC 759.
(ix) Ashok Kumar Chaudhary Vs. State of Bihar, 2008 (61) ACC 972 (SC)
(x) Chowdhary Ramjibhai Narasanghbhai Vs. State of Gujarat, (2004) 1 SCC 184

(xi) Ram Narain Singh Vs. State of UP, 2003(46) ACC 953 (All--D.B.)
(xii) Babu Ram Vs. State of UP, 2002 (2) JIC 649 (SC)
(xiii) Komal Vs. State of U.P., (2002) 7 SCC 82
(xiv) State of H.P. Vs. Gian Chand, 2001(2) JIC 305 (SC)
(xv) Hukum Singh Vs. State of Rajasthan, 2000 (41) ACC 662 (SC)
(xvi) Dalbir Kaur Vs. State of Punjab,(1976) 4 SCC 158

5.2. Non-examination of material independent witnesses by prosecution adversely affects its case: Non-examination of material independent witnesses by prosecution adversely affects its case. See:

(i) Parminder Kaur Vs. State of Punjab, (2020) 8 SCC 811 (Three-Judge Bench).
(ii) Takhaji Hiraji Vs. Thakor Kubersing Chaman Sing, (2001) 6 SCC 145.

6.1. Injured witness & appreciation of his evidence: Deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies for the reason that his presence on the scene stands established in the case and it is proved that he suffered the injuries during the said incident. See:

(i) Bhagirath Vs. State of MP, AIR 2019 SC 264.
(ii) State of Haryana Vs. Krishan, AIR 2017 SC 3125
(iii) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(iv) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(v) Veer Singh Vs. State of UP, (2014) 2 SCC 455
(vi) Shyam Babu Vs. State of UP, AIR 2012 SC 3311
(vii) Mano Dutt & Another Vs. State of UP, 2012 (77) ACC 209 (SC)
(viii) Mohammad Mian Vs. State of U.P., 2011 (72) ACC 441 (SC)
(ix) Abdul Sayeed Vs. State of M.P, (2010) 10 SCC 259
(x) Balraje Vs. State of Maharashtra,(2010) 6 SCC 673
(xi) Jarnail Singh Vs. State of Punjab, 2009 (6) Supreme 526.

6.2. Non-examination of injured witness when not fatal? : Where the injudered witness could not be examined by the prosecution despite efforts as he was kidnapped and threatened by the accused persons, it has been held by the Hon'ble Supreme Court that non examination of the injured witness under the

above circumstances was not fatal to the case of prosecution and conviction of the accused persons on the testimony of eye witnesses was proper. See: Sadhu Saran Singh Vs. State of UP, (2016) 4 SCC 357.

6.3. Non-examination of injured witness held fatal: Where an injured witness had not been examined by the prosecution despite the fact that he attended the trial court regularly, the Supreme Court held that his non-examination was fatal to the prosecution since his presence at the place of occurrence was beyond doubt. See: State of UP Vs Wasif Haider and others, (2019) 2 SCC 303

6.4. Public prosecutor not bound to examine all witnesses: Explaining the provisions of Sections 231, 311 CrPC and Sections 114 & 134 of the Evidence Act, the Supreme Court had ruled that prosecution need not examine its all witnesses. Discretion lies with the prosecution whether to tender or not witness to prove its case. Adverse inference against prosecution can be drawn only if withholding of witness was with oblique motive. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(ii) Nand Kumar Vs. State of Chhatisgarh, (2015) 1 SCC 776
(iii) Rohtas Kumar Vs. State of Haryana, 2013 CrLJ 3183 (SC)

7.1. Injured witnesses---when all not examined: In a sessions trial, public prosecutor is not bound to examine all PWs mentioned in the FIR or charge-sheet. He is at liberty to choose only some of the several witnesses on the same point and when there are several eye witnesses or injured witnesses the public prosecutor may examine only two or some of them and he is not obliged to examine all the injured witnesses as has been clarified by the Hon'ble Supreme Court in the case noted below. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(ii) Hukum Singh Vs. State of Rajasthan, 2000 (41) ACC 662 (SC)
(iii) Kripal Singh Vs. State of Haryana, AIR 2013 SC 286

7.2. **Injured witnesses and their reliability:** Presence of the injured witnesses at the time and place of the occurrence cannot be doubted as they had received injuries during the course of the incident and they should normally be not disbelieved. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537

(ii) Maqsoodan Vs. State of U.P., (1983) 1 SCC 218 (Three-Judge Bench).

8.1. **Tutored witness:** If there are minor inconsistencies in the statements of witnesses and FIR in regard to number of blows inflicted and failure to state who injured whom, would by itself not make the testimony of the witnesses unreliable. This, on the contrary, shows that the witnesses were not tutored and they gave no parrot like stereotyped evidence. See: Maqsoodan Vs. State of U.P., (1983) 1 SCC 218 (Three Judge Bench)

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

8.3. **Habitual witness:** Where the evidence of a stock witness/panch witness to recovery of weapons of offence was found truthful and fully corroborated, it has been held by the Hon'ble Supreme Court that merely because the said witness had deposed in some other cases, his evidence cannot be rejected. See: Nana Keshav Lagad Vs State of Maharashtra, AIR 2013 SC 3510.

9.1. **Hostile witnesses & appreciation of their evidence (Sec. 154, Evidence Act):** Law is settled that the evidence of a hostile witness cannot be rejected out right. Both parties are entitled to rely on such part of his evidence which assists their case. See:

(i) Raja Vs. State of Karnataka, (2016) 10 SCC 506

(ii) Pooja Pal Vs. Union of India, (2016) 3 SCC 135
(iii) Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220
(iv) Veer Singh Vs. State of UP, (2014) 2 SCC 455
(v) Shyamal Ghosh Vs. State of WB, AIR 2012 SC 3539
(vi) Bhajju Vs. State of M.P., 2012 (77) ACC 182 (SC)
(vii) G.Parshwanath Vs. State of Karnataka, AIR 2010 SC 2914
(viii) Prithi Vs. State of Haryana, (2010) 8 SCC 536.
(ix) Mallappa Siddappa Vs. State of Karnataka, 2009 (66) ACC 725 (SC)
(x) Sarvesh Narain Shukla Vs. Daroga Singh, AIR 2008 SC 320
(xi) Jodhraj Singh Vs. State of Rajasthan, 2007 CrLJ 2942 (SC)
(xii) Radha Mohan Singh Vs. State of UP, AIR 2006 SC 951
(xiii) Chhidda Vs. State of UP, 2005(53) ACC 405 (All)(D.B.)
(xiv) Gubbala Venugopalaswamy Vs. State of A.P., 2004(10) SCC 1200
(xv) Narain Vs. State of M.P., 2004(48) ACC 672 (SC)
(xvi) K. Anbazhagan Vs. Supdt. of Police, (2004)3 SCC 767
(xvii) T. Shankar Prasad Vs. State of A.P., (2004) 3 SCC 753
(xviii) Rizwan Vs. State of Chhatisgarh, 2003(46) ACC 428 (SC)
(xix) Sucha Singh Vs. State of Punjab, 2003(47) ACC 555 (SC)
(xx) Malkhan Singh Vs. State of U.P., 2001 JIC 290 (All)
(xxi) Gaura singh Vs. State of Rajasthan, 2001 CrLJ 487 (SC)
(xxii) Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, 2000(40) ACC 116 (SC)

9.2. Presiding judge must play pro-active role to ensure fair trial (Sec. 165, Evidence Act): Duty of presiding judge is to play pro-active role to ensure fair trial. Court cannot be a silent spectator or mute observer when it presides over trial. It is the duty of the court to see that neither prosecution nor accused play truancy with criminal trial or corrod sancitity of the proceedings. Presiding judge can envoke his powers u/s 165 of the Evidence Act and can put questions to the witness to elicit the truth. See: Bablu Kumar Vs. State of Bihar, (2015) 8 SCC 787.

9.3. When witness resiles from his previous statement recorded u/s 164 CrPC, conviction cannot be based upon his such previous statement: When a witness resiles from his earlier statement recorded by a Judicial Magistrate u/s 164 CrPC, then his previous statement u/s 164 CrPC may not

be of any relevance nor it can be considered as substantive evidence to base conviction solely thereupon**.** See:

(i) Somasundaram Vs. State, (2020) 7 SCC 722
(ii) State of Karnataka Vs. P. Ravikumar, (2018) 9 SCC 614.

9.4. Informant/complainant when turning hostile & not proving FIR: Once registration of the FIR is proved by the police and the same is accepted on record by the Court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. It is settled law that FIR is not substantive piece of evidence. But certainly it is a relevant circumstance of the evidence produced by the investigating agency. Merely because the informant turns hostile it cannot be said that the FIR would lose all of it's relevancy and cannot be looked into for any purpose. See: Bable Vs. State of Chhattisgarh, AIR 2012 SC 2621.

9.5. Reliance upon Hostile witness: If the prosecution witness has turned hostile, the court may rely upon so much of his testimony which supports the case of the prosecution & is corroborated by other evidence. See: Sidharth Vashisth alias Manu sharma Vs. State of NCT of Delhi, 2010(69) ACC 833 (SC).

Note: A Division Bench judgment of Hon'ble Allahabad High Court delivered in Cr. Misc. Petition No. 5695/2006, Karan Singh VS. State of U.P., decided on 12.4.2007 and circulated amongst the judicial officers of the State of U.P., **vide C.L. No. 6561/2007 Dated: April 21, 2007** directs the judicial officers to initiate process for cancellation of bail of such accused who threaten the PWs to turn hostile. The directions issued by the Hon'ble Court reads as under :

"We now direct the District Judges and the DGP to ensure expeditious conclusion of trials and investigations, and directions for re-investigations where erroneous final reports appear to have been submitted, or where extraneous pressures have been exercised for saving politically influential

accused. In some cases non-bailable warrants have been issued but no further steps taken for initiating proceedings u/s 82 and 83 CrPC where the accused public representatives are absconding or are not cooperating with the trials. Necessary orders may be issued in this regard by the court concerned. A number of cases are held up in different courts by means of criminal revisions or other proceedings or on the basis of orders passed by the High Court. We direct that the District Judges, the Registry and the Government Advocates to prepare lists of such cases separately and take steps for expeditious disposal and vacation of stays where proceedings or investigations have been stayed. In some cases, the information is extremely inadequate, for example, in the case of Brij Bhushan Sharan Singh. The relevant column only mentions that in as many as three cases u/s 302 IPC, the cases have been decided or disposed of but it appears that the District Judge concerned has not clarified as to whether the cases have ended in acquittals or in convictions or under what circumstances the said cases were disposed of. We require the District Judges concerned to furnish better details where inadequate information has been furnished or where no information has been furnished, and to continue to submit periodical reports as directed by this Court. A perusal of the chart shows that a large number of cases have ended in acquittals, principally on the basis that the witnesses are not coming forward to support the prosecution version and are turning hostile. If there are any reasons to suspect that the witnesses have been won over, as we have already directed in an earlier order that the Court concerned should take steps for ensuring that the witnesses are not under any pressure including by initiating proceedings for cancellation of bails, if necessary. This may be done as already emphasized in our order dated 31.8.2006 by taking of steps for cancellation of bails of accused persons, where it is apparent that witnesses are turning hostile due to political or other extraneous pressures, as has been recommended by the Apex Court in **Gurucharan VS. State, AIR 1978 SC 179, Mahboob Dawood Shaikh VS. State of Maharashtra: AIR 2004 SC 2890 and Panchanan Mishra Vs. Digambar Mishra: AIR 2005 SC 1299**. It has become necessary to re-emphasize this direction because in may case we find that the trial courts are

recording acquittals on the ground that the witnesses have turned hostile without taking any step to prevent the witnesses from turning hostile owing to extraneous reasons. The possibilities of witnesses turning hostile are much greater in cases where the accused public representative is wanted in several grave cases including those under sections 302 IPC. We must again re-emphasize as directed earlier, that the DGP should ensure that the investigating officers are directed to ensure that the witnesses turn up on the dates fixed for giving their evidences before the courts concerned."

9.6. Non-examination of hostile witness by Public Prosecutor in examination-in-chief & its effect? : Where the witness called by prosecution gave statements favorable to defense even during his examination-in-chief but the public prosecutor did not seek permission to cross examine the witness at that stage and allowed his cross examination by defence, it has been held by the Supreme Court that permission sought by public prosecutor to cross examine the witness thereafter should be refused. See: State of Bihar Vs. Lalu Prasad Yadav, AIR 2002 SC 2432

9.7. Cross-examination of witness not to be deferred at the pleasure or leisure of the defence counsel: Sending copy of its judgment to the Chief Justices of all the High Courts for circulating the same among the trial judges, it has been ruled by the Hon'ble Supreme Court that the trial judges must be commanded to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at the pleasure or leisure of the defence counsel. See: Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220.

9.8. Direction of the Supreme Court as to when should cross-examination of witness be deferred: Norm in any criminal trial is for the examination-in-chief of witnesses to be carried out first, followed by cross-examination, and re-examination if required, in accordance with Section 138 of the Indian Evidence Act, 1872. Section 231(2) of the Cr.P.C., however, confers a discretion on the Judge to defer the cross-examination of any witness until

any other witness or witnesses have been examined, or recall any witness for further cross-examination, in appropriate cases. Judicial discretion has to be exercised in consonance with the statutory framework and context while being aware of reasonably foresseable consequences. The party seeking deferral under Section 231(2) of the CrPC must give sufficient reasons to invoke the exercise of discretion by the Judge, and deferral cannot be asserted as matter of right. There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) of the CrPC can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231 CrPC is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed. While deciding an application under Section 231(2) of the CrPC, a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. See: State of Kerala Vs. Rasheed, AIR 2019 SC 721.

9.9. Calling witness for cross-examination after long gap depricated by the Supreme Court: It is not justified for any conscientious trial Judge to ignore the statutory command, not recognise "the felt necessities of time: and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that t civilised and orderly society thrives on the rule of law which includues "fair trial" for the accused as well as the prosecution. .... Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. In the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics. In fact, it is not at all appreciable to call a witness for cross-examination after such a long

span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial**.** See:

(i) Sadhu Saran Singh Vs. State of UP, (2016) 4 SCC 357
(ii) Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220.

9.10. Question not put to witness in cross-examination makes the fact final: It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. See :

(i) Mahavir Singh Vs. State of Haryana, (2014) 6 SCC 716 (para 16)
(ii) Atluri Brahmanandam Vs. Anne Sai Bapuji and Laxmibai Vs. Bhagwantbuva, (2013) 4 SCC 97 : AIR 2013 SC 1204.

9.11. Re-examination of witness u/s 137 & 138 Evidence Act not limited to ambiguities in cross-examination: Re-examination of witness u/s 137 & 138 Evidence Act is not limited to ambiguities in cross-examination. If Public prosecutor feels that certain answers require more elucidation from witness, he has the freedom and right to put such question as he deems necessary for that purpose, subject of course to control of court in accordance with other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination. See:

(i) Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220
(ii) Rammi Vs. State of MP, (1999) 8 SCC 649.

9.12. Stage of declaring witness as hostile? : It is open to the party who called the witness to seek permission of the court as envisaged in Sec. 154 of the Evidence Act at any stage of the examination and it is a discretion vested with the court whether to grant the permission or not. Normally when the PP requests for the permission to put cross examinations to a witness called by

him the court use to grant it. If the PP has sought permission at the end of the chief examination itself the trial court would have no good reason for declining the permission sought for. Even in a criminal prosecution when a witness is cross examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off he record all together. See:

(i) K. Anbajhgan Vs. Superintendent of Police, AIR 2004 SC 524
(ii) State of Bihar Vs. Lalu Prasad Yadav, AIR 2002 SC 2432

9.13. When hostile PW not got declared as hostile & not cross examined by prosecution: If the prosecution witness supporting defense is not declared hostile by prosecution, accused can rely on such evidence. See: Javed Masood Vs. State of Rajasthan, 2010 CRLJ 2020 (SC).

9.14. Witness when can be declared hostile? : U/s 154 Evidence Act, permission for cross examination of a witness declaring him hostile cannot and should not be granted at mere asking of the party calling the witness. See: Gura Singh VS. State of Rajasthan, AIR 2001 SC 330.

9.15. Public prosecutor not bound to examine such witnesses which are not supportive of prosecution's case: Under S. 226 CrPC the public prosecutor has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in Court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said Section that the Public Prosecutor is expected to produce evidence "in support of the prosecution"

and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution for relieving itself of the strain of adducing repetitive evidence on the same point but also helps the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those Courts crammed with cases, but without impairing the cause of justice. See:

(i) Sandeep Vs. State of UP, (2012) 6 SCC 107
(ii) Hukum Singh & others Vs. State of Rajasthan, 2001 CrLJ 511 (SC)

9.16. Closure of evidence by public prosecutor when not to be accepted by court? : The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses, but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the

potentiality to lead to the paralysis of the conception of fair trial. See: Bablu Kumar Vs. State of Bihar, (2015) 8 SCC 787 *(paras 17 to 22*).

9.17. Public prosecutor not bound to examine all witnesses of a particular fact: Under Section 226 CrPC the public prosecutor has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in Court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said Section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution for relieving itself of the strain of adducing repetitive evidence on the same point but also helps the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those Courts crammed with cases, but without impairing the cause of justice. See:

(i) Sandeep Vs. State of UP, (2012) 6 SCC 107
(ii) Hukum Singh & others Vs. State of Rajasthan, 2001 CrLJ 511 (SC)

9.18. Public prosecutor has discretion to examine only some of many injured witnesses: Under Section 226 CrPC the public prosecutor has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in Court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisaged in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said Section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. That principle applies when there are too many witnesses cited if they all had sustained injuries at the occurrence. The Public Prosecutor in such cases is not obliged to examine all the injured witnesses. If he is satisfied by examining any two or three of them, it is open to him to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution for relieving itself of the strain of adducing repetitive evidence on the same point but also helps the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those Courts crammed

with cases, but without impairing the cause of justice. See: Hukum Singh & others Vs. State of Rajasthan, 2001 CrLJ 511 (SC).

9.19. Threatening a witness made offence u/s 195A IPC w.e.f. 16.04.2006 : Threatening a witness has been made offence u/s 195A IPC w.e.f. 16.04.2006. Section 195A CrPC inserted w.e.f. 31.12.2009 provides that a witness or any other person may file a complaint in relation to an offence u/s 195A of the IPC.

10. Witnesses when partly reliable & partly unreliable: Maxim "falsus in uno, falsus in omnibus" is not applicable in India. Principle of "false in one, false in all" cannot be applied in relation to the depositions of a witness who has been found lying on a particular fact and whose remaining part of testimony is otherwise truthful. Even if major portion of evidence of a witness is found deficient but residue is sufficient to prove the guilt of the accused, notwithstanding the acquittal of number of co-accused-conviction can be recorded. See the rulings noted below:

(i) 2011 CrLJ 283 (SC)
(ii) Mani Vs. State, 2009 (67) ACC 526 (SC)
(iii) Kalegura Padma Rao Vs. State of A.P., AIR 2007 SC 1299
(iv) Kulvinder Singh Vs. State of Punjab, AIR 2007 SC 2868
(v) Radha Mohan Singh Vs. State of U.P., 2006(2) ALJ 242 (SC)
(vi) Narain Vs. State of M.P., 2004(48) ACC 672 (SC)
(vii) Megh Singh Vs. State of Punjab, (2003) 8 SCC 666

11.1. Mode of Assessing reliability of a witness: In the case of **Lallu Manjhi Vs. State of Jharkhand, AIR 2003 SC 854,** the Supreme Court has laid down certain factors to be kept in mind while assessing the testimony of a witness : "The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely **(i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable, nor wholly unreliable**. In the first two categories there may be no

difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness."

