Relevancy & Admissibility of Evidence

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1. **"Evidence": What is?:** 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 put forth by the Magistrate or Judge u/s 313 CrPC (now Section 351 of the BNSS, 2023).See: Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731 (Five-Judge Bench).

2. **Kinds of Evidence:** Evidence of following kinds are produced in criminal cases : (Section 3 of the Evidence Act, 1872, now Section 2 of the BSA, 2023):

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

3. **Kinds of evidence:** Evidence may be of following kinds:

(i) Direct evidence

(ii) Indirect evidence
(iii) Circumstantial evidence
(iv) Original evidence
(v) Secondary evidence
(vi) Substantive evidence
(vii) Hearsay evidence
(viii) Presumptive evidence
(ix) Documentary evidence. See: Neeraj Dutta Vs. State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Paras 51, 52 & 53)

4. Kinds of witnesses in criminal case: 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 :

(1) Independent Witness
(2) Direct (Ocular) Witness
(3) Interested Witness :
  (a) Family Member as Witness
  (b) Relatives as Witness
  (c) Friendly Witness
(4) Inimical Witness
(5) Hostile Witness
(6) Injured Witness
(7) Sterling Witness. Vide Santosh Prasad Vs. State of Bihar, (2020) 3 SCC 443
(8) Chance Witness
(9) Child Witness
(10) Deaf and Dumb Witness
(11) Tutored Witness
(12) Habitual Witness
(13) Hearsay Witness
(14) Planted Witness
(15) 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
(16) 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

(17) Secondary Witness
(18) Approver as Witness
(19) Accused as Witness

5. **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) Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731 (Five-Judge Bench) (para 56)
(ii) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(iii) State of Rajasthan Vs. Babu Meena, (2013) 4 SCC 206
(iv) Lallu Manjhi Vs. State of Jharkhand, AIR 2003 SC 854

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

(1) Contradictions
(2) Inconsistencies
(3) Exaggerations
(4) Embellishments
(5) Discrepancies
(6) Contrary statements by two or more witnesses on one and the same fact.

7. **Word "Relevant" as defined in Indian Evidence Act, 1872:** Section 3 of the Indian Evidence Act, 1872 defines the word "relevant" thus: "One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts."

8. **Word "Relevant" as defined in BSA, 2023**: Section 2(1)(k) of the Bharatiya Sakshya Adhiniyam, 2023 defines the word "relevant" thus: "A fact is said to be relevant to another when it is connected with the other in any of the ways referred to in the provisions of this Adhiniyam relating to the relevancy of facts." Sections 3 to 50 of the BSA, 2023 provide for relevancy of facts.

9. **"Relevancy" as defined by Supreme Court:** 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 circumstance 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. 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 See: Digamber Vaishnav Vs. State of Chhattisgarh, AIR 2019 SC 1367 (Three-Judge Bench)

10. **"Admissibility": meaning of** ?: Word "admissibility" of evidence has not been defined in the Indian Evidence Act, 1872 and in the BSA, 2023 as well. It means: an evidence which can be produced before the court to prove or disprove a fact as per the rules of evidence.

11. **Relevancy and Admissibility: Difference between**?: In order to prove or disprove a fact, the evidence produced before the court must be relevant as well as admissible. An evidence may be relevant but not necessarily admissible.

12. **Burden of proof immaterial where both parties have led their entire evidence:** Rule of burden of proof u/s 101 of the Evidence Act is irrelevant when the parties have actually led their evidence (oral and documentary) and that evidence has to be considered by the court. When the entire evidence is before the court, the burden of proof becomes immaterial and the court has to come to a decision on a consideration of all materials. Section 110 Evidence Act merely enunciates the burden of proof as to ownership. See:
    (i) Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)

(ii) Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)
(iii) Arumugham vs. Sundarambal, AIR 1999 SC 2216
(iv) Narayan vs. Gopal, AIR 1960 SC 100 (Three-Judge Bench)
(v) M.M.B. Catholicos vs. T. Paulo Avira, AIR 1959 SC 31 (Five-Judge Bench)
(vi) Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133 (Three-Judge Bench)

13. **Kinds of "Burden of Proof ":** Burden of proof is of two kinds: (i) legal burden and (ii) evidential burden. Legal burden of proof arises from pleadings and it never shifts. Section 101 of the Evidence Act provides for legal burden of proof. Evidential burden of proof may shift from one party to the other as the trial progresses according to the balance of evidence given at particular stage and then the burden rests upon the party who would fail if no evidence at all, or no further evidence, is adduced by either side. Section 102 of the Evidence Act deals with the evidential burden of proof. See: Rajesh Jain Vs Ajay Singh, (2023) 10 SCC 148 (Paras 28 & 29)

