Role of Judges during Recording of Evidence in Quest of Truth

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1. **Keeping congenial atmosphere in court room** for examination of witnesses and recording of their depositions

2. **Order of production and examination of witnesses:** As per discretion of the Court: Section 135 of Evidence Act,1872 (Now Sec.140 of BSA, 2023)

3. **Relevancy and admissibility of evidence proposed by party:** Sec.136 of Evidence Act (Now Sec.141 of BSA, 2023)

4. **objection regarding relevancy of questions put to witness not to be decided by the Judge during examination of the witness: "**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." See: Bipin Shantilal Panchal Vs. State of Gujarat, 2001 CrLJ 1254 (SC)

5. **"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)

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6. **Compound questions not be allowed to be put to the witness**

7. **Ambiguous and vague questions** not to be allowed to be put to the witness

8. **Explaining the question by the Judge to the witness** if the same is confusing, unclear, compound or vague to enable the witness to understand the same before answering

9. **Trial Judge has vast and unrestricted power to put any question, relevant or irrelevant, to witness u/s 165 of Evidence Act (now Sec.168 of BSA):** Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put any question he pleases, in any form, at any time, to any witness, or the parties, about any fact, relevant or irrelevant, in order to discover relevant facts. A Judge remaining mute in court during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind but there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the judge performing the role of only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary material from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses either during the chief examination or cross examination or even during re-examination to elicit the truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip, it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances or erring may accelerate under stress of nervousness during cross examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for the trial Judge to remain active and alert so that errors can be minimized. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording

machine. He must become a participant in the trial by evincing intelligent, active interest by putting questions to witnesses in order to

ascertain the truth. See: Rahul vs State of Delhi, (2023) 1SCC83 (Three-Judge Bench).

10. **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.

11. **Judge not to indulge into running argument** with the counsel or party

12. **Judge to avoid disclosure of mind on merits or conclusion** to be reached in the case while putting any question to the witness or seeking clarification form counsel on any issue during hearing and collection of evidence

13. **Judge to protect his dignity first** before anything else while collecting the evidence or hearing the case. Judge should avoid getting over zealous in any, every and all matters but must not remain mere a passive and mute spectator to the proceedings and happenings of his court.

14. **Duty of Judge to procure all material evidence:** It is the duty of court to procure all evidence relevant for the case. See: **Santosh Pathak Vs. State of U.P., 2010 (70) ACC 548 (All).**

15. **Illiterate witness and his examination:** Where the FIR of the illiterate informant / complainant was drafted by the advocate but the testimony of the illiterate informant was found to be trustworthy as he had seen the incident, it has been held by the Supreme Court that the testimony of such an illiterate witness cannot be disbelieve merely because his FIR was drafted by an advocate. See: Ravasaheb Vs. State of Karnataka, (2023) 5 SCC 391 (Three-Judge Bench) (Para 42)

16. **Rustic lady witness & illiterate villager witness and their examination:** 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) Darshan Singh Vs. State of Punjab, (2024) 3 SCC 164 (Three-Judge Bench).
(ii) State of U.P. Vs. Chhoteylal, AIR 2011 SC 697
(iii) Dimple Gupta (minor) Vs. Rajiv Gupta, AIR 2008 SC 239
(iv) State of Punjab Vs. Hakam Singh, (2005) 7 SCC 408
(v) State of H.P. Vs. Shreekant Shekari, (2004) 8 SCC 153
(vi) State of Rajasthan Vs. Kheraj Ram, (2003) 8 SCC 224
(vii) State of Punjab Vs. Hakam Singh, (2005) 7 SCC 408

17. **Judge to protect the rustic witness from being 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).