11.2. Eye witnesses & how to judge their credibility? : If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony. If the inconsistencies, contradictions, exaggerations, embellishments and discrepancies in the testimony are only normal and not material in nature, then the testimony of an eye witness has to be accepted and acted upon. Distinctions between normal discrepancies and material discrepancies are that while normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so:

(i) Ashok Kumar Chaudhary Vs. State of Bihar, 2008(61) ACC 972 (SC)
(ii) Dimple Gupta (minor) Vs. Rajiv Gupta, AIR 2008 SC 239
(iii) Kulwinder Singh Vs. State of Punjab, AIR 2007 SC 2868
(iv) State of Punjab Vs. Hakam Singh, 2005(34) AIC 929 (SC)
(v) Chowdhary Ramjibhai Narasanghbhai Vs. State of Gujarat, (2004) 1 SCC 184
(vi) State of H.P. Vs. Shreekant Shekari, (2004) 8 SCC 153
(vii) Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643
(viii) Krishna Mochi Vs. State of Bihar, (2002) 6 SCC 81

12. Chance witness: 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 :

(i) Kallu Vs. State of Haryana, AIR 2012 SC 3212
(ii) Ramesh Vs. State of U.P., 2010 (68) ACC 219 (SC)

(iii) Jarnail Singh Vs. State of Punjab, 2009 (67) ACC 668 (SC)
(iv) Sarvesh Narain Shukla Vs. Daroga Singh, AIR 2008 SC 320
(v) Acharaparambath Pradeepan Vs. State of Kerala, 2007(57) ACC 293 (SC)
(vi) Sachchey Lal Tiwari Vs. State of U.P., 2005 (51) ACC 141 (SC)
(vii) Chankya Dhibar Vs. State of W.B., (2004) 12 SCC 398
(viii) Fateh Singh Vs. State of U.P., 2003(46) ACC 862 (Allahabad)(DB)

13.1. Child witness (Sec. 118, Evidence Act): A child witness is competent to testify u/s 118, Evidence Act. Tutoring cannot be a ground to reject his evidence. A child of tender age can be allowed to testify if it has intellectual capacity to understand questions and give rational answers thereto. Trial Judge may resort to any examination of a child witness to test his capacity and intelligence as well as his understanding of the obligation of an oath. If on a careful scrutiny, the testimony of a child witness is found truthful, there can be no obstacle in the way of accepting the same and recording conviction of the accused on the basis of his testimony. See:

(i) Ganpathi Vs. State of Tamil Nadu, (2018) 5 SCC 549
(ii) K. Venkateshwarlu Vs. State of AP, AIR 2012 SC 2955
(iii) State of U.P Vs. Krishna Master, AIR 2010 SC 3071
(iv) State of Karnataka Vs. Shantappa Madivalappa, AIR 2009 SC 2144
(v) Acharaparambath Pradeepan VS. State of Kerala, 2007(57) ACC 293 (SC)
(vi) Ratan Singh Vs. State of Gujarat, (2004) 1 SCC 64
(vii) Doryodhan Vs. State of Maharashtra, 2003(1) JIC 184 (SC)
(viii) Paras Ram Vs. State of H.P., 2001(1) JIC 282 (SC)
(ix) Panchhi Vs. State of U.P., 1998(37) ACC 528 (SC- Three Judge Bench)
(x) Dattu Ramrao Sakhare Vs. State of Maharashtra, 1997(35) ACC 100 (SC)
(xi) Rajaram Yadav Vs. State of Bihar, 1996(33) ACC 439 (SC)
(xii) Baby Kundayanathil Vs. State of Kerala, (1993) Supplementary 3 SCC 667
(xiii) Prakash Vs. State of M.P., JT 1992 (4) SC 594.

13.2. Testimony of child witness not to be rejected unless found unreliable & tutored: (Sec. 118, Evidence Act): Testimony of a child witness cannot be

rejected unless found unreliable & tutored. See: Gul Singh Vs. State of MP, 2015 (88) ACC 358 (SC).

13.3. Oath to child witness: Proviso to Sec. 4(1) of the Oaths Act, 1969 reads as under:

"Provided that, where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Sec. 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth."

13.4. Omission to administer oath (Sec. 7 of the Oaths Act, 1969): Reads as under:

"No omissions to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth."

13.5. Child witness when not understanding the meaning of oath: It has been laid down by the Supreme Court that there is no legal bar against relying on the testimony of a child witness to whom oath could not be administered due to her incapacity to understand the meaning of oath. See: Paras Ram Vs. State of H.P., 2001(1) JIC 282 (SC)

13.6. Corroboration of testimony of child witness not required if credible: Conviction on the basis of testimony of a child witness is permissible if evidence of such child witness is credible, truthful and corroborated.

Corroboration is not must. It is under rule of prudence. See: 2013 CrLJ 2658 (SC).

13.7. Deaf and dumb witness & his reliability (Section 119): Section 119, Evidence Act provides that a deaf and dumb person is also a competent witness provided he can make his evidence intelligible, by writing or by signs and such evidence can be deemed to be oral evidence under Section 3 of the Evidence Act. When a deaf and dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. In case the witness is not able to read and write his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath. However, in case a person can read and write it is most desirable to adopt that method being more satisfactory than any sigh language. The law requires that there must be a record of signs and not the interpretation of signs. See: State of Rajasthan Vs Darshan Singh alias Darshan Lal, AIR 2012 SC 1973.

13.8. Precautions to be taken by court before examining deaf &dumb witness: When a deaf and dumb person is examined in court as witness, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also with the assistance of an interpreter**.** There must be a record of signs and not the interpretation of signs. See:

(i) Ram Deo Chamar Vs. State of UP, 2016 (94) ACC 384 (All)(paras 20 & 21)

(ii) State of Rajasthan Vs. Darshan Singh, 2012 (78) ACC 539 (SC)

14.1. Rustic lady witness & illiterate villager witness: 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:

(i) State of U.P. Vs. Chhoteylal, AIR 2011 SC 697
(ii) Dimple Gupta (minor) Vs. Rajiv Gupta, AIR 2008 SC 239
(iii) State of Punjab Vs. Hakam Singh, (2005) 7 SCC 408
(iv) State of H.P. Vs. Shreekant Shekari, (2004) 8 SCC 153
(v) State of Rajasthan Vs. Kheraj Ram, (2003) 8 SCC 224
(vi) State of Punjab Vs. Hakam Singh, (2005) 7 SCC 408

14.2. Appreciation of evidence of rustic witness subjected to grueling cross examination: Where a rustic eye witness of murder/Honor killing (child of tender age) was subjected to cross examination for days together to confuse him and there were certain contradiction etc. in his evidence, it has been held that such rustic witness can not be expected to state precisely the exact distance, direction from which he had witnessed the incident and the description of whole incident happened in few minutes and his evidence can not be rejected. See: State of U.P Vs. Krishna Master, 2010 (5) ALJ 423(SC).

14.3. Rustic eye witness and appreciation of his evidence: Where a rustic witness was subjected to grueling cross examination for many days, inconsistencies are bound to occur in his evidence and they should not be blown out of proportion. See: State of U.P Vs. Krishna Master, AIR 2010 SC 3071.

15.1. Hearsay witness (Section 60, Evidence Act): As per S. 60, Evidence Act, 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:

(i) Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri, AIR 2011 SC 760.
(ii) Mukul Rani Varshnei Vs. Delhi Development Authority, (1995)6 SCC 120.
(iii) Sunder Lal Vs. State of Rajasthan, (2007) 10 SCC 371

15.2. Newspaper reports to be treated as hearsay evidence: Newspaper reports would be regarded as hearsay evidence and cannot be relied upon. See:

(i) Joseph M. Puthussery Vs. T.S. John, AIR 2011 SC 906.
(ii) Laxmi Raj Shetty Vs. State of T.N., AIR 1988 SC 1274.
(iii) Quamarul Ismam Vs. S.K. Kanta 1994 Supp. (3) SCC 5.

15.3. Certain witnesses should normally be not called to depose in support of their reports or opinions: Sections 291, 292, 293 CrPC (deposition of a medical witness, evidence of officers of the Mint and report of a government scientific expert) have created exceptions to the rule against hearsay evidence of Section 60 of the Evidence Act in the cases of proceedings under the CrPC wherein the report is that of certain specified persons. See: Phool Kumar Vs. Delhi Administration, AIR 1975 SC 905.

15.4. Omission to take signature of witness on his deposition not to render his deposition inadmissible: Where deposition of witness was recorded on commission but signature of the witness was not taken on it, it has been held by a Three-Judge Bench of the Supreme Court that correctness and authenticity of the deposition of the witness could not be disputed for want of signature on his depositions. Defect of not taking signature is not fatal to reception of deposition in evidence. See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernandeo Lopez, AIR 1989 SC 2206 (Three-Judge Bench).Note : Section 114(e) of the Evidence Act is also relevant here.

16.1. Identification of accused by witnesses in poor light, no light or darkness: In criminal trials, argument by defense 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.

16.2. Witness accustomed to live in midst of nature and without light can identify the assailant: 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 neighboring 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

16.3. Victim and witnesses having identified assailant in night believed by Court: It was a murder trial. The victim had himself signed the FIR, made statements u/s 161 CrPC 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)(DB)

16.4. Witness having identified accused in night in poor light of lantern believed by court: It was a criminal trial u/s 302/149, 201 IPC. Place of occurrence was verandah of the deceased. Lanterns (two) were said to be kept and lighting on the verandah near the place of occurrence. Mother, sister and neighbourer of the deceased, being eye witnesses, had 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 verandah (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 verandah, 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 verandah 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)**

16.5. Hurricane lamp not seized by IO held not a ground to disbelieve witnesses who had identified accused in hurricane's light: 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)

16.6. Optical potency of urban witnesses can't be equated with those witnesses living in villages without light: "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

16.7. Claim of eye witness being relative of accused and having identified accused in night believed by Court: 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

16.8. Witness claiming to have seen assailant in head light of scooter believed by Court: 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

16.9. Moonless night & when torch not taken into possession by IO: Where the murder had taken place in a moonless night and the eye witnesses had stated that they had identified the accused in torch light but the torch had not been taken into possession by the IO and both the parties belonged to he same village and were well known to each other,it has been held that merely because non taking of torch into possession by the ASI would not mean that witnesses were not credible and conviction under Sec 302 IPC was held proper. See:

(i) Durbal Vs. State of U.P., 2011 CrLJ 1106 (SC)
(ii) Hari Singh Vs. State of U.P, AIR 2011 SC 360.

17.1. FIR not substantive piece of evidence: It is settled law that an FIR registered under Section 154 CrPC is not substantive piece of evidence. See: Bable Vs. State of Chhattisgarh, AIR 2012 SC 2621

17.2. Evidentiary value of FIR not lost if informant turns hostile: Once registration of the FIR is proved by the police and the same is accepted on record by the Court and the prosecution establishes its case beyond

reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. It is settled law that FIR is not substantive piece of evidence. But certainly it is a relevant circumstance of the evidence produced by the investigating agency. Merely because the informant turns hostile it cannot be said that the FIR would lose all of its relevancy and cannot be looked into for any purpose. See: Bable Vs. State of Chhattisgarh, AIR 2012 SC 2621.

17.3. Informant/complainant when turning hostile: Once registration of the FIR is proved by the police and the same is accepted on record by the Court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. It is settled law that FIR is not substantive piece of evidence. But certainly it is a relevant circumstance of the evidence produced by the investigating agency. Merely because the informant turns hostile it cannot be said that the FIR would lose all of its relevancy and cannot be looked into for any purpose. See: Bable Vs. State of Chhattisgarh, AIR 2012 SC 2621

17.4. Scribe of FIR when not examined? : Non-examination of scribe of FIR is not fatal to prosecution and no adverse inference can be drawn against prosecution if the scribe was not an eye-witness to the incident and the complainant/informant had proved the execution of the FIR by examining himself as PW :

(i) Moti Lal Vs. State of U.P., 2009 (7) Supreme 632
(ii) Anil Kumar Vs. State of U.P., (2003) 3 SCC 569

17.5. Offence u/s 506 IPC when proved? : Proving the intention of the accused to cause alarm or compel doing or abstaining from some act, and not mere utterances of words, is a prerequisite of successful conviction under Section 506 IPC. See:

(i) Parminder Kaur Vs. State of Punjab, (2020) 8 SCC 811 (Three-Judge Bench).

(ii) Manik Taneja Vs. State of Karnataka, (2015) 7 SCC 423.

18.1. Non-mentioning of name of accused in FIR not fatal to prosecution case: Merely because the accused was not named in the FIR, the same cannot be fatal to prosecution case. See:

(i) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(ii) Mritunjoy Biswas Vs Pranab alias Kuti Biswas & Another, AIR 2013 SC 3334.

18.2. Appreciation of FIR & its contents: The FIR is not the encyclopedia of all the facts relating to crime. The only requirement is that at the time of lodging FIR, the informant should state all those facts which normally strike to mind and help in assessing the gravity of the crime or identity of the culprit briefly. See:

(i) State of MP Vs. Chhaakki Lal, AIR 2019 SC 381.
(ii) Prabhu Dayal Vs. State of Rajasthan, (2018) 8 SCC 127
(iii) Motiram Padu Joshi Vs. State of Maharashtra, (2018) 9 SCC 429
(iv) Bhagwan Jagannath Markad Vs. State of MaharaShtra, (2016) 10 SCC 537.
(v) Jarnail Singh Vs. State of Punjab, 2009 (6) Supreme 526

18.3. Non-mentioning of name of witness in FIR not fatal: Testimony of witness cannot be disbelieved merely because of non-mentioning of his name in FIR. See: Prabhu Dayal Vs. State of Rajasthan, (2018) 8 SCC 127

19.1. Telephonic FIR whether FIR in law? : Telephonic information to police station about cognizable offence recorded in daily diary book would be treated as FIR u/s 154 CrPC even when the said information though mentioning the names of assailants but investigation has started on its basis. See :

(i) Sunil Kumar Vs. State of M.P., AIR 1997 SC 940
(ii) Vikram Vs. State of Maharashtra, 2007 CrLJ 3193 (SC)

19.2. A cryptic telephonic message recorded at police station not to be treated as FIR: A cryptic telephonic message given to police to the effect that accused accompanied by others assaulted the complainant party cannot be treated as an FIR u/s 154 CrPC when the said message did not disclosed the letter of offence and the manner in which the offence was committed. See: Bhagwan Jagannath Markad Vs. State of Maharashtra, AIR 2016 SC 4531 (para 26)

19.3. GD entries whether FIR? : Gist of information regarding commission of cognizable offences recorded in GD can legally be treated as FIR. See: Superintendent of Police, CBI Vs. Tapan Kumar Singh, 2003 (46) ACC 961 (SC).

19.4. Only gist of information received required to be recorded in general diary (GD): What is to be recorded in general diary as per Section 44 of the Police Act, 1861 in general diary is only gist of information received and not the whole of information received. It cannot, therefore, be said that what is recorded in general diary is to be considered as compliance of requirement of Section 154 CrPC for registration of FIR. See: Lalita Kumari Vs. Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).

19.5. Daily diary entry not FIR: Where on receiving telephonic message about the incident, SI made entry in Daily Diary report that after receiving the information he was proceeding to the spot alongwith other constables, it has been held that that was not an FIR u/s 154 CrPC and therefore non-mentioning of the names of the assailants in that entry cannot have any bearing on the case of the prosecution. See: Thaman Kumar Vs. State, (2003) 6 SCC 380.

19.6. Entries made in G.D. not to be treated as FIR registered u/s 154 CrPC: What is recorded in General Diary cannot be considered as compliance of

requirement of Section 154 CrPC of registration of FIR. See: Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).

19.7. Information received by the police must be entered into the G.D. : Since the General Diary/Station Diary/Daily Diary is the record of all information received in a Police Station, all the information relating to cognizable offences, whether resulting in registration of FIR or leading to an enquiry must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary enquiry must also be reflected as mentioned above. See: Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench) *(para 111).*

19.8. Information regarding cognizable offence from two or more sources & FIR: Where two informations regarding commission of cognizable offence are received and recorded and it is contended before the court that the one projected by the prosecution as FIR is not the real FIR but some other information recorded earlier (in GD) is the FIR, that is a matter which the court trying the accused has jurisdiction to decide. See:

(i) Superintendent of Police, CBI Vs. Tapan Kumar Singh, 2003 (46) ACC 961 (SC)
(ii) Vikram Vs. State of Maharashtra, 2007 CrLJ 3193 (SC)

19.9. R.T. message & FIR: R.T. message or high frequency set message simply informing police that one person had died due to gun shot without disclosing the names of assailants or deceased, cannot be treated as FIR u/s 154 CrPC particularly when details of the occurrence regarding commission of cognizable offence were subsequently conveyed to the police station officer. See:

(i) Budhraj Singh Vs. State of U.P.,2006(5) ALJ (NOC) 972(All—D.B.)
(ii) Uppari Venkataswamy Vs. Public Prosecutor, 1996 SCC (Criminal) 284
(iii) Ramsinh Bavaji Jadeja Vs. State of Gujarat, (1994) 2 SCC 685

19.10. Cryptic telephonic message not to be treated as FIR: Where information by an individual to police regarding commission of cognizable offence was given in the form of cryptic telephonic message not for purpose of lodging FIR but the police to reach at the place of occurrence, it has been held that such Cryptic telephonic information can not be treated as FIR. See: Sidharth Vashisth alias Manu sharma Vs. State of NCT of Delhi, 2010(69) ACC 833 (SC)

19.11. Witness when not named in FIR or charge-sheet: Mentioning of names of all witnesses in FIR or in statements u/s 161 CrPC is not a requirement of law. Such witnesses can also be examined by prosecution with the permission of the court. Non-mentioning of the name of any witness in the FIR would not justify rejection of evidence of the eye-witness:

(i) Prabhu Dayal Vs. State of Rajasthan, (2018) 8 SCC 127
(ii) Raj Kishore Jha Vs. State of Bihar, 2003(47) ACC 1068 (SC)
(iii) Chittarlal Vs. State of Rajasthan, (2003) 6 SCC 397
(iv) Bhagwan Singh Vs. State of M.P., 2002(44) ACC 1112 (SC)
(v) Sri Bhagwan Vs. State of Rajasthan, (2001)6 SCC 296
(vi) Satnam Singh Vs. State of Rajasthan, (2000)1 SCC 662

20.1. Official acts of police should be presumed to be regularly performed: Court cannot start with the presumption that police records are untrustworthy. As a proposition of law, presumption should be theother wayaround. Archaic notion to approach actions of police with initial distrust should be discarded.Even Section 114, III (e) of the Evidence Act provides that it should be presumed that the official act has been regularly performed. See: Surinder Kumar Vs. State of Punjab, (2020) 2 SCC 563 (Three-Judge Bench)

20.2. Police as witness & their reliability: 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. As a rule it cannot be stated that Police Officer can or cannot be sole eye witness in criminal case. Statement of Police Officer can be relied upon and even form basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record. See:

(i) Pramod Kumar Vs. State (GNCT) of Delhi, AIR 2013 SC 3344
(ii) Govindaraju alias Govinda Vs. State of Shri Ramapuram P.S. & Another, AIR 2012 SC 1292

20.3. Conviction of accused for murder merely on the basis of testimony of police officers as PWs confirmed: Where the incident had taken place at 9.30 P.M. on a non-busy road where some laborers were working on a crushing unit about 100 yards away but none of them came near the scene of crime and the accused was arrested by the police party which had rescued the deceased from the accused's clutches before she died and only the members of the police party were examined as PWs and the labourers/independent witnesses were not examined as witnesses, the Supreme Court confirmed the conviction of the accused for the offences u/s 302/34 and 316/34 of the IPC. See : Sandeep Vs. State of UP (2012) 6 SCC 107.

20.4. Exact information given by the accused u/s 27 of the Evidence Act should be recorded and proved and if not so recorded, the exact information must be adduced through evidence: Section 27 of the Indian Evidence Act, 1872 is by way of proviso to Sections 25 to 26 of the Evidence Act and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding Sections was

presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion and that in practice the ban will lose its effect. The object of the provision of Section 27 was to provide for the admission of evidence which but for the existence of the Section could not in consequences of the preceding sections, be admitted in evidence. Under Section 27, as it stands, in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the Police Officer. In other words, **the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence.** The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from

a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which 'distinctly relates to the fact thereby discovered.' But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. See: Bodh Raj Vs. State of J & K, AIR 2002 SC 3164 (para 18).