14. **Once a document has been properly admitted, the contents of that document would also stand admitted in evidence:** Once a document is admitted in evidence, the contents of that document are also admitted in evidence, though those contents may not be conclusive evidence. Moreover, once certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence. There is a prohibition for any other evidence to be led which may detract from the conclusiveness of that evidence and the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Thus, once a document has been properly admitted, the contents of the document would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or in appeal. But the document can be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is admitted in evidence. See: Neeraj Dutta Vs State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Para 62)

15. **Contents of document cannot be proved by oral evidence:** Section 59 of Evidence Act (now Section 54 of the BSA, 2023): When the entire case is based on construction of a document (insurance policy), the question of adducing any oral evidence would be irrelevant as per Section 59 of the

Evidence Act. See: Peacock Plywood (P) Ltd. Vs. OIC Ltd., (2006) 12 SCC 673

16. **Contents of documents and their proof:** Explaining the provisions of Sections 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. See: Narbada Devi Gupta vs. Birendra Kumar Jaiswal, (2003) 8 SCC 745

17. **Admission of genuineness of document not to be confused with admission of truth of contents (Rule 54, G.R. Civil):** According to Rule 54 of the General Rules (Civil), when a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact. See: Kapil Core Packs Pvt. Ltd Vs. Harvansh Lal, (2010) 8 SCC 452.

18. **Exhibited documents and their admissibility in evidence:** Explaining the provisions of Sections 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. See:
    (i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719(Paras 23 & 24)
    (ii) Jagmail Singh Vs. Karamjit Singh, (2020) 5 SCC 178
    (iii) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745
    (iv) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)
    (v) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752
    (vi) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.

(vii) 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.

19. **Mere exhibition of a document not sufficient:** Mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law. See:

(i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719(Paras 23 & 24)

(ii) LIC of India Vs. Ram Pal Singh Visen, (2010) 4 SCC 491.

20. **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.

21. **Document brought on record but not proved cannot be read:** Document brought on record but not proved cannot be read in evidence. See: Nand Ram Vs. Jagdish Prasad, (2020) 9 SCC 393.

22. **Stage of raising objection against the admissibility of an exhibited document:** Objection as to admissibility of a secondary documentary evidence produced u/s 65 of the Evidence Act can be classified as **(i)** objection that the document sought to be proved is itself inadmissible, and **(ii)** objection directed not against the admissibility of the document but against the mode of proof thereof on the ground of irregularity or insufficiency. Objection under category **(i)** can be raised even after the document has been marked as "an exhibit" or even in appeal or revision, but the objection under category **(ii)** can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. See:

(i) Ranvir Singh vs. Union of India, 2005 (4) AWC 3152 (SC)

(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

23. **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.

Admissibility 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).

23.1 C**ertified copy of sale deed not being a public document not admissible in evidence:** A sale deed is not a public document and therefore its certified copy is not admissible in evidence unless an explanation is given u/s 65 of the Evidence Act, 1872 (now Section 60 of the BSA, 2023) in support of non-availability of the original sale deed. See: Dr. Gurmukh Ram Madan vs. Bhagwan Das Madan, 1998 (2) ARC 517 (SC).

23.2 Certified copy of sale deed when admissible in evidence?: Where a certified copy of registered sale deed was being marked as exhibit and admitted in evidence u/s 65 of the Evidence Act without any objection from the opposite party but later on the opposite party raised objections regarding the mode of proof of the certified copy for want of primary evidence, it has been held by the Supreme Court that since the objection was not raised as to the admissibility of the certified copy but only against the mode of proof being irregular and insufficient, the document was admissible in evidence and such objections could have been taken before the document was marked as an exhibit and admitted to the record. See :

(i) Dayamathi Bai vs. K.M. Shaffi, (2004) 7 SCC 107

(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

23.3 Certified copy of sale deed is admissible in evidence: A certified copy of a sale deed can be filed to prove ownership and possession over the disputed property. See: Ved Prakash Rastogi Vs. Nagar Palika Budaun, AIR 2008 All 27

24.1 Certified copy of gift deed admissible in evidence: Where the original gift deed had been lost, its certified copy issued by the competent authority is admissible in evidence. See: Debananda Chaubey Vs. Narayan Bigraha, 2007 (54) AIC 349 (Gauhati).