18. **Leading questions to be put to the witness only with the prior permission of the Court:** (Section 142 of Evidence Act. (Now Sec.146 of BSA, 2023)

19. **Drawing attention of witness towards his previous statement reduced into writing:** Sec.145 of Eidence Act (Now Sec.145 of BSA, 2023) : Sec.148 of Eidence Act (Now Sec.149 of BSA, 2023)

20. **No question can be permitted to be asked to a female witness who is a victim of rape, etc. regarding her consent or immoral character:** Sec.146 of Evidence Act (Now Sec.149 of BSA, 2023)

21. **Questions derogatory to the dignity of victim of rape can be reported by the Court to the State Bar Council:** Sec.150 of Evidence Act (Now Sec.153 of BSA, 2023)

22. **Court may forbid indecent and scandalous question to be put to witness:** Sec.151 of Evidence Act (Now Sec.154 of BSA, 2023).

23. **In camera proceedings:** Section 366 of the BNSS,2023 empowers the

court to hold in camera proceedings in relation to inquiry or trial of offences of rape or under POCSO Act,2012. The Juge or Magistrate has

power to order in camera proceedings in any other cases also if he thinks so proper.

24. **Name of victim of rape whether major or child not to be disclosed in deposition and judgment (Sections 376, 376-A, 376-B, 376-C, 376-D and POCSO Act and 228-A IPC):** S. 228-A IPC reads thus : "Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence u/s 376, Sec. 376-A, Sec. 376-B. Sec. 376-C, or Sec. 376-D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine." Identity of the minor/child victim of sexual offences under the POCSO Act, 2012 can also not be disclosed and Section 228-A IPC applies to the POCSO Act, 2012 also. See:

(i). A Vs State of UP, (2020) 10 SCC 505 (Three-Judge Bench)

(ii). Nipun Saxena Vs Union of India, (2019) 2 SCC 703

(iii). Premiya Vs. State of Rajasthan, 2008 (63) ACC 94 (SC)

(iv). Om Prakash Vs. State of U.P., 2006 (55) ACC 556 (SC)

(v). State of Karnataka Vs. Puttaraja, (2004)) 1 SCC 475

(vi). State of H.P. Vs. Shree Kant Shekari, (2004) 8 SCC 153

(vii). Bhupinder Sharma VS. State of H.P., (2003) 8 SCC 551

25. **Court shall forbid questions unnecessarily being put to witness in order to insult or annoy him:** Sec.152 of Evidence Act (Now Sec.155 of BSA, 2023)

26. **Recording evidence in presence of accused or his counsel**

27. **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.

28. **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.

29. **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.

30. **Speedy trial and Protection of personal liberty under Article 21 of the Constitution**: Speedy trial of the cases of under trial prisoners has also been declared by the Supreme Court as their fundamental right under Article 21 of the Constitution. See :

(i) Babubhai Bhimabhai Bokhiria Vs. State of Gujarat, (2013) 9 SCC 500

(ii) Vakil Prasad Singh Vs. State of Bihar, (2009) 3 SCC 355

(iii) A.R. Antulay Vs. R.S. Nayak, AIR 1992 SC 1701 (Seven-Judge Constitution Bench)

(iv) Kadra Pehadiya Vs. State of Bihar, AIR 1981 SC 939

(v) Hussainara Khatoon Vs. State of Bihar, AIR 1976 SC 1360

31. **No direction fixing time limit for disposal of criminal trials can be issued by courts :** A Constitution Bench of the Hon'ble Supreme Court in the case noted below has ruled that although speedy trial is a fundamental right of an accused/under trial under Article 21 of the Constitution but courts cannot prescribe any specific time limit for the conclusion of a criminal trial.See: P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578 (Seven-Judge Bench)

32. **Direction of the Hon'ble Supreme Court for taking administrative action against the delinquent Judicial Officers not conducting trial on day to day basis and granting adjournments u/s 309 CrPC** : Where the trial court (sessions court) had granted adjournment for two months for cross- examination of a prosecution witness (who was subsequently won over by the accused and had completely contradicted in cross-examination his previous deposition in examination-in-chief), the Hon'ble Supreme Court has ruled thus : "The dire need for the courts dealing with the cases involving serious offences is to proceed with the trial commenced on day to day basis in *de die in diem* until the trial is concluded. We wish to issue a note of caution to the trial courts dealing with sessions cases to ensure that there are well settled procedures laid down in the Code of Criminal Procedure as regards the manner in which the trial should be conducted in sessions cases in order to ensure the dispensation of justice without providing any scope for unscrupulous elements to meddle with the course of justice to achieve some unlawful advantage. In this respect, it is relevant to refer to the provisions contained in Chapter XVIII of the CrPC where u/s 231 it has been specifically provided that on the date fixed for examination of witnesses as provided u/s 230, the sessions judge should proceed to take all such evidence as may be produced in support of prosecution and that in his discretion may permit cross-examination of any witnesses to be deferred until any other witness or witnesses have been examined or recall any