20.5. Non recording of disclosure statement u/s 27 not significant when the incrimenatory articles belonging to the deceased were recovered pursuant to the said disclosure statement of the accused: Where the accused had made confessional disclosure statement u/s 27 of the Evidence Act to the police officer during investigation and on the basis thereof, incriminatory articles were found and seized and the evidence showed that the articles belonged to the deceased, it has been held by the Supreme Court that the disclosure statement can be said to be true and also worthy of credence. Non recording of diclosure statement and non-examination of public witness as regards to the said recovery would be of no consequence. See: Suresh Chandra Bahri Vs. State of Bihar, AIR 1994 SC 2420 (paras 71 & 72)

20.6. Mere recovery of incriminating article u/s 27 of the Evidence Act on pointing out of the accused without establishing its connection with the crime or the ownership etc. not relevant and not reliable: Relevancy means connection or link between the fact discovered and the crime. Under Sections 27 of the Indian Evidence Act, it is not the discovery of every fact that is admissible but the discovery of the relevant fact is alone admissible. Relevancy is nothing but the connection or the link between the facts

discovered with the crime. In this case u/s 394, 302, 386, 366, 368 IPC read with Section 27 of the Evidence Act, recovery of the motor cycle was sought to be relied upon as a circusmstance against the convicts/appellants but there was nothing on record to show that the motor cycle recovered at the instance of the appellant no. 1 belonged to him. The investigating officer who was cross-examined before the court as P.W. had admitted that he did not know whether the appellant no. 1 was the owner of the motor cycle. He had further admitted that no attempts were made by him to enquire about the owner of the vehicle. His testimony as to the recovery of the motor cycle from the possession of the convict appellant no. 1 was disbelieved by the Supreme Court for the said reason. See: Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench)

20.7. Involuntary confession made u/s 27 Evidence Act under inducement, pressure or coercion inadmissible: Once a confessional statement of the accused is found to be involuntary, it is hit by Article 20 (3) of the Constitution rendering such a confession inadmissible. There is an embargo on accepting self-incriminatory evidence of an accused but if it leads to the recovery of material objects u/s 27 Evidence Act in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. However, if such a statement is made under undue pressure and compulsion from the investigating officer, the evidentiary value of such a statement leading to the recovery is nullified. See: State of MP Vs. Markand Singh, AIR 2019 SC 546.

20.8. Confession made to an officer under special Acts having power of police officer inadmissible u/s 25 of Evidence Act: Confession made to an officer under special Acts having power of police officer inadmissible u/s 25 of Evidence Act. See: Tofan Singh Vs State of TN, (2021) 4 SCC 1 (Three-Judge Bench)

20.9. Evidence of police officer as witness to recovery not to be ordinarily disbelieved: If anything or weapons etc. are recovered at the instance of the accused **(u/s 27, Evidence Act)** 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. Kindly see the cases noted below :

(i) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(ii) Sandeep Vs. Stat of UP, (2012) 6 SCC 107
(iii) Tejpal Vs. State of U.P., 2005(53) ACC 319 (Allahabad—D.B.)
(iv) Karanjeet Singh Vs. State of Delhi Administration, 2003(46) ACC 876 (SC)
(v) Praveen Kumar Vs. State of Karnataka, 2003(47) ACC 1099 (SC)
(vi) State Govt. of NCT of Delhi Vs. Sunil & others, 2001(1) SCC 652
(vii) Revindra Santaram Sawant Vs. State of Maharashtra, AIR 2002 SC 2461
(viii) Kalpnath Rai Vs. State Through CBI, (1997) 8 SCC 732

Note: But relying upon an earlier decision reported in Hardayal Prem VS. State of Rajasthan, 1991 (Suppl.) 1 SCC 148, the Supreme Court in the case of Bharat VS. State of M.P., 2003 SAR (Criminal) 184 (SC), has laid down that if the recovery of certain ornaments u/s 27, Evidence Act and 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.

20.10. Recovery of narcotic drugs by police when not supported by public witnesses: Where the accused, on seeing the police party, made an attempt to turn back and escape but was over powered by the police party and on his arrest and search "Charas" was recovered from his possession for which he had no license and after prosecution he was convicted for the offence u/s 20 of the NDPS Act 1985, it has been held by the Supreme Court that the obligation to take public witnesses is not absolute. If after making efforts which the court considers in the circumstances of the case reasonable the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the reliant evidence and will have to determine whether the evidence of the police officer is believable after taking due care and caution in evaluating their evidence. See: Ajmer Singh Vs. State of Haryana, (2010) 3 SCC 746

20.11. Recovery of fire arm, possession thereof & standard of proof required for offence u/s 25 of the Arms Act, 1959: The first pre-condition for an offence under Section 25 (1) (a) is the element of intention, consciousness or knowledge with which a person possessed the firearm. That possession need not be physical possession but can be constructive, having power and control over the gun. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. See: Gunwantlal Vs. State of M.P., AIR 1972 SC 1756 (Three-Judge Bench)*(Para 5)*

20.12. Recovery of fire arm, possession thereof & standard of proof required for offence u/s 25 of the Arms Act, 1959: Where the accused was convicted for offences u/s 307 IPC and also u/s 25(1)(a) of the Arms Act, 1959, setting aside his conviction and sentence, the Hon'ble Supreme Court held thus : "Section 307 IPC--attempt to murder--car driven by accused intercepted by complainant police officer--other inmates fleeing away--scuffle ensuing when

complainant tried to apprehend accused--accused alleged to have snatched service revolver of complainant and fired single shot--Pant and vest of complainant both having one bullet hole--Bullet holes are incompatible with case of single shot--Nature of injury suffered by complainant also incompatible with gun shot injury--seizure witnesses turning hostile--prosecution case suffers from lot of discrepancies --conviction of accused liable to be set aside. See: Sumersingh Umedshinh Raput alias Sumersinh Vs State of Gujarat, AIR 2008 SC 904.

21.1. 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 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 :

(i) Raj Kishore Jha Vs. State of Bihar, 2003(47) ACC 1068 (SC)
(ii) Ram Gulam Chowdhary Vs. State of Bihar, 2001(2) JIC 986 (SC)
(iii) Bahadur Naik Vs. State of Bihar, JT 2000 (6) SC 226
(iv) Ambika Prasad Vs. State of Delhi Administration, JT 2000 (1) SC 273
(v) Behari Prasad Vs. State of Bihar, JT 1996 (1) SC 93
(vi) 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.

21.2. 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. See:

(i) Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88.
(ii) Nawab Vs. State of Uttarakhand, (2020) 2 SCC 736
(iii) Khem Ram Vs. State of Himachal Pradesh, (2018) 1 SCC 202
(iv) State of Karnataka Vs. Suvarnamma, (2015) 1 SCC 323
(v) Hema Vs. State, 2013 (81) ACC 1 (SC)(Three-Judge Bench)
(vi) Ashok Tshersing Bhutia Vs. State of Sikkim, (2011) 4 SCC 402
(vii) C. Muniappan Vs. State of TN, 2010 (6) SCJ 822
(viii) Acharaparambath Pradeepan Vs. State of Kerala, 2007(57) ACC 293 (SC)
(ix) State of Punjab Vs. Hakam Singh, (2005) 7 SCC 408
(x) Dhanaj Singh Vs. State of Punjab, (2004) 3 SCC 654
(xi) Dashrath Singh Vs. State of U.P., (2004) 7 SCC 408
(xii) Visvesaran Vs. State, (2003) 6 SCC 73
(xiii) State of Rajasthan Vs. Teja Ram, 1999(38) ACC 627 (SC)
(xiv) Leela Ram Vs. State of Haryana, (1999) 9 SCC 52510

21.3. Serious defects on part of investigating agency affecting fair investigation and fair trial amounts to violation of fundamental rights of accused under Articles 20 & 21: Serious lapse on the part of the investigating agency which affects fair investigation and fair trial amounts to violation of fundamental rights of the accused guaranteed under Articles 20 and 21 of the Constitution of India. In this case, TIP was conducted by the Special Executive Magistrate after 33 days after arrest of the accused persons and 50 days after commission of the offence. The eye witnesses had though identified the accused persons during trial in the court but had not given

particular descriptions of the accused persons during the TIP and the said delay in conducting the TIP was also not explained by the prosecution. The dummy persons to identify the accused persons during the TIP were selected by the police though they were required to be selected by the Special Executive Magistrate. In this case of rape, murder and dacoity, the DNA report and the finger prints report did not support the prosecution story and there was no availability of sufficient light on the spot of the incident. See: Ankush Maruti Shinde Vs. State of Maharashtra, AIR 2019 SC 1457 (Three-Judge Bench).

21.4. Investigation by a police officer of below rank than prescribed not to vitiate trial or conviction: Where an FIR under the Prevention of Corruption Act, 1988 was investigated not by the officer of the rank and status of Deputy SP or equal but the police officer of the rank of Inspector, it has been held by the Supreme Court that such lapse would be an irregularity and unless it resulted in causing prejudice to the accused, trial and conviction would not be vitiated.See:

(i) Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88
(ii) Ashok Tshersing Bhutia Vs. State of Sikkim, (2011) 4 SCC 402

21.5. I.O. not obliged to anticipate all possible defences and investigate in that angle: The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such ommissions. See: Rahul Mishra Vs. State of Uttarakhand, AIR 2015 SC 3043 (Three-Judge Bench)= V.K. Mishra Vs. State of Uttarakhand, (2015) 9 SCC 588 *(para 38)*.

21.6. 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. When the origin of blood could not be determined by the FSL and merely it was stated that the blood stains were found of human origin, it does not necessarily prove fatal to the prosecution case. See:

(i) Prabhu Dayal Vs. State of Rajasthan, (2018) 8 SCC 127
(ii) Maqbool Vs. State of A.P., AIR 2011 SC 184.
(iii) Sheo Shankar Singh Vs. State of Jharkhand, 2011 CrLJ 2139(SC)
(iv) Dhanaj Singh Vs. State of Punjab, (2004) 3 SCC 654

21.7. 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 :

(i) Maqbool Vs. State of A.P., AIR 2011 SC 184
(ii) State of Punjab Vs. Hakam Singh, 2005(7) SCC 408
(iii) Dhanaj Singh Vs. State of Punjab, (2004) 3 SCC 654

21.8. Non-recovery of weapon from accused not material: When there is ample unimpeachable ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the accused does not affect the prosecution case relating to murder. See:

(i) Rakesh Vs State of UP,(2021) 7 SCC 188
(ii) Nankaunoo Vs. State of UP, (2016) 3 SCC 317 (Three-Judge Bench)
(iii) Mritunjoy Biswas Vs. Pranab alias Kuti Biswas & another, AIR 2013 SC 3334.

21.9. 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 cannot 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.

21.10. When blood group of accused not matched with the blood group of the deceased: In a case of murder based on circumstantial evidence, dead body and blood stained clothes of deceased were found only on discloser made by accused, there was clear medical evidence that assault by stone was the cause of death and the injuries found could not be caused by fall, the blood found on the clothes of the accuse matched with the blood group of the deceased then it has been held by the Supreme Court that non-examination of blood of the accused was not fatal to the prosecution case when the accused had no injury. See: Barku Bhavrao Bhaskar Vs. State of Maharashtra, AIR 2013 SC 3564.

21.11. Only those things in site plan admissible in evidence which are based on personal knowledge of I.O. : Only those things in site plan are admissible in evidence which are based on personal knowledge of I.O. as to what he saw and observed. See: State of UP Vs. Lakhan Singh, 2014 (86) ACC 82 (All)(DB).

21.12. 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.

21.13. 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 :

(i) Raj Kishore Jha Vs. State of Bihar, 2003(47) ACC 1068 (SC)
(ii) Ambika Prasad Vs. State of Delhi Admn., JT 2000(1) SC 273
(iii) Bahadur Naik Vs. State of Bihar, JT 2000(6) SC 226
(iv) Behari Prasad Vs. State of Bihar, JT 1996 (1) SC 93
(v) Ram Deo Vs. State of U.P., 1990(2) JIC 1393 (SC)

22.1. 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:

(i) Amar Nath Jha Vs. Nand Kishore Singh, (2018) 9 SCC 137
(ii) Mahabir Vs. State of Delhi, AIR 2008 SC 2343
(iii) Heera Vs. State of Rajasthan, AIR 2007 SC 2425
(iv) Simon Vs. State of Karnataka, (2004) 2 SCC 694
(v) Malkhan Singh Vs. State of M.P., 2003(47) ACC 427 (SC)
(vi) Visveswaran Vs. State, 2003 (46) ACC 1049 (SC)

22.2. 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:

(i) Santosh Devidas Behade Vs. State of Maharashtra, 2009 (4) Supreme 380
(ii) Mahabir Vs. State of Delhi, AIR 2008 SC 2343
(iii) Malkhan Singh Vs. State of M.P., 2003(47) ACC 427 (SC)

22.3. Delayed TIP: 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:

(i) Mahabir Vs. State of Delhi, AIR 2008 SC 2343

(ii) Anil Kumar Vs. State of U.P., (2003) 3 SCC 569
(iii) Pramod Mandal Vs. State of Bihar, 2005 SCC (Criminal) 75

22.4. Delayed TIP with 100% precision held proper: Where in a case of rioting and firing at the police personnel causing death of senior police official and injuries to others, TIP was held after 55 days of the incident but five out of the seven eye witnesses had identified the accused persons with 100% precision, the Supreme Court held that the delay in counducting the TIP was meaningless and the TIP was held proper. See: State of UP Vs Wasif Haider and others, (2019) 2 SCC 303

22.5. Serious defects on part of investigating agency affecting fair investigation and fair trial amounts to violation of fundamental rights of accused under Articles 20 & 21: Serious lapse on the part of the investigating agency which affects fair investigation and fair trial amounts to violation of fundamental rights of the accused guaranteed under Articles 20 and 21 of the Constitution of India. In this case, TIP was conducted by the Special Executive Magistrate after 33 days after arrest of the accused persons and 50 days after commission of the offence. The eye witnesses had though identified the accused persons during trial in the court but had not given particular descriptions of the accused persons during the TIP and the said delay in conducting the TIP was also not explained by the prosecution. The dummy persons to identify the accused persons during the TIP were selected by the police though they were required to be selected by the Special Executive Magistrate. In this case of rape, murder and dacoity, the DNA report and the finger prints report did not support the prosecution story and there was no availability of sufficient light on the spot of the incident. See: Ankush Maruti Shinde Vs. State of Maharashtra, AIR 2019 SC 1457 (Three-Judge Bench).

22.6. Identification by voice: 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

22.7. Magistrate has power to direct an accused to give sample of his voice for purposes of investigation: In the case noted below, it has been directed by the Hon'ble Supreme Court that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give sample of his voice for the purpose of investigation of crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in Supreme Court under Article 142 of the Constitution of India. See: Judgement dated 02.08.2019 of the Supreme Court passed in Criminal Appeal No. 2003/2012, Ritesh Sinha V/s State of UP.

22.8. Identification of accused by clothes without TIP held credible: In a village of merely 25 houses where everyone is well-acquainted with one another, an outsider would stand out starkly and attract attention. In such situation, his identification through clothes, if supported by credible testimony of multiple witnesses, cannot be faulted with only for non-conduct of the TIP subsequently. See: Viran Gyanlal Rajput Vs State of Maharashtra (2019) 2 SCC 311 (Three- Judge Bench)

22.9. First time identification of the accused by witnesses in the court: 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:

(i) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(ii) Harpal Singh Vs. State of Punjab, (2017) 1 SCC 734
(iii) Noora Hammad Vs. State of Karnataka, (2016) 3 SCC 325
(iv) Subal Ghorai Vs. State of W.B., (2013) 4 SCC 607

(v) Mahabir Vs. State of Delhi, AIR 2008 SC 2343
(vi) Heera Vs. State of Rajasthan, AIR 2007 SC 2425
(vii) Ashfaq Vs. State Govt. of NCT of Delhi, (2004) 3 SCC 116
(viii) Simon Vs. State of Karnataka, (2004) 2 SCC 694
(ix) Dana Yadav Vs. State of Bihar, 2003(47) ACC 467 (SC)
(x) Munna Vs. State (NCT) of Delhi, 2003 (47) ACC 1129 (SC)

22.10. First time identification of accused by witnesses in court after two years of incident found doubtful in the absence of TIP: Law with regard to importance of TIP (Sec. 9 of the Evidence Act) is well settled that identification in court is a substantive piece of evidence and TIP simply corroborates the same. Where the incident had taken place in the night at a place with improper light and all the accused were known to the witnesses and no TIP was held, it has been held by the Supreme Court that first time identification of the accused persons by the witnesses in court after a gap of more than two years from the date of incident was not beyond reasonable doubt and was suspicious. See: Noora Hammad Vs. State of Karnataka, (2016) 3 SCC 325.

22.11. Identification of accused by clothes without TIP held credible: In a village of merely 25 houses where everyone is well-acquainted with one another, an outsider would stand out starkly and attract attention. In such situation, his identification through clothes, if supported by credible testimony of multiple witnesses, cannot be faulted with only for non-conduct of the TIP subsequently. See: Viran Gyanlal Rajput Vs State of Maharashtra (2019) 2 SCC 311 (Three- Judge Bench)

22.12. Evidentiary value of charge-sheet u/s 173(2) CrPC: A charge sheet submitted by an investigating officer u/s 173(2) CrPC 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).

22.13. Contents in memory card or pen drive cannot be supplied to accused u/s 207 CrPC: Contents in memory card or pen drive cannot be supplied to accused u/s 207 CrPC. See: P. Gopalkrishnan Vs. State of Kerala, (2020) 9 SCC 161.

22.14. Mode of proving contents in primary or secondary electronic devices like DVD, CD, Pen Drive etc: Evidence like DVDs, CDs, pen drives are admissible in constitutional courts. For instance, any storage device that is primary in nature must be admissible in court. For primary evidence to be submitted as evidence, it is necessary that the data is presented in the court as stored in the DVD itself. In other words, the original media has to be self-generated or recorded and stored in the device directly and not by copying from any other storage device. But if on the other hand, the device on which the data was restored was copied from the original source and then is being presented as a duplicate version, it will be subject to a test and will have to pass the test of authenticity i.e. conditions laid down in Section 65-B of Indian Evidence Act. Whereas, if a storage device in question is secondary in nature and is a copy of the original one, then it has necessarily to pass the test of validity with respect to the provisions of Section 65(B) as was held in the case of **Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)**. The precedence laid down by the courts in the subsequent years has helped the criminal justice system in delivering justice and it has ensured that the CCTV footage is authentic and can be relied upon. See: Judgment dated 12.02.2016 of Division Bench of Delhi High Court in Kishan Tripathi@ Kishan Painter Vs. State.

22.15. 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:

(i) Ramakant Rai Vs. Madan Rai, 2004 (50) ACC 65 (SC)
(ii) State of Punjab Vs. Jugraj Singh, AIR 2002 SC 1083

22.16. Police personnel can also be treated as ballistic experts: 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.

22.17. Effect of non-production of case diary or general diary: 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

22.18. Ballistic experts opinion & its appreciation: 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

22.19. Ballistic experts opinion & ocular testimony when contrary: 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.

22.20. Ballistic expert's contrary view that bullet recovered did not match with gun recovered not to override credible ocular testimony: Ballistic expert's contrary view that the bullet recovered from the dead body of the deceased at the time of posr-mortem did not match with the gun recovered from the accused cannot override the credible testimony of the eye witness.See: Rakesh Vs State of UP,(2021) 7 SCC 188

23.1. 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:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(ii) Josh Vs. Sub-Inspector of Police, Koyilandy, (2016) 10 SCC 519.
(iii) Gurbachan Singh Vs. Satpal Singh, AIR 1990 SC 209)

23.2. 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

23.3. 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

24. 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:

(i) State of AP Vs. Pullagummi Kasi Reddy Krishna Reddy, (2018) 7 SCC 623
(ii) Balraje Vs. State of Maharashtra, 2010 (70) ACC 12 (SC)
(iii) Km. Rinki Vs. State of U.P., 2008 (63) ACC 476 (All—D.B.)
(iv) Kallu Vs. State of M.P., 2007 (57) ACC 959 (SC)
(v) Amzad Ali Vs. State of Assam, (2003) 6 SCC 270
(vi) Chhidda Vs. State of U.P., 2005 (53) ACC 405 (All– D.B.)
(vii) Sardar Khan Vs. State of Karnataka, (2004) 2 SCC 442
(viii) Sewa Vs. State of U.P., 2002 A.L.J. 481 (All—D.B.)
(ix) Komal Vs. State of U.P., (2002) 7 SCC 82

25. Delayed FIR and delayed recording of statement of PWs by I.O. u/s 161 CrPC—effect thereof? : 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 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. See:

(i) State of MP Vs. Chhaakki Lal, AIR 2019 SC 381

(ii) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench).
(iii) Ashok Kumar Chaudhary Vs. State of Bihar, 2008 (61) ACC 972 (SC)
(iv) Rabindra Mahto Vs. State of Jharkhand, 2006 (54) ACC 543 (SC)
(v) Ravi Kumar Vs. State of Punjab, 2005 (2) SCJ 505
(vi) State of H.P. Vs. Shree Kant Shekari, (2004) 8 SCC 153
(vii) Munshi Prasad Vs. State of Bihar, 2002(1) JIC 186 (SC)
(viii) Ravinder Kumar Vs. State of Punjab, 2001 (2) JIC 981 (SC)
(ix) Sheo Ram Vs. State of U.P., (1998) 1 SCC 149
(x) State of Karnataka Vs. Moin Patel, AIR 1996 SC 3041

26. Delayed sending of FIR to Magistrate u/s 157 CrPC: 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. Mere delay in sending the FIR to Magistrate u/s 157 CrPC cannot lead to a conclusion that the trial is vitiated or the accused is entitle to be acquitted on that ground. The accused must show that prejudice was caused to him by delayed sending of the FIR to the Magistrate u/s 157 CrPC. See:

(i) Ramji Singh Vs. State of UP, (2020) 2 SCC 425
(ii) Jafel Biswas Vs. State of West Bengal, AIR 2019 SC 519.
(iii) Anil Rai Vs. State of Bihar, (2001) 7 SCC 318
(iv) State of Punjab Vs. Hakam Singh, (2005)7 SCC 408

27.1. 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

27.2. Courts should give due regard to the expert opinion u/s 45 of the Evidence Act but not bound by it: The courts normally would look at

expert evidence with a greater sense of acceptability but the courts are not absolutely guided by the report of the experts, especially if such rports are perfunctory and unsustainable. The purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion but such report is not a conclusive one. The court is expectedto analyse the report, read it in conjunction with the other evidence on record and form its final opinion as to whether such report is worthy of reliance or not. Serious doubts aarise about the cause of death stated in the post-mortem reports in this case. See: **Tomaso Bruno & Another Vs. State of Uttar Pradesh, (2015) 7 SCC 178 (Three-Judge Bench)** ***(para 40)*****.**

27.3. 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

27.4. 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.