witness for further cross-examination….. every one

of the cautions indicated in the decision of this Court in **Raj Deo Sharma Vs. State of Bihar, (1998)7 SCC 507** was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trail judges of the need to comply with Section 309 CrPC in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law. It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in **State of UP Vs. Shambhu Nath Singh, (2001) 4 SCC 667** such recalcitrant approach was being made by the trial court unmindful of the adverse serious consequences flowing therefrom affecting the society at large. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial judge, as confirmed by the impugned judgment of the High Court**, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision in Raj Deo Sharma and reiterated in Shambhu Nath by issuing appropriate circular, if already not issued.** If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial courts without providing scope for any deviation in following the procedure prescribed in the matter of trial of sessions cases as well as other cases as provided under Section 309 CrPC. In this respect, the High Courts will also be well advised to use their machinery in the respective **State Judicial Academy** to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decision in Raj Deo Sharma which has been extensively quoted and reiterated in the subsequent decision of this court in Shambhu Nath and comply with the directions at least in the future years." See :

(1) Akil Vs. State (NCT of Delhi), (2013) 7 SCC 125 (paras 33, 42 & 43),

(2) Mohd. Khalid Vs. State of W.B., (2002) 7 SCC 334,

(3) Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220

(4) Judgment dated 28.11.2017 of the Supreme Court in Criminal Appeal No. 2045-2046 of 2017, Doongar Singh & Others Vs. State of Rajasthan.

33. **Granting of frequent adjournments u/s 309 CrPC deprecated by the Supreme Court:** Protraction of criminal trials because of grant of frequent adjournments u/s 309 CrPC by Judges and Magistrates has been deprecated by the Supreme Court and directions for speedy trial of the cases of the accused under trials has been issued in the following cases:

(i) N.G. Dastane Vs. Shrikant S. Shinde, AIR 2001 SC 2028

(ii) Swaran Singh Vs. State of Punjab, 2000 (11) U.P. Cr. Rulings 1 (SC)

(iii) Ramon Services Pvt. Ltd. Vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546

(iv) Raj Bahadur Vs. Commissioner, Agra Division, 2005 (4) AWC 3321 (All)(DB)

34. **Inordinate delay of 37 years in disposal of criminal appeal in the matter of attempt on life of the CJI deprecated by the Supreme Court :** Two live hand grenades were lobbed on 20.03.1975 at about 4.15 P.M. inside the car at the intersection of Tilak Marg and Bhagwan Dass Road at a stone's through distance from the Supreme Court of India, Delhi. The then Hon'ble CJI Mr. Justice A.N. Ray, his son Shri Ajoy Nath Ray (later on became Chief Justice of the Allahabad High Court), Driver of the car Inder Singh and Jamadar Jai Nand were travelling in the said car. Fortunately, the grenades did not explode and the occupants of the car including the CJI escaped unharmed. FIR was registered and the matter was investigated by the Crime Branch of Delhi police. On the same day one Santoshanand Avadhoot was arrested and later on an Advocate namely Ranjan Dwivedi was also arrested. Two other accused persons namely Sudevanand Avadhoot and Vikram @ Jaladhar Das, who were in jail for the murder of Shri L.N. Mishra, the then Minister of Railways in the Union Cabinet who was killed in a bomb blast two and half months before at the platform of Samastipur Railway Station, Bihar, were also arrested on 27.07.1975 in connection with the aforesaid incident of attempt on the life of the then CJI. The above accused persons were convicted on 28.10.1976 by the ASJ, Delhi for the offences u/s 307/120-B of the IPC and sentenced to 10 years rigorous imprisonment. The convicts preferred appeal to the Delhi High Court but the same remained undecided for the last 37 years. The convicts/appellants then approached the Hon'ble Supreme Court for justice. The Supreme Court, while expressing distress at the inordinate delay of 37 years in the disposal of the criminal appeal, observed that speedy, open and fair trial is a fundamental right of an accused under Article 21 of the Constitution. The Supreme Court further directed the Delhi High Court to ensure that the criminal appeals of the convicts named above were decided without further delay within a period of six months. See : Sudevanand Vs. State through CBI, (2012) 3 SCC 387.