27.5. 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.

27.6. Conflict between ocular and medical evidence—How to reconcile? : 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:

(i) Sadhu Saran Singh Vs. State of UP, (2016) 4 SCC 357
(ii) Abdul Sayeed Vs. State of M.P, (2010) 10 SCC 259
(iii) Chhotanney Vs. State of U.P., AIR 2009 SC 2013
(iv) Mallappa Siddappa Vs. State of Karnataka, 2009 (66) ACC 725 (SC)
(v) Mahmood Vs. State of U.P., AIR 2008 SC 515
(vi) Vishnu Vs. State of Maharashtra, 2006 (54) ACC 554 (SC)
(vii) State of Punjab Vs. Hakam Singh, (2005) 7 SCC 408
(viii) Anwarul Haq Vs. State of U.P., 2005 (4) SCJ 516
(ix) Anil Rai Vs. State of Bihar, (2001) 7 SCC 318
(x) State of Haryana Vs. Bhagirath & others, (1999) 5 SCC 96
(xi) Adya Singh Vs. State of Bihar, 1998 (37) ACC 527 (SC)
(xii) State of U.P. Vs. Harban Sahai, 1998 (37) ACC 14 (SC)

27.7. **Conflict between ocular & medical evidence:** Ocular evidence would have primacy unless established to be totally irreconcilable with the medical evidence. Testimony of ocular witness has greater evidentiary value. See: Rakesh Vs. State of UP, 2012 (76) ACC 264 (SC)

27.8. 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

27.9. When direction of bullet changes inside of body on being hit to bones: Where according to medical evidence the shot had hit the head of the humerus that got punctured and the signs of the wound were medically towards inside and slightly towards below and it was from the right to left and there was difference in the ocular & medical evidence regarding the direction of the gun shot injuries/pellets, it has been held by the Hon'ble Supreme Court 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 and ocular evidence. See: Lallan Chaubey Vs. State of UP, AIR 2011 SC 241= 2011 CrLJ 280 (SC).

27.10. Distance of gun firing: Where the wound was caused from gun fire, blackening could be found only when the shot was fired from a distance of about 3 to 4 feet and not beyond the same. See:

(i) Budh Singh Vs. State of MP, AIR 2007 SC (Suppl) 267
(ii) Swaran Singh Vs. State of Punjab, AIR 2000 SC 2017

27.11. Blackening, tattooing & scorching: The absence of scorching, blackening and tattooing injuries will not discredit eye witness account in the absence of positive opinions from doctor and testimony on distance of firing. See: Bharat Singh Vs. State of UP, AIR 1999 SC 717

27.12. Distance and fire arm injury: Where the witnesses had testified the use of assortment of modern fire arms from a distance of 1 to 2 feet and the defence had argued that only shot guns were used and the medical evidence was to the effect that all the entry wounds showed signs of charring ad tattooing and had different dimensions, it has been held that the medical evidence was not inconsistent with the ocular evidence as to the use of different fire arms. See: Sarvesh Narain Shukla Vs. Daroga Singh, AIR 2008 SC 320.

27.13. Single gun shot can cause multiple fire arm injuries: A single shot fired from double barreled gun can cause multiple injuries. See: Om Pal Singh Vs. State of UP, AIR 2011 SC 1562

27.14. Testimony of eye witnesses should be preferred unless medical evidence is so conclusive as to rule out even the possibility of eye witnesses' version to be true. See: State of U.P. Vs. Harban Sahai, (1998) 6 SCC 50 (Three-Judge Bench)

27.15. When ocular & medical evidence contrary on "wounds & weapons": The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of t victim, the resistance offered by him, the opportunity available to the witnesheses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony. See: Thaman Kumar Vs. State of Union Territory of Chandigarh, (2003) 6 SCC 380

27.16. When medical opinion suggesting alternative possibilities than ocular testimony---How to reconcile? : The ocular evidence being cogent, credible and trustworthy, minor variance, if any, with the medical evidence are not of any consequence. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. It is trite that where the eye witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Eye-witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy: consistency with the undisputed facts the 'credit' of the witnesses: their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. See: Krishnan Vs. State, AIR 2003 SC 2978

27.17. Location of injuries & difference between ocular & medical evidence: Where according to the FIR, the injury was inflicted on the nose of the deceased but all the witnesses had deposed in the court that the injury was caused on the body of the deceased from behind near the right shoulder and the force with which it was caused resulted in the cutting of the vital inner parts of her body, it has been held by the Supreme Court that such difference between the statement of the eye witnesses and the FIR would not affect the prosecution case when all the witnesses had deposed the position of the said injury consistently in the court. See: Keshavlal Vs. State of M.P., (2002) 3 SCC 254

27.18. Case of conflicting ocular & medical evidence on sharp-cutting weapon or blunt object as source of injuries: In this murder trial, testimony of eye-witnesses was that the deceased and injured were assaulted with sharp cutting weapons but their testimony was not corroborated with medical evidence showing deceased having been injured by blunt object (weapon) only. Post Mortem Report showing that the deceased had no injury which could be caused by a sharp cutting weapon and, indeed, he had sustained only one injury which could be caused, according to the doctor by a blunt weapon only. Keeping in view the sharp contrast in between the ocular testimony and the medical evidence, the Supreme Court set aside the conviction of the accused persons. See: Niranjan Prasad Vs. State of M.P., 1996 CrLJ 1987 (SC)

27.19. Bamboo sticks or lathis whether dealday weapons? : Bamboo sticks or lathis are not enough to make the weapons lethal or deadly to cause grievous hurt as is required u/s 397 IPC. See: Dhanai Mahato Vs. State of Bihar, 2000 (41) ACC 675 (SC)

27.20. When weapon told by witness not mentioned in FIR or medical report as source of injuries: There was no mention of "Kanta" in FIR and the deceased had one **incised wound** on right side chest. Eye witness deposed about "Kanta" in court. Discrepancy in between medical and oral evidence held to be insignificant as use of kanta was not ruled out. The Supreme Court held that testimony of an eye-witness cannot be discarded simply on opinion of medical expert. See: State of U.P. Vs. Harban Sahai, 1998 (37) ACC 14 (Supreme Court—Three Judge Bench

27.21. Contrary opinions of two doctors: Correctness of PMR cannot be doubted merely because it did not conform to the noting made in medico-legal injuries certificate by the Doctor who had initially checked up the deceased in the hospital without making any detailed examination and had pronounced her dead. See: State Govt. of NCT of Delhi Vs. Sunil, (2001) 1 SCC 652

27.22. (i) Quality of food (ii) Digestive capacity

(iii) Empty stomach (iv) Timing of injuries or death

Where the deceased was a healthy young boy aged about 23 years and his stomach was found empty at the time of Post Mortem Examination, it was held by the Supreme Court that it was not unnatural as the deceased at the prime of his youth might have digested his food within two hours as his **power of digestion** must be quick and that could not be a ground to create doubt as to the veracity of prosecution case. See: State of U.P. Vs. Sheo Sanehi, 2005 (52) ACC 113 (SC)

27.23. Fresh injuries---what are? : Fresh injuries are injuries which are caused within 06 hours. There may be variation of 02 hours on either side. Thus fresh injuries can be termed as injuries within 04 to 08 hours but not more than 08 hours. See : State of UP Vs. Guru Charan, (2010) SCC 721

27.24. Dr. Modi's Medical Jurisprudence on digestive capacity: In the case of **Suresh Chandra Bahri Vs. State of Bihar, JT 1994 (4) SC 309** the Supreme Court referred **"Modis Medical Jurisprudence and Toxicology, 22nd Edition, pages 246, 247** which reads as under :

"Digestive conditions vary in individuals upto 2.5-6 hours depending upon healthy state of body, consistency of food motility of the stomach, osmotic pressure of the stomach contents, quantity of food in the duodenum, surroundings in which food is taken, emotional factors and residual variations and only very approximate time of death can be given."

27.25. Inquest report & discrepancies or omissions in preparation thereof---effect? : 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 CrPC 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 CrPC. 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)

27.26. Decomposed dead body & its identification by clothes: Where the decomposed dead body of the deceased was identified by two fellow laborers 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)

27.27. Incised injury possible by lathi or stick: Quoting the renowned author of the 'Medical Jurisprudence & Toxicology', it has been clarified by the Supreme Court that incised injury on occipital region/skull is possible by lathi or stick. Occasionally, on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin, perineum etc. A scalp wound by a blunt weapon may resemble an incised wound, hence the edges and ends of the wound must be carefully seen to make out a torn edge from a cut and also to distinguish a crushed hair bulb from one cut or torn. See: Dashrath Singh Vs. State of U.P., (2004) 7 SCC 408

28.1. Factors to be proved in a case based on circumstantial evidence: The Supreme Court has laid down following factors to be taken into consideration in a case based on circumstantial evidence :

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

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

(3) the circumstances should be of conclusive nature and tendency,

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

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

(i) Mohd. Younus Ali Tarafdar Vs. State of West Bengal, (2020) 3 SCC 747
(ii) Anjan Kumar Sarma Vs. State of Assam, (2017) 14 SCC 359
(iii) Nathiya Vs. State, (2016) 10 SCC 298
(iv) Bhim Singh Vs. State of Uttarakhand, (2015) 4 SCC 281 *(para 23)*
(v) Dhanraj Vs. State of Haryana, (2014) 6 SCC 745 *(paras 18 & 19)*
(vi) Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509 *(para 15).*
(vii) Sharad Bridhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116 *(paras 120 & 121)*

28.2. Circumstantial evidence & requirements for conviction: 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 inconsistent with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved. See :

(i) Vidhyalakshmi Vs. State of Kerala, AIR 2019 SC 1397.
(ii) Vijay Kumar Vs. State of Rajasthan, (2014) 3 SCC 412
(iii) Vithal Eknath Adlinge Vs. State of Maharashtra, AIR 2009 SC 2067
(iv) State of Goa Vs. Pandurang Mohite, AIR 2009 SC 1066
(v) Prithu Vs. State of H.P., AIR 2009 SC 2070
(vi) State of W.B. Vs. Deepak Halder, 2009(4) Supreme 393 (Three-Judge Bench)
(vii) Baldev Singh Vs. State of Haryana, AIR 2009 SC 963
(viii) Smt. Mula Devi Vs. State of Uttarakhand, AIR 2009 SC 655
(ix) Arun Bhanudas Pawar Vs. State of Maharashtra, 2008 (61) ACC 32 (SC)
(x) Harishchandra Ladaku Thange Vs. State of Maharashtra, 2008 (61) ACC 897 (SC)
(xi) Reddy Sampath Kumar Vs. State of A.P., (2005) 7 SCC 603
(xii) Vilas Pandurang Patil Vs. State of Maharashtra, (2004) 6 SCC 158
(xiii) State of Rajasthan Vs. Raja Ram, (2003) 8 SCC 180
(xiv) State of Rajasthan Vs. Kheraj Ram, (2003) 8 SCC 224
(xv) Saju Vs. State of Kerala, 2001 (1) JIC 306 (SC).

28.3. There should not be any snap in the chain of circumstances: When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused in entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The court consideres ordinary human probabilities. See: Bhimsingh Vs. State of Uttarakhand, (2015) 4 SCC 281.

28.4. Stricture against ASJ for illegally awarding death sentence to three persons on the basis of incomplete chain of circumstantial evidence: Where an Additional Sessions Judge of the Aligarh judgship 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 was directed to be sent to the Additional Sessions Judge concerned for his guidance and one copy of the judgment was also directed to be pasted in the character roll of the ASJ concerned. See: Kiran Pal Vs. State of U.P., 2009 (65) ACC 50 (All)(DB).

28.5. "Last seen together" alone cannot lead to hold the accused guilty: The circumstantial evidence regarding "last seen together" alone is not sufficient to hold the accused guilty of the offence. "Last seen together" does not by itself 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. There must be close proximity between the time of seeing and recovery of dead body to constitute "last seen together" factor as incriminating circumstance. See:

(i) Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench)

(ii) State of Goa Vs. Pandurang Mohite, AIR 2009 SC 1066
(iii) Ramreddy Rajeshkhanna Reddy Vs. State of A.P., 2006 (10) SCC 172
(iv) State of U.P. Vs. Satish, 2005 (3) SCC 114
(v) Sardar Khan Vs. State of Karnataka, (2004) 2 SCC 442
(vi) Mohibur Rahman Vs. State of Assam, 2002(2) JIC 972 (SC)

28.6. "last seen together" shifts the burden of proof of innocence on accused : The doctrine of "last seen together" shifts the burden of proof on the accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him. See :

(i) Rohtas Kumar Vs. State of Haryana, 2013 (82) ACC 401 (SC) *(para 25)*
(ii) Prithipal Singh Vs. State of Punjab, (2012) 1 SCC 10

28.7. Proof of "last seen together" by prosecution when leads to conviction of accused? : Initial burden of proof is on prosecution to adduce suffieient evidence pointing towards guilt of accused. However, in case it is established that acused was last seen together with the deceased, prosecution is exempted to prove exact happening of incident as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106, Evidence Act. But last seen together itself is not conclusive proof but along with other circumstances surrounding the incident like relations between accused and deceased, enmity between them, previous history of hostility, recovery of weapon from accused, etc. non-explanation of death of deceased, etc.etc. may lead to a presumption of guilt of accused. See: Ashok Vs. State of Maharashtra, (2015) 4 SCC 393.

28.8. "last seen together", circumstantial evidence & unusual and suspicious conduct of accused may lead to conviction: Deceased girl aged 08 years alongwith her grandmother went to rice mill of the accused. After some time deceased again went alone to enquire whether grain had been ground. Accused took her to backyard of mill and committed rape upon her. Girl died due to neurogenic shock. Next day, dead body was recovered from well

situated behind the mill. Employees of the mill having seen the accused taking the girl to the backyard were immediately sent away by the accused for lunch. Two of such employees had seen the accused opening the mill on that day unusually at 10.00 p.m. and one of such employees had also seen the accused throwing something in the well. Shawl of the deceased girl was recovered from mill at the **instance** of the accused. The accused was convicted by the lower court and his conviction was also upheld by the High Court. Upholding the conviction of the accused for the offences u/s 376, 302 & 201 of the IPC, the Hon'ble Supreme Court held that unusual behaviour of the accused in taking the deceased child to the backyard of the mill, sending of his employees for lunch at the same time and also opeining the mill in odd hours of night the very same evening points towards guilt of the accused. Circumstantial evidence as above was found sufficient to establish the guilt of the accused even though the accused was not named in the FIR but non-mention of his name in the FIR was found inconsequential. See: Ramesh Vs. State, (2014) 9 SCC 392.

28.9. Time gap between last seen & death: 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 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 should establish time of death. See:

(i) Niranjan Panja Vs. State of W.B,(2010) 6 SCC 525
(ii) Vithal Eknath Adlinge Vs. State of Maharashtra, AIR 2009 SC 2067
(iii) Ramreddy Vs. State of A.P., (2006) 10 SCC 172

(iv) State of U.P. Vs. Satish, (2005) 3 SCC 114

28.10. Benefit of doubt to extend to the accused for greater offence also if lesser offence not proved beyond reasonable doubt out of circumstantial evidence: Where the accused was convicted for the offences u/s 304-B, 302, 498-A r/w Section 34 of the IPC, acquitting the accused, the Hon'ble Supreme Court has held that if the lesser offences are not proved beyond resonable doubt out of the circumstantial evidence led by **prosecution**, punishment for greater offence on same evidence is not sustainable. See: Umakant Vs. State of Chhatisgarh, (2014) 7 SCC 405.

28.11. I.O. not obliged to anticipate all possible defences and investigate in that angle: The investigating officer is not obliged to anticipate all possible **defences** and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such ommissions. See: Rahul Mishra Vs. State of Uttarakhand, AIR 2015 SC 3043 (Three-Judge Bench).

28.12. Burden u/s 106 of the Evidence Act not on the inmate when he was not present in his house at the relevant time of commission of offence: Where the husband was convicted for the offence u/s 302 IPC for strangulating his wife and then hanging her in his house but the expositions of the Doctor performing post-mortem examination highlighted the absence of characterstic attributes attendant on death due to homicidal hanging following strangulation, the Supreme Court held that the possibility of sucide by wife was reinforced and conviction of the husband was set aside. The Suprme Court further held that since the husband was not present at the relevant time in his house, therefore, it was **impermissible** to cast any burden on him u/s 106 of the Evidence Act to prove his innocence. See**:** Josh Vs. Sub-Inspector of Police, Koyilandy, (2016) 10 SCC 519.

28.13. Sec. 106, Evidence Act & murder in house: 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 Section 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 its case lies entirely upon the prosecution to offer any explanation. See:

(i) Sandeep Vs. Stat of UP, (2012) 6 SCC 107
(ii) Prithipal Singh Vs. State of Punjab, 2012 (76) ACC 680(SC)
(iii) Jagdish Vs. State of U.P., 2009 (67) ACC 295 (SC)
(iv) Daulatram Vs. State of Chhattisgarh, 2008 (63) ACC 121
(v) Trimukh Maroti Kirkan Vs. State of Maharashtra, 2007 (57) ACC 938 (SC)
(vi) Chankya Dhibar Vs. State of W.B., (2004) 12 SCC 398
(vii) State of Punjab Vs. Karnail Singh, 2003 (47) ACC 654 (SC)

28.14. Circumstantial evidence in the case of dowry death or murder and the presumption of guilt of the accused u/s 106, Evidence Act: Where cruelty and harassment by husband or his relative eventually led to murder of bride by poisioning, circumstantial evidence established murder by poisioning even though viscera report from FSL was not brought on record but corroborative evidence of father and brother of deceased was found credible, it has been

held by the Hon'ble Supreme Court that the attending circumstances led to irresistible conclusion of guilt of the accused persons as to how the body of the deceased was found in the river was within their special and personal knowledge but burden u/s 106 of the Evidence Act was not discharged by the accused persons and false explanation was given by them u/s 313 CrPC. Drawing adverse inference, the Hon'ble Supreme Court confirmed the conviction of the accused persons for the offences u/s 302/149, -A, 201 IPC. See: Joshinder Yadav Vs. State of Bihar, (2014) 4 SCC 42.

28.15. Parents-**in-laws living separely held not guilty of the offence u/s 498-A IPC:** In the case noted below,parents-in-laws living separely were held not guilty of the offence u/s 498-A IPC. See: R. Natrajan Vs State of Tamil Nadu, (2021) 7 SCC 204

28.16. Burden of proof of fact especially within accused's knowledge lies on him u/s 106 of the Evidence Act: Where the accused was arrested by police party from the scene of occurrence but the accused had built up a case that he was not present at the scene of occurrence and his version was that the car recovered from the scene, though belonged to his mother, was stolen and, therefore, someone else might have brought it to the place from where it was recovered but no serious effort was made by the accused to satisfactorily prove the theft of car, it has been held by the Supreme Court that the aforesaid facts were especially within the knowledge of the accused and, therefore, the burden of proof that he was not present at the scene of occurrence was on him which he failed to adequately discharge. His conviction for the offence u/s 302/34 and 316/34 of the IPC was confirmed by the Supreme Court. See: Sandeep Vs. State of UP, (2012) 6 SCC 107.

28.17. Recovery of robbed articles from the possession of the accused & circumstantial evidence found incredible for conviction of the accused: Where recovery of certain stolen/robbed articles from the possession of the accused was found reliable, it has been held by the Hon'ble Supreme Court

that the accused could not have been convicted for the offences of Section 302/34, 392, 397 of the IPC merely on the basis of circumstantial evidence as it does not establish that the accused had committed murder and the only admissible fact u/s 27 of the Evidence Act which can be inferred is that the accused was in possession of the stolen goods. Where the only evidence against the accused is recovery of stolen property, then although circumstances may indicate that theft/robbery and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. See: Dhanraj Vs. Stae of Haryana, (2014) 6 SCC 745.

28.18. 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 person. See: Joydeep Neogi Vs. State of W.B, 2010(68) ACC 227(SC)

28.19. 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).

28.20. Conviction on circumstantial evidence when blood group of accused not matched with the blood group of the deceased: In a case of murder based on circumstantial evidence, dead body and blood stained clothes of deceased

were found only on disclosure made by accused, there was clear medical evidence that assault by stone was the cause of death and the injuries found could not be caused by fall, the blood found on the clothes of the accused matched with the blood group of the deceased then it has been held by the Supreme Court that non-examination of blood of the accused was not fatal to the prosecution case when the accused had no injury. See: Barku Bhavrao Bhaskar Vs State of Maharashtra, AIR 2013 SC 3564.

28.21. Discovery of dead body only a rule of caution & not a rule of law: Law is well settled that it is not at all necessary for conviction of an accused for murder that the corpus delicti (dead body) be found. Undoubtedly, in the absence of the corpus delecti there must be direct or circumstantial evidence leading to the inescapable conclusion that the person has died and the accused are the persons who committed the murder. Discovery of dead body is a rule of caution and not rule of law. Conviction can be recorded even in the absence of recovery of dead body. However, it is not essential to establish corpus delicti but fact of death of victim must be established by any other fact. See:

(i) Madhu Vs. State of Karnataka, 2014 (84) ACC 329 (SC)
(ii) Ramjee Rai Vs. State of Bihar, 2007 (57) ACC 385 (SC)
(iii) Prithi Vs. State of Haryana,(2010) 8 SCC 536.
(iv) Sevaka Perumal Vs. State of TN,(1991) 3 SCC 471

28.22. Corpus delicti not absolute necessity: In a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. There are a number of possibilities where a dead body could be disposed of without any trace, therefore, if the recovery of the dead body is to be held to be mandatory to convict an accused, in many a case, the accused would manage to see that the dead body is destroyed to such an extant which would afford the accused complete immunity from being held guilty or from being punished. What is, therefore, require in law to base a conviction for an offence of murder is that

there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead body may not be traced. See:

(i) Madhu Vs. State of Karnataka, 2014 (84) ACC 329 (SC)
(ii) Prithipal Singh Vs. State of Punjab, 2012 (76) ACC 680(SC)
(iii) Mani Kumar Thapa Vs. State of Sikkim, AIR 2002 SC 2920

28.23. 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.

28.24. Motive must be proved in a case of circumstantial evidence: In the criminal trials based on circumstantial evidence only, the Supreme Court has ruled that prosecution should prove motive of the accused if its case is based on circumstantial evidence. See:

(i) Nagaraj Vs. State, (2015) 4 SCC 739 *(para 13)*
(ii) Wakkar Vs. State of U.P, 2011 (2) ALJ 452 (SC)
(iii) Babu Vs. State of Kerala, (2010) 9 SCC 189
(iv) Ravinder Kumar Vs. State of Punjab, 2001(2) JIC 981 (SC)
(v) State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370
(vi) Nathuni Yadav Vs. State of Bihar, (1998) 9 SCC 238
(vii) Sakha Ram Vs. State of M.P., 1992 CrLJ 861 (SC)

28.25. When the facts are clear and the links in the chain of circumstances are not broken, proof of motive is immaterial: When the facts are clear, it is immaterial whether motive was proved. Absence of motive does not break the link in the chain of circumstances connecting the accused with the crime. Proof of motive or ill-will is unneccssary to sustain conviction where there is clear evidence. It was a case u/s 304-B IPC r/w Section 113-A and 113-B of the Evidence Act. See:

(i) Mustak Vs. State of Gujarat, (2020) 7 SCC 237.

(ii) Saddik Vs. State of Gujara, (2016) 10 SCC 663
(iii) Bhimsingh Vs. State, (2015) 4 SCC 281 *(para 21)*
(iv) Dasin Bai Vs. State of Chhatisgarh, 2015 (89) ACC 337 (SC)
(v) Mulakh Raj Vs. Satish Kumar, AIR 1992 SC 1175

28.26. Motive & its proof not necessary even in a case of circumstantial evidence: It is true that in a case of circumstantial evidence motive does have extreme significance but to say that in the absence of motive, the conviction based on circumstantial evidence cannot, in principle, be made is not correct. Absence of motive in a case based on circumstantial evidence is not of much consequence when chain of proved circumstances is complete. See:

(i) G. Parshwanath Vs. State of Karnataka, AIR 2010 SC 2914
(ii) Jagdish Vs. State of M.P., 2009 (67) ACC 295 (SC).

28.27. Proof of motive in a case based on circumstantial evidence when not required? : It is setteled principle of law that to establish an offence (murder) by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. It is only either intention or knowledge on the part of the accused which is required to be seen in respect of the offence of culpable homicide. In order to read either intention or knowledge, the courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused. See: Sanjeev Vs. State of Haryana, (2015) 4 SCC 387 (para 16).

28.28. Dowry death by poisoning—accused not informing parents and cremating the dead body: conviction u/s 304-B, 201 IPC r/w S. 113-B, Evidence Act, 1872----- Poison was administered to deceased in Prasad and she died within 7 years of marriage. Evidence showing that there was persistent demand for dowry and because of non-fulfillment of said demand there was humiliation, harassment and continuous beating of deceased by accused husband and in-laws. Presumption u/s 113-B, Evidence Act attracted. Unnatural conduct of accused in not sending news of death of deceased to

parents of deceased who were living only a few miles away from their village. Accused persons neither took the deceased to any doctor nor any kind of medical treatment was given to her, dead body was secretly cremated without even intimating parents of deceased who were living only a few miles away from their village. Convictions of accused persons u/s 304-B, 201 IPC was upheld by the Supreme Court. See: Ram Badan Sharma Vs. State of Bihar, AIR 2006 SC 2855

28.29. Offence of abetment of suicide u/s 306 IPC when treated to have not been proved? : The deceased wife committed suicide within a year of her marriage. Allegations about demand and harassment for dowry made by parents and close relations of deceased were demolished by the facts brought on record through cross-examination of prosecution witnesses. The prosecution however relied on a letter written by the deceased to her father about 3-4 months before her death. The letter nowhere indicates any demand of dowry having been made by the accused or the deceased having been pressurized by the accused for bringing more dowry. The first thing the letter states is a request to her father to return some of her ornaments given to her father for repairs. There is nothing wrong, unusual or abnormal in deceased reminding her father to bring back the ornaments if they have been repaired' or 'to get them repaired' if not already done. The second thing which the letter suggests is of her having been beaten by her husband and her having been pushed out of the house by the accused and when she wanted to go away from the house then she having been persuaded by her husband to return to house. The accused had also tried to conciliate. Why this happened is slightly indicated in the letter. The cause for the beating as indicated by the letter and evidence of deceased's sister was that the deceased wife forgot that she had invited her sister and her husband for taking food and went away with her husband. This forgetfulness of deceased enraged the accused husband. The manner in which she dealt with the visitors, guests and relations was not to the liking of the accused-appellant is also borne out from a few writings which are in the form of essays written by the deceased which are full of

appreciation of the respondent acknowledging the love and affection which the accused-appellant had for her but which also go to state that there was 'some deficiency' in her. Held the reading of the entire evidence shows that the case is of marital mal-adjustment between the deceased and the accused. It is not a case of dowry death". However, teasing by the accused-appellant of the deceased, ill-treating her for her mistakes which could have been pardonable and turning her out of the house, also once beating her inside the house at the odd hours of night did amount to cruelty within the meaning of Section 498-A IPC. Though for a different cause conviction of the accused under Section 498-A of the IPC was therefore proper *(para 7, 8)*. The author of the letter namely the deceased wife is not alive. There is no one else in whose presence the letter was written. It is therefore not permissible to read anything in the letter which it is not there. The letter has to be read as it is and inferences have to be drawn therefrom based on the expressions employed therein and in the light of other evidence adduced in the case. (*para* 7) Before the presumption under Section 113-A of the Evidence Act may be raised the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged, had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression 'may presume' suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn. Before the presumption may be drawn the Court shall have to have regard to all other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression the other circumstances of the case' used in Section 113-A suggests the need to reach a

cause and affect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one *(para 12)*. What happened on the date of occurrence is very material for the purpose of recording a finding on the question of abetment. The deceased's version of that day's happening constituting the proximate cause provoking her suicide is to be spelled out from what is contained in a diary in the handwriting of the deceased. The deceased wrote in her diary "ashamed of my own faults am committing suicide," In the letter written to her husband in the diary she wrote "you know, you have made me free of the words I had given that I would not commit suicide. Now I would die peacefully". The husband in his statement under Section 313 CrPC stated that on the day of the incident he was preparing to go to his duty but deceased was pressing him to leave her at her sister's house. The accused had asked her to go there alone. When he was getting ready to leave for his duty he heard a cry of his wife from kitchen. He saw her burning. He ran to save her and in doing so he burnt his hands, legs and chest. The deceased in her dying declaration stated that she poured kerosene on herself and set fire. As to the cause she stated that there was a quarrel and her husband told him that you are free. You go wherever you want to go. Held, "presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life-partner. The accused may or must have told the deceased that she was free to go anywhere she liked. May be that was in a fit of anger as contrary to his wish and immediate convenience the deceased was emphatic on being dropped at her sister's residence to see her. This cannot constitute abetment of suicide. *(para 19)* Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a

reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. *(para 20)* The writing in the diary of the deceased-wife clearly states that the cause for committing suicide was her own feeling ashamed of her own faults. She categorically declares - none to be held responsible or harassed for her committing suicide. The writing in the diary clearly suggests that some time earlier also she had expressed her wish to commit suicide to her husband and the husband had taken a promise from her that she would not do so. On the date of the incident, the husband probably told the deceased that she was free to go wherever she wished and wanted to go and this revived the earlier impulse of the deceased for committing suicide. The dying declaration corroborates the inference flowing from the two writings contained in the diary. The conduct of the accused trying to put off the fire and taking his wife to hospital also improbablises the theory of his having abetted suicide. *(para 22)* Offences u/s 498-A and 306 IPC are separate offences. Merely because an accused has been held liable to be punished under Section 498-A it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. (para 22) See: Ramesh Kumer Vs. State of Chhattisgarh, AIR 2001 SC 3837 (Three-Judge Bench)

28.30. Drunkenness when a defence and when not? : In case of voluntary drunkenness or intoxication, knowledge is to be presumed in the same manner as if there was no drunkenness. So far as intention is concerned, it must be gathered from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind all together for the time being? If so, it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking and from the

facts it could be found that he knew what he was about, the rule to be applied is that a man is presumed to intend the natural consequences of his acts or. Time gap between the state drunkenness and the crime is also relevant. See: Paul Vs. State of Kerala, (2020) 3 SCC 115.

28.31. Offence of abetment of suicide u/s 306 IPC when treated to have been proved? : The abuse and insult hurled on the daughter-in-law usually are not expected to be made public so that the neighbours may have occasion to criticize the improper conduct of the accused and hold them with disrespect and contempt. Doubts about the genuineness of the case of physical torture and abuses made by the husband and the mother-in-law cannot be raised for the absence of any independent evidence given by the neighbours and co-tenants about such physical assault or the abuses hurled on the wife by the accused. We have indicated that ordinarily it is not expected that physical torture or the abuses hurled on the wife by the husband and the mother-in-law should be made in such a way as to be noticed by the tenants living in the adjoining portions of the house.*(para 13)* The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that victim committing suicide was hyper sensitive to ordinary petulance discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. In the present case there is no material worthy of credence to hold that the victim was hyper sensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence adduced in the case has clearly established that victim was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Within a few days after the marriage when a newly married

bride would reasonably expect love and affection from the in-laws, she was abused by the mother-in-law, by saying that the deceased was a woman of evil luck only because an elderly member in the family had died after her marriage. According to the evidence given by the mother of the deceased, the mother-in-law even suggested that being a woman of evil luck **(alakshmi)** the deceased, should not live and end her life. When deceased conceived for the first time she had the misfortune of abortion. When the unfortunate daughter-in-law would reasonably expect sympathy and consolation from the mother-in-law, the mother-in-law abused the deceased in the hospital by telling that she was a woman of evil luck. Mother was told that she was vile enough to swallow her own baby and she should commit suicide. There is also evidence in the case that the husband used to come home drunk and abuse her and also used to assault her on occasions. The bridal presents brought by her were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Held that acts were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide. In the aforesaid circumstance, the offence u/s 498-A IPC is clearly established against both the accused. See**:** State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73=AIR 1994 SC 1418 *(para 16, 17)*

29.1. Accused as witness & defence witnesses—how to deal with: An accused can examine himself u/s 315 CrPC as a defence witness. Equal treatment should be given to the evidence of PWs and the DWs. Standard and parameter for evaluation of evidence is the same whether it is a PW or DW. See:

(i) Anil Sharma Vs. State of Jharkhand, (2004) 5 SCC 679

(ii) Doodh Nath Pandey Vs. State of U.P., AIR 1981 SC 911

29.2. Falsity or suspicion in defence evidence cannot absolve prosecution to establish its case: Falsity or suspicion in defence evidence cannot absolve

prosecution to establish its case. See: Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench).

29.3. PWs can be examined as DWs: PWs (examined by prosecution) can be examined as DWs u/s 233 CrPC by the accused. See: T.N. Janardhanan Pillai Vs. State, 1992 CrLJ 436 (Kerala)

29.4. PWs when to be summoned as DWs : If the IO had declined to record statements of (Prosecution) witnesses, accused can cite them as defence witnesses and can request the court to summon them u/s 311 CrPC. See: Jogendra Nahak Vs. State of Orissa, 1999 (39) ACC 458 (SC) (Three-Judge Bench)

29.5. Summoning DWs and defence documents for accused: Accused can apply for issue of any process u/s 233 CrPC during defence evidence and also for production of any document for it is proof u/s 233 CrPC by compelling the appearance of DW. See: Ram Bahadur Shahi Vs. State of U.P., 1988 ALJ 451 (Allahabad).

30.1. Nature of right of private defence: Right of private defence is a very valuable right serving a social purpose and should not be constitute narrowly. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived. See :

(i) Dinesh Singh Vs. State of U.P., 2009 (67) ACC 737 (SC)

(ii) Vidhya Singh Vs. State of M.P., AIR 1971 SC 1857

30.2. Commencement & continuance of right of private defence of body and property: Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. See : Dinesh Singh Vs. State of U.P., 2009 (67) ACC 737 (SC)

30.3. Tests for plea of right of self defence: No test in the abstract for determining the question of right of self defence of person or property can be laid down. In determining this question of fact, the court must consider all the surrounding circumstances. A plea of right of private defence cannot be based on surmises and speculations. See:

(i) Dinesh Singh Vs. State of U.P., 2009 (67) ACC 737 (SC)
(ii) Khushi Ram Vs. State of U.P., 2009 (67) ACC 412 (All)
(iii) Sekar Vs. State, 2003 (46) ACC 5 (SC)

30.4. Time to have recourse to public authorities negates the plea of self defence: No right of private defence is available to the accused when there is time to have recourse to the protection of the public authorities. See:

(i) Dinesh Singh Vs. State of U.P., 2009 (67) ACC 737 (SC)
(ii) Khushi Ram Vs. State of U.P., 2009 (67) ACC 412 (All)
(iii) Sekar Vs. State, 2003 (46) ACC 5 (SC)

30.5. Causing more injuries than is necessary negates the plea of self defence: In no case it is permissible for the accused to inflict more harm than is necessary to inflict for the purpose of self defence. See: Khushi Ram Vs. State of U.P., 2009 (67) ACC 412 (All)

30.6. Stage of raising plea of self defence: Plea of right of private defence of property u/s 96 to 105 IPC can be raised even at the appellate stage. See: Khushi Ram Vs. State of U.P., 2009 (67) ACC 412 (All)

31.1. Extra-judicial confession (Section 24, Evidence Act): An extra-judicial confession made by an accused can be relied upon and conviction on the basis thereof can be recorded by the court only when the following conditions are proved----

(i) The witness proving the extra-judicial confession must state in his testimony regarding the exact words used by the accused or in the words as nearly as possible in making the extra-judicial confession to such witness.

(ii) Prosecution should prove the motive, occasion or reason for making extra-judicial confession by the accused.

(iii) It should be proved as to why the accused reposed his confidence in the witness proving the extra-judicial confession and the connection or relation of the witness with the accused making extra-judicial confession.

(iv) In case of non-judicial retracted confession it has to be seriously considered as to why the accused reposed confidence in the witness.

(v) The testimony of the witness deposing about confession should be credible.

(vi) The circumstances under which the extra-judicial confession was made by the accused.

(vii) It must be proved by prosecution that the extra-judicial confession was made

voluntarily. See:

(i) State of Karnataka Vs. P. Ravikumar, (2018) 9 SCC 614.
(ii) Podyami Sukada Vs. State of M.P, AIR 2010 SC 2977
(iii) State of A.P. Vs. Shaik Mazhar, AIR 2001 SC 2427
(iv) C.K. Reveendran Vs. State of Kerala, AIR 2000 SC 369
(v) Ram Khilari Vs. State of Rajasthan, AIR 1999 SC 1002
(vi) Tarseem Kumar Vs. Delhi Administration, 1994 SCC (Cri) 1735

(vii) Kishore Chand Vs. State of H.P., AIR 1990 SC 2140
(viii) Heramba Brahma Vs. State of Assam, AIR 1982 SC 1595

31.2. Extra-Judicial confession not to entail conviction unless supported by other substantive evidence: Extra-Judicial confession is a weak piece of evidence. It cannot form basis for conviction unless supported by other substantive evidence. See**:** State of Karnataka Vs. P. Ravikumar, (2018) 9 SCC 614.

31.3. If joint trial of two or more accused is not held, confession of co-accused cannot be held to be admissible in evidence against another accused: Conviction for conspiracy in respect of offences under TADA Act and Explosive Substances Act, 1908 was recorded by the trial court on the basis of confession of appellant accused and confessional statement of two other co-accused made before police. Said confession of accused was not meeting the requirements for reliance upon the same, hence, the same was rejected by the Supreme Court. Furthermore, as per Section 30 of Evidence Act, 1872, if for any reason, **a joint trial is not held, confession of co-accused cannot be held to be admissible in evidence against another accused**, who would face trial at a later point of time in the same case. Since trial of two co-accused was separate, their confessional statements are not admissible in evidence and same cannot be taken as evidence against appellant-accused herein. Hence, conviction of appeallant was set aside by the Supreme Court. See: Raja Alias Ayyappan Vs. State of Tamil Nadu, (2020) 5 SCC 118

31.4. Involuntary confession made u/s 27 Evidence Act under inducement, pressure or coercion inadmissible: Once a confessional statement of the accused is found to be involuntary, it is hit by Article 20 (3) of the Constitution rendering such a confession inadmissible. There is an embargo on accepting self-incriminatory evidence of an accused but if it leads to the recovery of material objects u/s 27 Evidence Act in relation to a crime, it is

most often taken to hold evidentiary value as per the circumstances of each case. However, if such a statement is made under undue pressure and compulsion from the investigating officer, the evidentiary value of such a statement leading to the recovery is nullified. See: State of MP Vs. Markand Singh, AIR 2019 SC 546.