35. **Delayed trial, protection of personal liberty and grant of bail** : Speedy trial is implicit in Article 21 of the Constitution. While it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty but at the same time a balance has to be struck between the right to individual liberty and the interest of the Society. No right can be absolute and reasonable restrictions can be placed on them.

While it is true that one of the considerations in deciding whether to grant bail to an

accused or not is whether he has been in jail for a long time. The court has also to take into consideration the other facts and circumstances such as the interest of the society. See:
(i). Union of India Vs K. A. Najeeb, (2021) 3 SCC 713 (Three-Judge Bench)
(ii).Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2007 SC 451.

36. **Delayed trial, not a ground for grant of bail:** Where the accused was involved in commission of offences u/s 302, 307, 201, 120-B IPC and the High Court had granted him bail u/s 439 CrPC by non-speaking order by not taking into consideration the material collected by the investigating officer in support of the charge-sheet and the seriousness of the offences and the only ground taken by the High Court was that the trial might take long time to conclude, the Supreme Court set aside the order of the High Court with the directions to it to decide the bail application afresh in accordance with law. See: Rahul Gupta Vs. State of Rajasthan, (2023) 7 SCC 781.

37. **Delay in trial a ground for bail u/s 439 CrPC :** The Hon'ble Supreme Court has consistently recognised right of accused for speedy trial. Delay in criminal trial has been held to be in violation of right guaranteed to an accused under Article 21 of the Constitution. Accused persons even in cases under TADA have been released on bail on ground that they have been in jail for a long period of time and there was no likelihood of completion of trial at the earliest. In the present case, FIR was filed against the appellant-accused for his involvement in serious offences under TADA, IPC, Arms Act, Explosives Act and Explosive Substances Act. Admittedly, the appellant had been suffering incarceration for more than 12 years and there was no likelihood of completion of trial in the near future. Therefore, the Supreme Court granted bail to the appellant-accused, inter alia, on the aforementioned grounds. See :
(i). Union of India Vs K. A. Najeeb, (2021) 3 SCC 713 (Three-Judge Bench)
(ii). Umarmia alias Mamumia Vs. State of Gujarat, (2017) 2 SCC 731**.**

38. **Delay in framing of charges entitles the accused to be released on bail:** In a criminal trial, where there was seven months delay in framing of the charges against the accused, it has been observed by the Hon’ble Supreme Court that in a simple matter of framing of charges, the court should have taken more than seven months to frame the charges, is negation of principles of speedy trial and the grounds on which the case had been adjourned from time to time reflected poorly on the manner in which trial was being conducted. The apex court directed the court to be

careful in

future in dealing with such cases and not to take up the cases for framing of charges in such a casual manner and keep them pending for long periods while the accused languishes in custody and directed that the accused be released on bail. See: Bal Krishna Pandey vs. State of UP, (2003) 12 SCC 186.

39. **Hostile Witness and duty of Judge:** Sec.154 of Evidence Act (Now Sec.157 of BSA, 2023)

40. **Threatening witness:** 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.