31.5. Confession made to officer u/s 53 of NDPS Act not admissible: An ststement made before an officer u/s 53 of the NDPS Act cannot be taken into account in order to convict an accused, except to the extent found relevant u/s 53-A and when corroborated in accordance with law. See: Tofan Singh Vs State of TN, (2021) 4 SCC 1 (Three-Judge Bench)

32.1. Motive when not proved (Sec. 8, Evidence Act): Motive is not a sine qua non for the commission of a crime. Moreover, it takes a back seat in a case of direct ocular account of the commission of the offence by a particular person. In a case of direct evidence the element of motive does not play such an important role asto cast any doubt on the credibility of the prosecution witnesses even if there be any doubts raised in this regard. If the eye-witnesses are trustworthy, the motive attributed for the commission of crime may not be of much relevance. Failure to prove motive or absence of evidence on the point of motive would not be fatal to the prosecution case when the other reliable evidence available on record unerringly establishes the guilt of the accused. See:

(i) Kumar Vs. State, (2018) 7 SCC 536
(ii) Saddik Vs. State of Gujara, (2016) 10 SCC 663
(iii) Nagaraj Vs. State, (2015) 4 SCC 739 *(para 13)*
(iv) Sanaullah Khan Vs. State of Bihar, 2013 (81) ACC 302 (SC)
(v) Subal Ghorai Vs. State of W.B., (2013) 4 SCC 607
(vi) Deepak Verma Vs. State of HP, 2012 (76) ACC 794(SC)
(vii) Durbal Vs. State of U.P., 2011 CrLJ 1106 (SC)
(viii) Brahmaswaroop Vs. State of U.P., AIR 2011 SC 280.
(ix) Dharnidhar Vs. State of U.P, 2010 (6) SCJ 662.
(x) State of U.P. Vs. Nawab Singh, 2005 SCC (Criminal) 33
(xi) Rambabujha Vs. State of U.P., 2003(46) ACC 892 (Allahabad – D.B.)

(xii) Shivraj Bapuray Jadhav Vs. State of Karnataka, (2003) 6 SCC 392
(xiii) Thaman Kumar Vs. State of Union Territory of Chandigarh, (2003) 6 SCC 380

32.2. Motive must be proved in a case of circumstantial evidence: But in relation to criminal trials based on circumstantial evidence only, the Supreme Court has, in the cases noted below, laid down different law on the point of motive and has clarified that prosecution should prove motive as well if it's case is based on circumstantial evidence. See:

(i) Wakkar Vs. State of U.P, 2011 (2) ALJ 452 (SC)
(ii) Babu Vs. State of Kerala, (2010) 9 SCC 189
(iii) Ravinder Kumar Vs. State of Punjab, 2001(2) JIC 981 (SC)
(iv) State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370
(v) Nathuni Yadav Vs. State of Bihar, (1998) 9 SCC 238
(vi) Sakha Ram Vs. State of M.P., 1992 CrLJ 861 (SC)

32.3. Motive & its proof not necessary even in a case of circumstantial evidence: It is true that in a case of circumstantial evidence motive does have extreme significance but to say that in the absence of motive, the conviction based on circumstantial evidence cannot, in principle, be made is not correct. Absence of motive in a case based on circumstantial evidence is not of much consequence when chain of proved circumstances is complete. See:

(i) G. Parshwanath Vs. State of Karnataka, AIR 2010 SC 2914
(ii) Jagdish Vs. State of M.P., 2009 (67) ACC 295 (SC)

33.1. Disposal of objections regarding relevancy of questions put to witness during examination—duty of trial Judge:

Bipin Shantilal Panchal Vs. State of Gujarat, 2001 CrLJ 1254 (SC)

"Criminal Trial- S. 231, 242, 244 CrPC - evidence collection stage—Practice to decide any objections raised first to admissibility of evidence and then proceed further with the trial- impedes steady and swift progress in trial- practice recast- court should now make note of objections, mark objected document tentatively as exhibited and decide objection at final stage."

33.2. "Relevancy" meaning of? : Relevancy means connection or link between the fact discovered and the crime. Under Sections 27 of the Indian Evidence Act, it is not the discovery of every fact that is admissible but the discovery of the relevant fact is alone admissible. Relevancy is nothing but the connection or the link between the facts discovered with the crime. In this case u/s 394, 302, 386, 366, 368 IPC read with Section 27 of the Evidence Act, recovery of the motor cycle was sought to be relied upon as a circusmstance against the convicts/appellants but there was nothing on record to show that the motor cycle recovered at the instance of the appellant no. 1 belonged to him. The investigating officer who was cross-examined before the court as P.W. had admitted that he did not know whether the appellant no. 1 was the owner of the motor cycle. He had further admitted that no attempts were made by him to enquire about the owner of the vehicle. His testimony as to the recovery of the motor cycle from the possession of the convict appellant no. 1 was disbelieved by the Supreme Court for the said reason. See: Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench).

34.1. Admission of a party is only a piece of evidence and not conclusive of the fact admitted: Admission of a party is only a piece of evidence and not conclusive of the fact admitted. Where there is no clear-cut admission as to the fact concerned, it would be of no consequence. See: Bhagwat Sharan Vs. Purushottam, (2020) 6SCC 387.

34.2. Admission of genuineness of (prosecution) documents by defence: Effect: If the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party u/s 294(1) CrPC, it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implies

admission of correctness of its contents. Such a document may be read in evidence u/s 294 (3) CrPC. Neither the signature nor the correctness of its contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct. The phrase 'read in evidence' means read as substantive evidence, which is the evidence adduced to prove a fact in issue as opposed to the evidence used to discredit a witness or to corroborate his testimony. It may be mentioned that the phrase 'used in evidence' has been used in sub-section (1) of Section 293 CrPC with respect to the reports of the Government scientific experts mentioned in sub-section (4) of Section 293 CrPC and the phrase 'read in evidence' has been used in sub-section (1) of Section 296 CrPC with respect to the affidavits of persons whose evidence is of a formal character. The phrases 'used in evidence' and 'read in evidence', have the same meaning, namely, read as substantive evidence.If the genuineness of the post mortem report is admitted by the accused, it can be read as substantive evidence u/s 294 CrPC. Likewise, if the genuineness of a document (its execution and contents both) is admitted by the accused and none of the parties against whom the same has been produced to be read as evidence is disputing its genuineness, such admitted document (alongwith its contents) has to be read against the accused.See: Saddiq Vs. State of UP, 1981 CrLJ 379 (Allahabad) (Full Bench).

34.3. Even if a confession is treated as retracted, still conviction can be recorded on the strength of the original confession, if there is corroborative evidence: In case of retraction of earlier confession, probative value of the original confession is not discarded but may be reduced. Even if a confession is treated as retracted, still the conviction can be recorded on the strength of the original confession, if there is corroborative evidence. See: Manoharan Vs. State, (2020) 5 SCC 782 (Three-Judge Bench)

34.4. Witness not to be examined after admission of genuineness of document: Once genuineness of a document of prosecution is accepted by the defence,

there remains no necessity to examine any witness**.**See: Vinay Kumar Vs. State of U.P,2010 (70) ACC 990 (All)) DB)

34.5. Presumption of genuineness of document but not of contents: Section 81 of the Evidence Act raises a presumption of the genuineness of the documents mentioned therein and not of their contents**.** See: M. Siddiq (Ram Janmabhumi Temple) Vs.Suresh Das, (2020) 1 SCC 1(Five-Judge Bench)

35.1. Non-exhibition of documents only a procedural lapse: Non-exhibition of documents is only a procedural lapse. Non-exhibition of documents cannot disentitle a claim when otherwise sufficient evidence is adduced and the documents established the fact in controversy. See: Vimla Devi Vs National Insurance Company Limited, (2019) 2 SCC 186

35.2. Exhibited or non-exhibited documents—documents not proved but exhibited & proved but not exhibited—effect: Mere production and marking of a document as exhibit is not enough. It's execution has to be proved by admissible evidence. Mere marking of a document as exhibit by Court cannot be held to be a due proof of it's contents. But where the documents produced are admitted by the opposite party, signatures on them are also admitted and they are thereafter marked as exhibits by the Court, then their correctness cannot be questioned by the opposite party and then no further burden rests on party producing the document to lead additional evidence in proof of the writing on the document and its execution. If secondary evidence (Photostat copies etc.) are filed, objection as to admissibility thereof can be raised even after the document has been marked as an exhibit or even in appeal or revision. But when the objection is not directed against the admissibility of the secondary document but only against the mode of proof thereof on the ground of irregularity or insufficiency, it can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. Once the document has been admitted in evidence and marked as exhibit, objection that it should not have

been admitted in evidence or that the mode adopted for proving the document is irregular, cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. See:

(i) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745
(ii) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)
(iii) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752
(iv) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.
(v) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd..

35.3. Mere exhibiting of a document cannot dispense with its proof: As per the provisions of Sections 63 & 65 of the Evidence Act, 1872, a party is required to lay down factual foundation to establish the right to give secondary evidence where the original document cannot be produced. Admisibility of a document does not amount to its proof. Mere marking of an exhibit on the document does not dispense with its proof. See: Kaliya Vs. State of M.P., 2013 (83) ACC 160 (SC).

35.4. Photostat copy of document not admissible in the absence of its factual foundation: Pleas of party that original documents were misplaced cannot be relied on and the party cannot be permitted to lead secondary evidence by producing photostat copies of the documents in the absence of facual foundation that the original documents really existed but were lost or misplaced as is required u/s 63 and 65 of the Evidence Act. See:

(i) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd.,
(ii) Amarjit Singh Vs. Surinder Singh Arora, AIR 2017 Delhi 198,
(iii) U. Sree Vs. U. Srinivas, AIR 2013 SC 415
(iv) H. Siddiqui Vs. A. Ramlingam, AIR 2011 SC 1492
(v) J. Yashoda Vs. K. Shobharani, (2007) 5 SCC 730

(vi) Ashok Dulichand Vs. Madhavlal Dubey, (1975) 4 SCC 664

35.5. Stolen documents from custody of Govt. admissible in evidence: Secret documents relating to Rafale fighter jets were removed/stolen from the custody of the Ministry of Defence, Govt. of India and their photocopies were produced before the Supreme Court. The objection raised before the Supreme Court by the Central Govt. was that the secret stolen documents were not admissible in evidence. The Supreme Court held that all the documents in question were admittedly published in newspapers and thus already available in public domain. No law specifically prohibits placing of such secret documents before the Court of law to adjudicate legal issues. Matter involved complaint against commission of grave wrong in the highest echelons of power. Review petition could be adjudicated on merits by taking into account the relevance of the documents. See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)

35.6. Test whether an information/document is protected from disclosure u/s 123, Evidence Act: Section 123 of the Evidence Act relates to the affairs of the State. Claim of immunity u/s 123 has to be adjudged on the touchstone that the public interest is not put to jeopardy by requesting disclosure of any secret document. Documents in question (stolen papers of the Rafale fighter jets from the Ministry of Defence, Govt. of India) being in public domain were already within the reach and knowledge of the citizens. The Supreme Court held that the claim of immunity u/s 123 of the Evidence Act raised by the Central Govt. was not tenable and the documents in question were admissible as evidence. See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)

36.1. When cases of different accused are at different stages, holding of joint trial is only discretionary and not obligatory u/s 220 to 223 CrPC: Provisions of Sections 220 to 223 CrPC are enabling in nature. Holding of joint trial of different accused is discretionary with the court. Matters to be

considered by court for not holding joint trial of different accused persons are (a) joint trial would prolong trial, (b) cause unnecessary vestage of judicial time, (c) confuse or cause prejudiced to accused who had taken part only in some minor offence, (d) neither facts and allegations are common nor is evidence common nor were the accused acting with a commonality of purpose. Holding up joint trial in the above circumstances is not obligatory. When the cases of different accused are at different stages, it is proper for the trial judge not to consider it optimal based on the above factors to club trials as it would lead to miscarriage of justice. See: Essar Teleholdings Limited Vs. Central Bureau of Investigation, (2015) 10 Supreme Court Cases 562 (Three-Judge Bench).

36.2. Amalgamation of two cases u/s 223 CrPC is discretionary: Amalgamation of two cases u/s 223 Cr PC is discretionary on the part of the trial magistrate and he has to be satisfied that persons would not be prejudicially affected and that it is expedient to amalgamate the cases. See:

(i) Lalu Prasad Vs. State through CBI, AIR 2003 SC 3838
(ii) Kuldip Yadav Vs. State of Bihar, AIR 2011 SC 1736

Note: In the case of **State of Karnataka VS. Annegowda, (2006) 5 SCC 716,** the Supreme Court has held that if different connected cases of the same accused on different charge-sheets are pending and one case reached the stage of proceeding u/s 313 CrPC then the court has no power to defer proceeding u/s 313 CrPC till all other cases also reach the same stage and then hold trial and record evidence in all the cases simultaneously.

36.3. Cross Cases: In the cases noted below, the Supreme Court has clarified the procedure and the manner of leading and dealing with the evidence in the cross-cases:

1. State of M.P. Vs. Mishrilal, 2003(46) ACC 881 (SC)

The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid

conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately, there is likelihood of conflicting judgments.

Note: In this ruling, accused Mishrilal had also lodged FIR against the prosecution-party u/s 147, 148, 149, 324 IPC and charge-sheet u/s 147, 148, 149, 324 IPC was pending before the judicial magistrate and meanwhile the sessions trial against the accused Mishrilal u/s 302, 307 r/w s. 149, 148 IPC and u/s 25 Arms Act was decided by the sessions court and conviction was recorded. Then in second appeal, the Supreme Court held as noted above by quoting the ruling reported in **Nathilal Vs. State of U.P., 1990 (Suppl) SCC 145** which reads as under :

"We think that the fair procedure to adopt in a matter like present one where there are cross-cases is to direct that the same Learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same Learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into, nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same Learned Judge one after the other."

2. Mitthulal Vs. State of M.P., AIR 1975 SC 149

If there are cross-cases, evidence recorded in one cannot be considered in other. It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in other case though it may be a cross-case, cannot be taken into account in arriving at the decision. Even in civil cases this cannot be done unless the parties are agreed that the evidence in

one case may be treated as evidence in the other. Much more so in criminal cases, this would be impermissible. It is doubtful whether the evidence recorded in criminal case can be treated as evidence in the other even with the consent of the accused.

The law as quoted above relating to the manner of leading and dealing with the evidence in cross-cases has also been laid down by the Supreme Court in the cases of –

(1) Kewal Kishore Vs. Suraj Bhan, AIR 1980 SC 1780

(2) Harjinder Singh Vs. State of Punjab, 1985 SCC (Cri) 93

(3) Kuldip Yadav Vs. State of Bihar, AIR 2011 SC 1736

36.4. Cross cases not to be consolidated but only to be tried jointly: Explaining Sec. 223 Cr PC, the Supreme Court has held that the proper course to adopt is to direct that the two cases should be tried together by the same trial judge but not consolidated i.e. the evidence recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution ho or common to both the cases be examined in one case and their evidence be read as evidence in the other. See:

(i) Harjinder Singh Vs. State of Punjab, AIR 1985 SC 404 (Para 8)
(ii) Kuldip Yadav Vs. State of Bihar, AIR 2011 SC 1736 (Para 10)

36.5. Evidence recorded in one case when to be read in cross case: Explaining Sec. 223 Cr PC, the Supreme Court has held that the proper course to adopt is to direct that the two cases should be tried together by the same trial judge but not consolidated i.e. the evidence recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution ho or common to both the cases be examined in one case and their evidence be read as evidence in the other. See:

(i) Harjinder Singh Vs. State of Punjab, AIR 1985 SC 404 (Para 8)
(ii) Kuldip Yadav Vs. State of Bihar, AIR 2011 SC 1736 (Para 10)

36.6. The rule as regards cross cases is only one of prudence to avoid different standards as far as may be and no tone of law. Legally both cases are separate

and have to be decided on their own evidence on record. See: Subhash Chandra Vs. State of UP, 1981 ALJ 458 (All.)

36.7. Evidence in connected cases: In the cases noted below, it has been repeatedly held that every criminal case has to be decided on the basis of evidence adduced therein. The evidence adduced in one case would not be relevant in other case. See:

(i) Km. Rinki Vs. State of U.P., 2008 (63) ACC 476 (All—D.B.)
(ii) Rajan Rai Vs. State of Bihar, 2006 (54) ACC 15 (SC)
(iii) K.G. Premshanker Vs. Inspector of Police, 2002 (45) ACC 920 (SC)
(iv) S.P.E. Madras Vs. K.V. Sundaravelu, AIR 1978 SC 1017
(v) Karan Singh Vs. State of M.P., AIR 1965 SC 1037

Note: In the case of **Km. Rinki Vs. State of U.P., 2008 (63) ACC 476 (All—D.B.),** in all 10 accused were named in the FIR and a common charge-sheet against them all was submitted by the I.O. for the offences u/s 498-A, 304-B IPC & u/s 3/4 D.P. Act, some of the accused were tried together and acquitted and some were being separately tried when they filed a petition under Art. 226 of the Constitution for quashing the proceedings of on going sessions trials against them on the ground that some of the accused were already acquitted and it would be only futile exercise to continue with the separate trial of the remaining accused persons on the basis of the same witnesses or their evidence already led in the case of co-accused persons who were already acquitted. Rejecting the argument the Hon'ble Allahabad High Court held that in view of the provisions contained u/s 40, 41, 42, 43, 44 of the Evidence Act and the law laid down by the Supreme Court in the cases noted above, the judgment of acquittal delivered by the trial court in one criminal case in relation to some of the accused of the same occurrence/charge-sheet would not be relevant in the case of other remaining co-accused persons even if they do belong to the same occurrence or charge-sheet. It has further been observed by the Allahabad High Court that each case has to be decided on the basis of evidence led therein even if it may be a

connected case or having arisen out of the same occurrence or from split charge-sheet.

37.1. **One PW cannot be contradicted by the evidence of other PWs**: Sec. 145 of the Evidence Act applies when the same person makes two contradictory statements it is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-à-vis statement of other witnesses. It is not open to court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witness can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness. Sec. 145 has no application where a witness is sought to be contradicted not by his own statement but by the statement of another witness. See:

(i) Chaudhary Ramjibhai Narasangbhai Vs. State of Gujarat, AIR 2004 SC 313

(ii) Mohanlal Gangaram Vs. State of Maharashtra, AIR 1982 SC 839 (Three- Judge Bench)

37.2. Previous statement of a witness can only be used to corroborate his own evidence or statement during trial and not the evidence or statement of other witnesses u/s 157 Evidence Act. Statement of witness recorded u/s 202 CrPC, not admissible as evidence during trial u/s 33 of the Evidence Act. (See: **Sashi Jena Vs. Khadal Swain, (2004) 48 ACC 644 (SC)**

If the maker of a dying declaration survives after making the DD, such statement of the declarant can be treated as statement u/s 164 & 32 of CrPC. It can be used during trial u/s 145 or 157, Evidence Act to contradict or corroborate the testimony of the declarant if he/she is examined during the trial as a witness. (See : **State of U.P. Vs. Veer Singh, 2004 SCC (Criminal) 1672)**

Mode of contradicting a witness in respect of his former statement is that the former statement of the witness in writing must be shown to him for contradicting him. If the witness disowns to have made any statement which is inconsistent with his present stand, his testimony in court on that score

would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the 2nd limb of sec. 145 Evidence Act. (See **Raj Kishore Jha Vs. State of Bihar, 2003 (47) ACC 1068 (SC) & Rajendra Singh Vs. State of Bihar, 2000 (4) SCC 298).**

37.3. When two witnesses making contrary statements on the same fact: One statement by one of witnesses may not be taken out of context to abjure guilt on the part of all accused persons. When the case of the prosecution is based on evidence of eye witnesses, some embellishments in prosecution case caused by evidence of any prosecution witness although not declared hostile, cannot by itself be ground to discard entire prosecution case. On the basis of mere statement of one P.W. on a particular fact, the other P.W. cannot be disbelieved. See:

(i) Bhanwar Singh Vs. State of M.P., AIR 2009 SC 768
(ii) Dharmendrasingh @ Mansing Ratansing Vs. State of Gujarat, (2002) 4 SCC 679

37.4. Contradicting other witnesses by statement in FIR: Use of statement contained in FIR recorded u/s 154 CrPC as substantive evidence to discredit testimony of other witnesses is not permissible. See: George Vs. State of Kerala, AIR 1998 SC 1376

37.5. Statements u/s 161 & 164 CrPC not substantive evidence: FIR does not constitute substantive evidence. The statement of a witness recorded u/s 161 or 164 CrPC can be used to contradict or corroborate the witness u/s 145 or 157 Evidence Act but it cannot be used as substantive evidence. See:

(i) Somasundaram Vs. State, (2020) 7 SCC 722
(ii) Utpal Das Vs. State of WB, AIR 2010 SC 1894
(iii) Baijnath Singh Vs. State of Bihar, 2010(70)ACC 11(SC)

37.6. Use of former statement of witness made u/s 161 CrPC & duty of Court: Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated

there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose (i) of contradicting such witness by an accused under Section 145, Evidence Act (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "ïf duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be lokked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction, but only after strict compliance with Section 145, Evidence Act, that is, by drawing attention to the parts intended for contradiction. Under Section 145, Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court, to ensure that the part of the police statement with which it is intended to contradict the witness, is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part, which must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process, the contradiction is merely

brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer, who, again by referring to the police statement, will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145, Evidence Act, that is, by drawing attention to the parts intended for contradiction. See**:**

(i) Krishan Chander Vs. State of Delhi, (2016) 3 SCC 108
(ii) V.K. Mishra Vs. State of Uttarakhand, (2015) 9 SCC 588 (Three-Judge Bench).

37.7. FIR when and how to be used for contradicting the witness? : Statement of victim (of rape) in cross examination which was not stated by her in FIR, cannot be used for contradicting her and it cannot be said that she went on making improvements in her depositions. Previous statement of the witness can not be used for purposes of contradiction unless attention of witness has first been drawn to those parts by which it is proposed to contradict the witness. See: Utpal Das Vs. State of WB, AIR 2010 SC 1894.

37.8. Improvement by witness in his statement before court to be read in evidence: The evidence of a witness cannot be discarded merely because he has made improvements over his police statements by stating some of the facts for the first time in his deposition before the court. If the facts stated for the first time before the court are in the nature of elaboration, do not amount to contradiction, and the evidence of the witness does not militate against his earlier version, his evidence cannot be discarded. See:

(i) Esher Singh Vs. State of A.P., AIR 2004 SC 3030.
(ii) Aadam Kasam Shaikh Vs. State of Maharashtra, 2006 CrLJ 4585

38.1. An accomplice is competent witness u/s 133 Evidence Act: Section 133 of the Evidence Act reads thus:"An accomplice shall be a competent witness against an accused person and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice**."**

38.2. Approver...who is? : As per Section 306 CrPC, when an accomplice turns as a witness on accepting the pardon granted by the court under Section 306 CrPC to speak to the facts relating to the offence, he is called an approver.

38.3. An accomplice is different from a co-accused: The statement of a co-accused may be admissible in certain circumstances, though not examined, but not that of an accomplice who is available to be examined. See: Hadu Vs. State of Orissa, AIR 1951 Orissa 53 (DB)

38.4. Accomplice on being pardoned u/s 306 CrPC ceases to be an accused and becomes PW: Once an accused is granted pardon u/s 306 CrPC, he ceases to be an accused and becomes a witness for prosecution. See: State (Delhi Administration) Vs. Jagjit Singh, AIR 1989 SC 989

38.5. Effect of pardon to an approver? : The moment the pardon is tendered to an accomplice u/s 306 CrPC and he becomes approver, the accused shall be deemed to be discharged. The court would then not convict him. See**:** Phulan Shah Vs. State of UP, 2002 CrLJ 1520 (All)

38.6. Corroboration of testimony of accomplice necessary (Sec. 133 r/w Sec. 114(b), Evidence Act): The testimony of an approver may be accepted in evidence for recording conviction of an accused person provided it receives corroboration from direct or circumstantial evidence in material particulars. See:

(i) Somasundaram Vs. State, (2020) 7 SCC 722
(ii) Jasbir Singh Vs. Vipin Kumar Jaggi, AIR 2001 SC 2734

(iii) Ramprasad Vs. State of Maharashtra, AIR 1999 SC 1969
(iv) A. Deivendran Vs. State of Tamil Nadu, 1998 CrLJ 814 (SC)
(v) Rampal Pithwara Rahidas Vs. State of Maharashtra, 1994 SCC (Cri) 851
(vi) Suresh Chandra Bahri Vs. State of Bihar, AIR 1994 SC 2420
(vii) Abdul Sattar Vs. Union Territory, Chandigarh, AIR 1986 SC 1438

38.7. Approver u/s 133 Evidence Act & Corroboration of his Testimony: Section 133 of the Evidence Act, makes an accomplice a competent witness against the accused person and declares that a conviction shall not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Even so, the established rule of practice evolved on the basis of human experience since times immemorial, is that it is unsafe to record a conviction on the testimony of an approver unless the same is corroborated in material particulars by some untainted and credible evidence. So consistent has been the commitment of the courts to that rule of practice, that the same is now treated as a rule of law. Courts, therefore, not only approach the evidence of an approver with caution, but insist on corroboration of his version before resting a verdict of guilt against the accused, on the basis of such a deposition. The juristic basis for that requirement is the fact that the approves by his own admission a criminal, which by itself make him unworthy of an implicit reliance by the Court, unless it is satisfied about the truthfulness of his story by evidence that is independent and supportive of the version given by him. That the approver's testimony needs corroboration cannot, therefore, be doubted as a proposition of law. The question is whether any such corroboration is forthcoming from the evidence adduced by the prosecution in the present case. See: Venkatesha Vs State of Karnataka, AIR 2013 SC 3634 *(para 15)*

38.8. Evidence of an accomplice not to be accepted without corroboration: Evidence of an accomplice can not be accepted without corroboration: See:

(i) Kanan Vs. State of Kerala, AIR 1979 SC 1127
(ii) Ram Prasad Vs. State of Maharashtra, AIR 1999 SC 1969

38.9. Approvers evidence when to be accepted as decisive? : Approvers evidence is looked upon with great suspicion but if it is found to be trustworthy it can be decisive in securing conviction. See**:**

(i) AIR Customs Officer, IGI, New Delhi Vs. Promod Kumar Dhamija, (2016) 4 SCC 153.

(ii) Jasbir Singh Vs. Vipin Kumar Jaggi, AIR 2001 SC 2734

38.10. Confession of a co-accused not sufficient to hold the other accused guilty: Confession of a co-accused is not sufficient to hold the other accused guilty and it can be used to support the other evidence. See**:**

(i) Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intellingence, (2018) 8 SCC 271

(ii) Prakesh Kumar Vs. State of Gujarat, (2007) 4 SCC 266.

39.1. Unexplained injuries of accused & its effect? : (1) Non-exaplanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy that it outweighs the effect of the omission on the part of the prosecution to explain the injuries. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537,

(ii) Bheru Lal Vs. State of Rajasthan, 2009 (66) ACC 997 (SC)

(iii) Shaikh Majid Vs. State of Maharashtra, 2008 (62) ACC 844 (SC)

(iv) Sukumar Roy Vs. State of W.B., AIR 2006 SC 3406

(2) Criminal Trial u/s 304, Part I IPC—Non explanation of minor injuries on the person of accused does not help accused. Moreso when neither injury report by doctor was produced nor any doctor was examined.

(3) Sucha Singh Vs. State of Punjab, 2003(47) ACC 555 (SC)

No invariable rule that injuries sustained by accused in the same transaction should be explained by the prosecution. When major portion of evidence deficient but residue sufficient to prove the guilt of the accused, conviction can be recorded.

(4) Bhola Yadav Vs. State of U.P., 2002 (1) JIC 1010 (Allahabad)

In a criminal trial u/s 302/34 IPC, non-disclosure of superficial injuries sustained by accused would not be fatal to prosecution if injuries are self-explained and consistent with the prosecution case and circumstances themselves explain such injuries. Prosecution case will not be affected adversely.

(5) Anil Rai Vs. State of Bihar, (2001) 7 SCC 318

If medical evidence when properly read shows two alternative possibilities but not any inconsistency, the one consistent with the reliable and satisfactory statements of the eye-witnesses has to be accepted.

(6) Dashrath Singh Vs. State of U.P., (2004) 7 SCC 408

Mere failure to mention in FIR about injuries received by accused is not a ground to discard the explanation of injuries given at the trial.

(7) Narain Singh Vs. State of U.P., 2002(2) JIC 556 (Allahabad—D.B.)

In case of non-explanation of injuries of accused by prosecution, if evidence is clear, cogent credit worthy, then non-explanation of injuries of accused ipso facto cannot be the basis to discredit the entire prosecution case.

(8) State of Punjab Vs. Hakam Singh, 2005(34) AIC 929 (SC)

If direct testimony of eye-witnesses is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence.

39.2. Unexplained injuries sustained by accused when fatal for prosecution? :

Generally failure of prosecution to offer any explaination regarding injuries suffered by accused shows that evidence of prosecution witnesses relating to incident is not true or at any rate not wholly true. In the present case of murder, admittedly the appellant-accused was also injured in the same occurrence and he too was admitted in hospital. But the prosecution did not produce his medical record, nor doctor was examined on nature of injuries sustained by the accused. Trial court instead of seeking proper explanation from prosecution for injuries sustained by the accused simply believed what the prosecution witnesses had desposed in one sentence that the accused had sustained simple injuries only. The Supreme Court set aside the conviction of

the appellant-accused for non-explanation of injuries sustained by the accused-appellant. See: Kumar Vs. State represented by Inspector of Police, (2018) 7 SCC 536.

40. **Right of private defence & appreciation of evidence:** Right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. Necessity must be present, real or apparent. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the state machinery is not readily available, that individual is entitled to protect himself and his property that being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The means and the force a threatened person adopts at the spur of the moment to ward off the danger and to sale himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the conclusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicioVs. It would be repugnant to the very concept of private defence. See:

(i) Bhanwar Singh Vs. State of M.P., AIR 2009 SC 768
(ii) Dharam Vs. State of Haryana, 2006 AIR SCW 6298

41.1. **Affidavit of witnesses & their evidentiary value? :** If the defence wanted to rely on the evidence of the person who gave an affidavit stating that the

accused was not involved in the incident, the proper course was to examine him as defence witness. In the case of a living person, evidence in judicial proceedings must be tendered by calling the witness. Testimony of such witness cannot be substituted by an affidavit unless the law permits so as u/s 295 and S. 407(3) CrPC or the court expressly allows it. See: Munir Ahmad & others Vs. State of Rajasthan, AIR 1989 SC 705.

41.2. Affidavits not "evidence" u/s 3 of the Evidence Act: Affidavits have got no evidentiary value as the affidavits are not included in the definition of "evidence" in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons court passes an order like the one under O.19, r. 1 & 2 of the CPC. See:

(i) Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58
(ii) Smt. Sudha Devi Vs. M.P. Narayanan & others, AIR 1988 SC 1381.

41.3. Getting affidavit of witnesses in advance deprecated by Supreme Court: Practice of getting affidavits of witnesses in advance has been deprecated by Supreme Court and has been treated as an attempt aimed at dissuading witnesses from speaking the truth before the court. The Supreme Court has directed that such interference in criminal justice should not be encouraged and should be viewed seriously. See: Rachapalli Abbulu & others Vs. State of AP, AIR 2002 SC 1805.

41.4. Affidavits not "evidence" u/s 3 of the Evidence Act: Affidavits have got no evidentiary value as the affidavits are not included in the definition of "evidence" in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons court passes an order like the one under O.19, r. 1 & 2 of the CPC. See:

(i) Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58
(ii) Smt. Sudha Devi Vs. M.P. Narayanan & others, AIR 1988 SC 1381.

42.1. Plea of alibi needs to be proved by defence only when the prosecution has proved its case agains the accused: The word *alibi* means "elsewhere". The

plea of alibi is not one of the General Exceptions contained in Chapter IV IPC. It is a rule of evidence recognised u/s 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused.See: Darshan Singh Vs. State of Punjab, (2016) 3 SCC 37 *(para 17).*

42.2. Alibi (S. 11, Evidence Act): Alibi is not an exception (special or general) envisaged in the IPC or any other law. It is only a rule of evidence recognized in S. 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The Latin word "alibi" means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and had participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such

circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. See:

(i) Binay Kumar Singh Vs. State of Bihar, AIR 1997 SC 322
(ii) State of Haryana Vs. Sher Singh, AIR 1981 SC 1021

42.3. Alibi & burden of it's proof lies upon the accused: Burden of proving the plea of alibi lies upon the accused. If the accused has not adequately discharged that burden, the prosecution version which was otherwise plausible has, therefore, to be believed. See:

(i) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(ii) Sandeep Vs. State of UP, (2012) 6 SCC 107

43.1. Degree of proof of alibi: Plea of alibi has to be established by accused by leading positive evidence. Failure of said plea would not necessarily lead to success of prosecution case which has to be independently proved by prosecution beyond reasonable doubts. Plea of alibi has to be proved with absolute certainty so as to completely exclude possibility presence of accused at place of occurrence at the relevant time. See: Shaikh Sattar Vs. State of Maharashtra, (2010) 8 SCC 430.

43.2. Plea of alibi should be subjected to strict proof of evidence and not to be allowed lightly: Plea of alibi has to be raised at first instance and subjected to strict proof of evidence and cannot be allowed lightly, in spite of lack of evidence merely with the aid of salutary principal that an innocent man may not suffer injustice by recording conviction in spite of his plea of alibi. See: Om Prakash Vs. State of Rajasthan & another, (2012) 5 SCC 201

43.3. Alibi when to be rejected: Where in a murder trial, the place of alibi not being far, witnesses being colleagues & there being no proper documentary evidence regarding alleged levy work during time of commission of crime, it has been held that the plea of alibi was rightly rejected. See: Adalat Pandit Vs. State of Bihar, (2010) 6 SCC 469.

44.1. Standard of proof in civil and criminal cases: Finding recorded in one not to be treated as final or binding in the other: Standard of proof required in the civil & criminal proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that findings recorded in one procedure may be treated as final or binding in the other as both the cases have to be decided on the basis of the evidence adduced therein. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537

(ii) Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370 (Five-Judge Bench)*(para 32)*

44.2. Findings of civil court whether relevant in criminal trials? : The findings of fact recorded by the civil court do not have any bearing so far as the criminal cases concerned and vice versa. Standard of proof is different in civil & criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by court in either civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sec 41 to 43 of the Evidence Act,1872 dealing with the relevance of previous judgements in subsequent cases may be taken into consideration. See: Kishan Singh Vs. Gurpal Singh, (2010) 8 SCC 775.

44.3. Falsity or suspicion in defence evidence cannot absolve prosecution to establish its case: Falsity or suspicion in defence evidence cannot absolve prosecution to establish its case. See: Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench).

44.4. Evidence and finding recorded by criminal court not conclusive in a civil case: Evidence and finding recorded by criminal court not conclusive in a civil case. See: K. Kanjappa Vs R.A. Hameed, (2016) 1 SCC 762.

45.1. No direct evidence can be required to prove offence u/s 120-B IPC: There cannot be direct evidence for the offence of criminal consiparacy. Express agreement between the parties cannot be proved. Court should consider the circumstances proved to decide about the complicity of the accused. See:

(i) State NCT of Delhi Vs. Shiv Charan Bansal, (2020) 2 SCC 290.
(ii) Chandra Prakash Vs. State of Rajasthan. 2014 (86) ACC 836 (SC).

45.2. **Criminal conspiracy u/s 120-B IPC & Standard of proof**: Once reasonable ground is shown for believing that two or more persons had conspired to commit offence, any thing done by anyone of them in reference to their commen intension, evidence regarding the criminal consiperacy u/s 120-B of the IPC will be admissible against the others. See:

(i) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(ii) S. Arulraja Vs. State of TN, (2010) 8 SCC 233.

46.1. Sniffer Dog & Value of Evidence of it's Master: 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

46.2. 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

46.3. Objections generally raised against the evidence of tracker 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)

46.4. Conviction of wife for murder of her husband recorded on parrot's evidence by American Court: There was a media report in newspapers and the electronic media on 14.07.2017 that a Michigan based Court in America recorded conviction of wife for murdering her husband on the basis of evidence of an African grey parrot. It is for the first time in the judicial history of the world when a parrot was treated as witness and its evidence was relied on by the Court in convicting the accused. The facts of the case were that at the time when the wife of the victim was threatening to shoot her husband, the hushand repeatedly requested her by saying "don't shoot". The parrot was the only witness to the incident. On being produced in the Court, the parrot repeated the same very words "don't shoot". The said words repeatedly used by the parrot in the Court were so clear and unambigous that the Court believed the parrot's testimony and held the wife guilty of murder of her husband. There is, however, no such instance in India when a bird's testimony has been used in Indian Courts as admissible evidence under Indian laws. The position in India is that a bird cannot be treated as a competent

witness in Indian Courts as only the human beings in the existing law of India are treated as witnesses in Courts.

47.1. Electronic records & their apreciation: With the passage of the '**Information Technology Act, 2000**' as further amended by the Parliament in the year 2008 (Central Act No. 10 of 2009), the expression "document" now includes **"electronic records"** also**.**

47.2. "Compact Disc" is a 'document' in Evidence Act and admissible in evidence as per Section 294(1) CrPC without endorsement of admission or denial by the parties: Definition of 'document' in Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the Court to obtain admission or denial on a document under sub-section (1) to Section 294, CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the Counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the Counsel for the complainant in respect of document filed by the defence. See: State of UP Vs. Ajay Kumar Sharma, 2016 (92) ACC 981 (SC)*(para 14)*.

47.3. CCTV footage admissible in evidence u/s 65-B, Evidence Act: In the case noted below, the electronic record i.e. CCTV footage and photographs revealed the presence of the injured informant and victim near the mall from where they had boarded the bus. The CCTV footage near the hotel where the victims were dumped showed moving of white coloured bus having green and yellow stripes and the word "Yadav" written on it. The bus exactly

matched the discription of the offending bus given by the injured informant and the victim. Evidence of the Computer Cell Expert revealed no tampering or editing of the CCTV footage. The Supreme Court found the CCTV footage to be craditworthy and acceptable u/s 65-B of the Evidence Act. See: Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)

47.4. An offence of obscenity u/s 292 IPC is covered u/s 67 of the IT Act, 2000: Where there are two special statutes which contain non obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause, it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply. The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. Once the special provisions having the overriding effect do cover a criminal act, the offender gets out of the net of the IPC (in this case Section 292 IPC). It is apt to note here that electronic forms of transmission are covered by the IT Act which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC. See: Sharat Babu Digumarti v. Govt. of NCT of Delhi AIR 2017 SC 150 (Para 32)

47.5. In the event of non obstante clauses in two Act, later Act shall prevail: Where there are two special statutes which contain non obstante clauses, the later statute must prevail. This is because at the time of enactment of the later

statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause, it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply. See: Sharat Babu Digumarti v. Govt. of NCT of Delhi AIR 2017 SC 150 (Para 31)

47.6. 'Facebook' as a public forum facilitates expression of public opinion: Facebook is a public forum and it facilitates expression of public opinion. Posting of one's grievances against machinary even on govt. facebook page does not buy itself amount to criminal conduct. A citizen has right to expression under Article 19(1)(a) & (2) of the Constitution of India. See: Manik Taneja Vs. State of Karnataka, (2015) 7 SCC 423.

47.7. Whatsapp message not being in public view held not to constitute offence under the SC/ST Act: In the present case, the convict / appellant had sent certain offending messages to the complainant of the SC community through the Whatsapp but the contents of the messages were not in public view, no assault had occurred nor was the appellant in such a position so as to dominate the will of the complainant. The Supreme Court held that even if the allegations set out by the complainant with respect to the Whatsapp messages and words uttered were accepted on their face, no offence was made out under the SC/ST Act (as it then stood). The allegations on the face of the FIR did not establish the commission of the alleged offences. See: Pramod Suryabhan Pawar Vs. State of Maharashtra, AIR 2019 SC (Criminal) 1489.

47.8. Changing chat on facebook from private to public would amount to chat in public view and would attract SC/ST Act: In the case noted below, the informant stated that her husband/accused harassed and abused her caste on social network site, the facebook. Defence of the accused/husband was that the facebook wall of a member cannot be described as place within ‘public

view'. Change of privacy settings from public to private makes person's post not accessible to the members other than those befriended with the author. In the present case, the offending post fell foul of Section 3(1)(x) of the SC/ST Act even when the settings were private and punishable. If the befriended member was independent, impartial and not interested in any of the parties, privacy settings on facebook as private or public would make no difference for attracting the SC/ST Act. See: Gayatri alias Apurna Singh Vs. State and Another, 2018 ADR 384.