41. **Refreshing of memory by witness in relation to a matter reduced into writing:** Sec.159 of Evidence Act (Now Sec.162 of BSA, 2023)

42. **Power of Judge to put question to the witness:** Sec.165 of Evidence Act (Now Sec.168 of BSA, 2023)

43. **Demeanour of witness to be recorded by the Judge:** Evidence is the medium through which the court is convinced of the truth or otherwise of the matter under enquiry i.e. the actual words of witnesses or documents produced and not the facts which have to be proved by oral and documentary evidence. Word “evidence” is not restricted to only oral and documentary evidence but it also includes other things like material objects, demeanour of the witnesses, facts of which judicial notice could be taken by the courts, admissions of parties, local inspection made and answers given by the accused to the questions putforth by the magistrate or judge u/s 313 CrPC. See: Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731 (Five-Judge Bench).

44. **Intention, knowledge, state of mind, good faith, negligence, ill-will and mode of their proof:** Intention, knowledge, state of mind, good faith, negligence and ill-will not to be always proved by direct testimony. It may be proved inferentially from conduct and surrounding circumstances, etc. Sections 8 and 14 of the Evidence Act can be referred to in this context. See: Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731 (Five-Judge Bench) (para 55)

45. **Reaction/conduct/behaviour of witnesses & their appreciation**: Where eye witnesses did not come to the rescue of the deceased, it has been held

by the Supreme Court that by virtue of Section 8 of the Evidence Act, 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. Conduct of accused in leading the police party to the spot to recover the incriminating material is also admissible in evidence.See:

(i) SambhubhaiRaisangbhaiPadhiyar, State of Gujarat, (2025)2 SCC399 (Three-Judge Bench) (Para26)

(ii) Viran Gyanlal Rajput Vs State of Maharashtra (2019) 2 SCC 311 (Three- Judge Bench)

(iii) Motiram Padu Joshi Vs. State of Maharashtra, (2018) 9 SCC 429

(iv) Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643

46. **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

47. **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.

48. **Eye witness disbelieved because of his unnatural conduct:** In the case noted below, the eye witness knew the deceased and claimed to have seen the accused persons fatally assaulting the deceased but had kept quite at the time of the incident and did not inform the police or the family members of the deceased, it has been held by the Supreme Court that his conduct was unnatural, particularly when his vision and hearing capacity was also poor. The eye witness was found unreliable. See: Chunthuram Vs State of Chhatisgarh, AIR 2020 SC 5495 (Three-Judge Bench).

49. **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).

50. **Court may draw adverse inference against witness making evasive reply to the question put to him:** Sec.114(h) of Evidence Act (Now Sec.119(h) of BSA, 2023)

51. **Qestions put to witness on contents of documents ordinarily not to be allowed by Judge:** Sec.59 of Evidence Act (Now Sec.54 of BSA, 2023)

52. **Admission or denial on documents by opposite party (Rule 42, G.R. Civil):** According to Rule 42 of the General Rules (Civil), a party desiring to produce any document in court shall, before producing it in court, obtain admission or denial recorded on the back of the document by the opposite party's lawyer. If the opposite party is not represented by a lawyer, the Court shall get admission or denial recorded by the party in its presence and may, for the purpose, examine the party.

53. **Exhibition of documents:** Mere production and marking of a document as exhibit is not enough. Its 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 its 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..

54. **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 :

(i) Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731 (Five-Judge Bench).

(ii) Kaliya Vs. State of M.P., 2013 (83) ACC 160 (SC).

55. **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

56. **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

57. **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*).

58. **Public prosecutor not bound to examine all witnesses of a particular fact:** 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 S. 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)

59. **Public prosecutor has discretion to examine only some of many injured witnesses:** 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 prosecutionWhen the case reaches the stage envisaged in S. 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).

60. **Asking questions to child witness to test his IQ** and declarion by Judge whether he is a competent winess

61. **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."

62. **Omission to administer oath (Sec. 7 of the Oaths Act, 1969): Section 7** reads thus "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."

63. **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)

64. **Keeping other witnesses out of court** while examining one witness

65. **Permitting recording of depositions of witness through audio-video electronic means**: (Sections 254, 265,266,310, 356 of the BNSS,2023)

66. **Providing legal aid and counsel to accused** through DLSA if he is unable to engage a lawyer on his own