47.9. Intermediary like Google and accused both liable for defamation done in electronic form: There is no bar u/s 79 of the Information Technology Act, 2000 as it stood before its amendment w. e. f. 27.10.2009 to prosecute a person u/s 500 IPC for having committed defamation by publication through electronic devices. Section 79 did not give immunity from criminal liability under general penal law. The intermediary, in this case the Google, is also liable for criminal liability u/ 500 IPC if it does not remove the defamatory publication despite having power and right to remove it when called upon to do so by the person defamed**.** See: Google India Private Limited Vs. Visaka Industries, (2020) 4 SCC 162

47.10. Section 3 (as amended vide the Information Technology (Amendment) Act, 2008) (Central Act No. 10 of 2009): The expressions, Certifying Authority, electronic signature, Electronic Signature Certificate, electronic form, electronic records, information, secure electronic record, secure electronic signature and subscriber shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

47.11. Section 17: Admission defined: An admission is a statement, (Oral or documentary or contained in electronic form), which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

47.12. Section 22-A: When oral admission as to contents of electronic records are relevant: Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

47.13. Section 34: Entries in books of accounts including those maintained in an electronic form, when relevant: (Entries in books of accounts including those maintained in an electronic form), regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

47.14. Section 35: Relevancy of entry in public record or an electronic record made in performance of duty: An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

47.15. Section 39: What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

47.16. Section 45-A: Opinion of Examiner of Electronic Evidence

47.17. Section 47-A: Opinion as to electronic signature which relevant

47.18. Section 59: Proof of facts by oral evidence

47.19. Section 65-A: Special provisions as to evidence relating to electronic record

47.20. Section 65-B: **Admissibility of electronic records**

47.21. Section 67-A: Proof as to electronic signature

47.22. Section 73-A: **Proof as to verification of digital signature**

47.23. Section 81-A: **Presumption as to Gazettes in electronic forms**

47.24. Section 85-A: **Presumption as to electronic agreements**

47.25. Section 85-B: **Presumption as to electronic records and electronic signatures**

47.26. Section 85-C: **Presumption as to Electronic Signature Certificates**

47.27. Section 88: Presumption as to telegraphic messages

47.28. Section 88-A: **Presumption as to electronic messages**

47.29. Section 90-A: **Presumption as to electronic records five years old**

47.30. Section 131: **Production of documents or electronic records which another person, having possession, could refuse to produce.**

48.1. Alleged translated version of voice cannot be relied on without producing its source: Interpreting Sections 65-A & 65-B of the Evidence Act, it has been held by the Hon'ble Supreme Court that where the voice recorded was inaudible and the voice recorder was not subjected to analysis, the translated version of the voice cannot be relied on without producing the source and there is no authenticity for translation. Source and it authenticity are the two key factors for an electronic evidence. See:

(i) Harpal Singh Vs. State of Punjab, (2017) 1 SCC 734 (on electronic evidence in the nature of call details)

(ii) Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123

48.2. Section 66A of the Information Technology Act, 2000 struck down by the Supreme Court in its entirety being violative of Article 19(1)(a) of the Constitution: Section 66A of the Information Technology Act, 2000 is intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66A. It will be immediately noticed that the recipient of the written word that is sent by the person who is accused of the offence is not of any importance so far as this Section is concerned. (Save and except where under sub-clause (c) the addressee or recipient is deceived or misled about the origin of a particular message.) It is clear, therefore, that the information that is disseminated may be to one individual or several individuals. The Section makes no distinction between mass dissemination and dissemination to one person. If the Section does not require that such message should have a clear tendency to disrupt public order, such message need not have any potential which could disturb the community at large. The nexus between the message and action that may be taken based on the message is conspicuously absent - there is no ingredient in this offence of inciting anybody to do anything which a reasonable man would then say would have the tendency of being an immediate threat to public safety or tranquillity. On all these counts, it is clear that the Section has no proximate relationship to public order whatsoever. Under Section 66A, the offence is complete by sending a message for the purpose of causing annoyance, either 'persistently' or otherwise without in any manner impacting public order. Viewed at either by the standpoint of the clear and present danger test or the tendency to create public disorder, Section 66A would not pass muster as it has no element of any tendency to create public disorder which ought to be an essential ingredient of the offence which it creates. Equally, Section 66A has no proximate connection with incitement to commit an offence. Firstly, the information disseminated over the internet

need not be information which 'incites' anybody at all. Written words may be sent that may be purely in the realm of 'discussion' or 'advocacy' of a 'particular point of view'. Further, the mere causing of annoyance, inconvenience, danger etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all. They may be ingredients of certain offences under the Penal Code but are not offences in themselves. For these reasons, Section 66A has nothing to do with 'incitement to an offence'. As Section 66A severely curtails information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject-matters under Article 19(2) must, therefore, fall foul of Article 19(1)(a), and not being saved under Article 19(2), is declared as unconstitutional. Section 66A cannot possibly be said to create an offence which falls within the expression 'decency' or 'morality' in that what may be grossly offensive or annoying under the Section need not be obscene at all - in fact the word 'obscene' is conspicuous by its absence in Section 66A. If one looks at Section 294 of the Penal Code, the annoyance that is spoken of is clearly defined - that is, it has to be caused by obscene utterances or acts. Equally, under Section 510, the annoyance that is caused to a person must only be by another person who is in a state of intoxication and who annoys such person only in a public place or in a place for which it is a trespass for him to enter. Such narrowly and closely defined contours of offences made out under the Penal Code are conspicuous by their absence in Section 66A which in stark contrast uses completely open ended, undefined and vague language. Incidentally, none of the expressions used in Section 66A are defined. Even 'criminal intimidation' is not defined - and the definition clause of the Information Technology Act, Section 2 does not say that words and expressions that are defined in the Penal Code will apply to this Act. Hence, S. 66A is unconstitutionally vague. Applying the tests of reasonable restriction, it is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right. Information that may be grossly offensive or which

causes annoyance or inconvenience are undefined terms which take into the net a very large amount of protected and innocent speech. A person may discuss or even advocate by means of writing disseminated over the internet information that may be a view or point of view pertaining to governmental, literary, scientific or other matters which may be unpalatable to certain sections of society. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. In point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total. Thus S. 66A is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth. See: Shreya Singhal Vs. Union of India, AIR 2015 SC 1523.

48.3. Sending offensive message online not punishment u/s 66A of the Information Technology Act, 2000 as Section 66A is constitutionally invalid: If Section 66A of the Information Technology Act, 2000 is otherwise invalid, it cannot be saved by an assurance from the learned Additional Solicitor General that it will be administered in a reasonable manner. Governments may come and Governments may go but Section 66A goes on forever. An assurance from the present Government even if carried out faithfully would not bind any successor Government. It must, therefore, be held that Section 66A must be judged on its own merits without any reference to how well it may be administered. Section 66A purports to authorize the imposition of restrictions on the fundamental right contained in Article 19(1)(a) in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action. The possibility of Section 66A being applied for purposes not sanctioned by the Constitution

cannot be ruled out. It must, therefore, be held to be wholly unconstitutional and void. Further, Section 66A does not fall within any of the subject-matters contained in Article 19(2) and the possibility of its being applied for purposes outside those subject-matters is clear. Therefore, no part of Section 66A is severable and the provision as a whole must be declared unconstitutional. See: Shreya Singhal Vs. Union of India, AIR 2015 SC 1523.

48.4. Admissibility and Evidentiary Value of Tape recorded conversation (S. 7, Evidence Act): With the introduction of **Information Technology Act, 2000** "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.

48.5. Preconditions for admissibility of tape recorded conversation: 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:

(i) Ram Singh & others Vs. Col. Ram Singh, 1985 (Suppl) SCC 611
(ii) State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC

(Cri) 1715---- (known as Parliament attack case)

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

48.6. Secondary evidence of electronic records inadmissible unless requirements of Section 65-B are satisfied: Proof of electronic record is a special provision introduced under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the pro-cedure prescribed under Section 65B of the Evidence Act. That is a complete Code in itself. Being a special law, the general law on secondary evidence under Section 63 and 65 has to yield. An electronic record by way of secondary ervidence therefore shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which the secondary evidence pertaining to that electronic record, is inadmissible. See:

(i) Anvar P.V. Vs. P.K. Basheer & Others, AIR 2015 SC 180 (Three-Judge Bench)
(ii) Harpal Singh Vs. State of Punjab, (2017) 1 SCC 734

Note: *Decision in State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 now overruled by a Three-Judge Bench of the Hon'ble Supreme Court vide Anvar P.V. Vs. P.K. Basheer, AIR 2015 SC 180 (Three-Judge Bench).*

48.7. Certificate u/s 65-B of Evidence Act must if secondary copy of CD, VCD, chip, CDRs etc. is produced in court: Proof of electronic record is a special provision introduced by the IT Act, 2000 amending various provisions under the Evidence Act. The very caption of section 65-A of the Evidence Act read with section 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield. Further, the evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Special law will always prevail over the general law. Sections 59 and 65-A deal with the admissibility of electronic records. Section 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Section 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by the Supreme Court in *Navjot Sandhu*, (2005) 11 SCC 600, did not lay down the correct legal position, and hence was overruled. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc, the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible. As per *Sonu Vs. State of Haryana*, (2017) 8 SCC 570, an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by the Supreme Court, is whether the defect could have been cured at the stage of

marking the documents. If an objection was taken to the CDRs being marked without the certificate, the court could have given the prosecution an opportunity to rectify the deficiency. Further, objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. *Anvar P.V. Vs. P.K. Bashir*, (2014) 10 ACC 473, as clarified, is the law declared by the Supreme Court on Section 65-B of the Evidence Act. The judgment in *Tomaso Bruno Vs. State of U.P.*, (2015) 7 SCC 178, being per incuriam, did not lay down the law correctly. Also, the judgment in *Shafhi Mohammad,* (2018) 2 SCC 801 and *Shafhi Mohammad Vs. State of H.P.,* (2018) 5 SCC 311, did not lay down the law correctly and were therefore overruled. As per *Anvar P.V. Vs. P.K. Bashir*, (2014) 10 ACC 473, case as clarified in *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Goranthyal,* (2020) 7 SCC 1, the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned on which the original information is first stored is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in *Anvar P.V.* case which reads as "…. if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…." has been clarified: it is to be read without the words "under Section 62 of the Evidence Act, …". With this clarification, the law stated in para 24 of *Anvar P.V.* case has been affirmed. The general directions issued in para 64 of *Arjun*

Panditrao Khotkar Vs. Kailash Kushanrao Goranthyal, (2020) 7 SCC 1 case are to be followed by courts that deal with electronic evidence to ensure their preservation and production of certificate at the appropriate stage. These directions shall apply in all proceedings till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by the telecom and internet service providers. It must now be taken to have been settled that the decision of the Supreme Court in *Anvar P.V. Vs. P.K. Bashir,* (2014) 10 ACC 473 case as clarified in *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Goranthyal,* (2020) 7 SCC 1 case is the law declared on Section 65-B of the Evidence Act. See: Mohd. Arif Vs. State (NCT of Delhi) (2023) 3 SCC 645, (Three-Judge Bench)

48.8. Certificate u/s 65-B required only for secondary tape recorded conversation and not for primary: Where original tape-recorded conversation of randsom calls was handed over to police, it has been held by a Three-Judge Bench of the Supreme Court that since the original tape-record was primary evidence, therefore, certificate u/s 65-B of the Evidence Act was not required for its admissibility. Such certificate u/s 65-B is mandatory only for secondary evidence and not for the primary evidence i.e. the original tape-recorded conversation. See:

(i) Arjun Panditrao Khotkar Vs. Kailash Kushan Rao Gorantyal, (2020) 7 SCC 1 (Three-Judge Bench).

(ii) Vikram Singh Vs. State of Punjab, (2017) 8 SCC 518 (Three-Judge Bench).

48.9. Certificate u/s 65-B(4) of the Evidence Act is not always necessary: In the case noted below, a Two-Judge Bench while distinguishing the Three-Judge Bench decision in P. K. Basheer has held that the requirement of a certificate u/s 65-B (4) of the Evidence Act is not always necessary. A piece of evidence / material object should not be kept out of court's consideration on the ground that the certificate u/s 65-B (4) of the Evidence Act is not

available because the ultimate object of a criminal prosecution is to arrive at the truth. See: Shafhi Mohammad Vs. State of H. P., (2018) 2 SCC 801.

Note: *The decision in Shafhi Mohammad Vs. State of H. P., (2018) 2 SCC 801 of the Two-Judge Bench has now been referred on 26.07.2019 by the Supreme Court to a larger Bench.*

48.10. Mobile phone used in committing offence should be taken into safe custody without delay to prevent destruction or manipulation of data: In a case in which a mobile phone is used for the commission of the crime, the first and foremost thing the police officer should have done was to secure the phone to prevent the destruction or manipulation of data. Given the nature of evidence to be copied, maintaining the evidential continuity and integrity of the evidence that is copied is of paramount importance. See: Kerala in Vijesh v. The State of Kerala and Ors. 2018 (4) Kerala Law Journal 815

48.11. Conversation on telephone or mobile & its evidentiary value: 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).

Note: *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-*

Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.

48.12. Mode of proving contents in mobile, computer, laptop, tablet etc: Required certificate under Section 65B(4) of the Evidence Act is unnecessary if the original document itself is produced. This can be done by the owner of a laptop, computer, computer tablet or even a mobile phone by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1) of the Evidence Act together with the requisite certificate under Section 65B(4) of the Evidence Act. See: Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. AIR 2020 SC 4908

49.1. Information contained in computers: The printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Such secondary evidence is admissible u/s 63 and 65 of the Evidence Act. See: State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715---- (known as Parliament attack case).

Note: *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the*

*absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence***.**

49.2. Cell phone is equivalent to a computer: In the case noted below, it has been held that a cell phone fulfills the definition of a computer under the IT Act and the tampering of the unique numbers i.e. computer source codes/ ESN(Electronic Serial Number) attracts Section 65 of the IT Act. See: Syed Asifuddin and Ors. v. The State of Andhra Pradesh and Ors. 2005 CriLJ 4314 (A.P.)

50.1. Value of Expert Evidence under Section 45 of the Evidence Act: The courts normally look at expert evidence with a greater sense of acceptability but it is equally true that the courts are not absolutely guided by the report of the experts especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert opinion is accepted it is not the opinion of the Medical Officer but that of the court. The skill and experience of an expert is the ethos of his opinion which itself should be reasoned and convincing. Not to say that no other view would be possible but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing. See: Dayal Singh Vs. State of Uttaranchal, AIR 2012 SC 3046.

50.2. Finger prints & its evidentiary value: There is no gainsaying the fact that a majority of fingerprints found at crime scenes or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say

whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case. See: Mohan Lal Vs. Ajit Singh, (1978) 3 SCR 823.

50.3. Fingerprint experts report not substantive evidence: Evidence of fingerprint expert u/s 45 of the Evidence Act is not substantive evidence. It can be used to corroborate some items of substantive on record. See: Musheer Khan Vs. State of M.P, 2010 (70) ACC 150(SC)

50.4. 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: 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)

50.5. Taking finger print of accused without magisterial order held doubtful: 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:

(i) State of MP Vs. Markand Singh, AIR 2019 SC 546.
(ii) Ashish Jain Vs. Makrand Singh, (2019) 3 SCC 770.

50.6. Thumb impression & expert's evidence: Science of identifying thumb impression by an expert u/s 45 of the Evidence Act is an exact science and

does not admit of any mistake or doubt. See: Jaspal Singh Vs. State of Punjab, AIR 1979 SC 1708

50.7. Non-examination of finger print expert & its effect: Where the crime article, before its seizure, was handled by many persons, non-examination of the finger print expert in such a case would not have any adverse effect on prosecution case. See: Keshavlal Vs. State of M.P., (2002)3 SCC 254.

50.8. Expert opinion u/s 45 Evidence Act & its appreciation: An experts opinion is only opinion evidence: Opinion of an expert u/s 45 of the Evidence Act is only opinion evidence. It does not help court in interpretation. Expert evidence is a secondary evidence which cannot be given importance as primary evidence. See:

(i) Anand Singh vs. State of U.P., 2009 (67) ACC 99 (All—D.B.)
(ii) Forest Range Officer vs. P. Mohammed Ali, AIR 1994 SC 120

50.9. Evidentiary value of handwriting expert u/s 45 Evidence Act: The handwriting expert's evidence u/s 45 Evidence Act is only opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. See:

(i) Padum Kumar Vs. State of UP, (2020) 3 SCC 35
(ii) Sashi Kumar Banerjee vs. Subodh Kumar Banerjee, AIR 1964 SC 529 (Five-Judge Bench)

50.10. Handwriting experts opinion to be relied upon with great caution: It is well settled that the opinion of a handwriting expert must always be received with great caution. See: Magan Bihari Lal vs. State of Punjab, (1977) 2 SCR 1007

50.11. Handwriting expert & appreciation of his opinion evidence: A handwriting expert is a competent witness whose opinion evidence is recognized as relevant under the provisions of Sec. 45 & 73 of the Evidence Act and has not

been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert. See: State of Maharashtra vs. Sukhdev Singh @ Sukha, AIR 1992 SC 2100

50.12. Handwriting experts opinion to be relied upon when supported by other evidence: The opinion of a handwriting expert u/s 45 of the Evidence Act can be relied on when supported by other evidence. Though there is no rule of law that without corroboration the opinion evidence cannot be accepted but due caution and care should be exercised and it should be accepted after probe and examination. See: Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21

50.13. Effect of adverse remarks against handwriting expert in some of past cases: Where there were some adverse remarks against the handwriting expert in some of past proceedings but nothing could be shown as to how experts report suffered from any infirmity then his evidence cannot be treated as totally irrelevant or no evidence on the basis of said adverse remarks. See: Lalit Popli vs. Canara Bank, AIR 2003 SC 1796.

50.14. 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.**

50.15. 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:

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

51. Typewriter expert: Overruling an earlier Three Judge Bench decision in Hanumant VS. State of M.P., AIR 1952 SC 343, a Five Judge Bench of the Supreme Court has held that the word 'expert' in Sec. 45 of the Evidence Act includes expert in typewriters as well. Typewriting also falls within the meaning of work 'handwriting'. Hence opinion of typewriter expert is admissible in evidence. The examination of typewriting and identification of the typewriter on which the questioned document was typed in based on a scientific study of certain significant features of the typewriter peculiar to a particular typewriter and its individuality which can be studied by an expert having professional skill in the subject and, therefore, the opinion of the typewriter expert is admissible u/s 45 of the Evidence Act. See: State through CBI Vs. S.J. Choudhary, AIR 1996 SC 1491 (Five Judge Bench).

52. Author's opinions in text books & their evidentiary value: Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always

be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given. See: State of M.P. Vs. Sanjay Rai, AIR 2004 SC 2174.

53. Sections of Presumptions in Evidence Act:

Section 56: Fact judicially noticeable need not be proved.

Section 57: Facts of which court must take judicial notice

Section 58: Facts admitted need not be proved

Section 72: Proof of document not required by law to be attested

Section 73: Comparison of signature, writing or seal with others admitted or proved

Section 74: Public documents

Section 79: Presumption as to genuineness of certified copies

Section 80: Presumption as to documents produced as record of evidence

Section 81: Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

Section 81A: Presumption as to Gazettes in electronic forms

Section 82: Presumption as to document admissible in England without proof of seal or signature.

Section 83: Presumption as to maps or plans made by authority of Government.

Section 84: Presumption as to collections of laws and reports of decisions

Section 85: Presumption as to powers-of-attorney

Section 85A: Presumption as to electronic agreements

Section 85B: Presumption as to electronic records and electronic signatures.

Section 85C: Presumption as to electronic signature certificates.

Section 86: Presumption as to certified copies of foreign judicial records

Section 87: Presumption as to books, maps and charts

Section 88: Presumption as to telegraphic messages

Section 88A: Presumption as to electronic messages

Section 89: Presumption as to due execution, etc, of documents not produced

Section 90: Presumption as to documents thirty years old

Section 90A: Presumption as to electronic records five years old

Section 106: Burden of proving fact especially within knowledge

Section 113A: Presumption as to abetment of suicide by a married woman

Section 113B: Presumptionas to dowry death

Section 114: Court may presume existence of certain facts

Section 114A: Presumption as to absence of consent in certain prosecution for rape.

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