24.2 Unregistered will deed in respect of agricultural land not admissible in evidence in UP due to bar of Section 169(3) of UP ZA & LR Act,1950: All matters relating to right in or over agricultural land including transfer, alienation and devolution were exclusively within the domain of State Legislature. Under UP Zamindari Abolition and Land Reforms Act, 1950, restriction has been imposed by the State Legislature of Uttar Pradesh by way of amendment in Section 169(3) of the said Act regarding devolution of agricultural land except by way of written and registered deed. Restriction so imposed by State Legislature upon rights of bhumidhar under Special Act is in conformity with the objects and purpose of the Act which has been framed to reform law relating to land tenure so as to check any unscrupulous person from claiming land of bhumidhar to the exclusion of his heirs and legal representatives. There is no conflict in provincial legislation namely UP Zamindari Abolition and Land Reforms Act,1950 and the central legislations i.e. Indian Succession Act,1925 and Registration Act, 1908 with regard to devolution of interest in land of tenure-holder u/s 17 of the Registration Act, 1908 registration has been made compulsory for all non-testamentary instruments. Registration of will has not been made compulsory under Succession Act, whereas UP Z.A. & L.R. Act provides restriction in this field. Restriction imposed by the State Govt. cannot be said to be in conflict with laws made by Central Legislature. There is no repugnancy as such and it cannot be said that State Legislature was not competent to legislate. It is settled law that when question arises with regard to legislative competence of legislature in regard to particular enactment with reference to entries in various lists, it is necessary to examine the pith and substance of the Act and find out if the matter comes substantially within item in list. Scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of legislation are to be focused at. It is fundamental principle of Constitutional law that everything necessary to exercise of power is included for grant of power itself. Non-obstante clause is sometimes added to a Section in the beginning with a view to give enacting part of Section, in case of conflict, overriding effect over the provisions of the Act mentioned in that clause. In other words, in spite of the provisions of the Act mentioned in that clause, enactment following it, will have its full operation or that provisions enacted in non-obstante Clause will not be impediment in operation of the enactment. It is well known rule of interpretation that on construction, entire Act must be looked into as a whole. Court cannot add words to Statute or read words into it which are not there. When purpose and object or reason and spirit pervading through the Statute is clear, Court must adopt purposive approach in interpreting such Statute. Restriction imposed by Section 169(3) of the UP ZA & LR

Act, 1950 upon bhumidhar for devolution of his bhumidhari land would be operative w.e.f. 23.08.2004 i.e. date of commencement of the Amendment Act by which registration of will has been made compulsory. Restriction so imposed by aforesaid provision is on the right of bhumidhar to bequeath his property except by way of registered instrument. Restriction is not upon person who is claiming his right on the basis of the Will rather it is on testator of the Will. Thus, no, bhumidhari land could be bequeathed after 23-8-2004 except by way of registered will. Whole idea is that land of village remains with the tiller of the land. See: Jahan Singh Vs. State of UP, AIR 2017 All 247 (paras 13, 14, 21, 22, 24, 26 & 27).

25.1 **Certified copy of will deed admissible in evidence:** A certified copy of a will deed is admissible in evidence for purposes of proving contents of the original document in view of Sections 63(1), 65(f) and 79 of the Evidence Act read with Section 57 of the Registration Act. See: Hameed Vs. Kanhaiya, AIR 2004 All 405.

25.2 **How to prove will-deed?:** If objection is raised on genuineness of the will-deed by pointing out suspicious circumstances against the will-deed, the propounder has to remove them. Propounder has to establish that the testator had signed the will in a sound disposing state of mind and understanding the nature and effect of disposition. See: Leela Vs. Muruganantham, (2025) 4 SCC 289 (Paras 25-28)

24. **A fact learnt from other person not admissible in evidence:** Statement of the wife of the deceased before the court made on the basis of what she had learnt from her husband, of which she had no personal knowledge, was found not admissible in evidence under Section 32 of the Evidence Act. See: Subhash Harnarayanji Laddha Vs. State of Maharashtra, (2006) 12 SCC 545.

25. **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)

26. 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,1872 (now Section 6 of the BSA, 2023).But mere abscondence itself cannot establish the guilt of the accused. See :

(i) Sekaran Vs State of Tamil Nadu, (2024)2 SCC 176

(ii) Sidhartha Vashisht alias Manu Sharma Vs. State of NCT of Delhi, 2010 (69) ACC 833 (SC)

27. 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 withourt 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 doing about, the rule to be applied is that a man is presumed to intend the natural consequences of his acts. Time gap between the state of drunkenness and the crime is also relevant. See: Paul Vs. State of Kerala, (2020) 3 SCC 115.

28. Burden u/s 106 of the Evidence Act (now Section 109 of the BSA, 2023), 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 characteristic attributes attendant on death due to homicidal hanging following strangulation, the Supreme Court held that the possibility of suicide by wife was reinforced and conviction of the husband was set aside. The Supreme 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 **:**

(i) Darshan Singh Vs. State of Punjab, (2024) 3 SCC 164 (Three-Judge Bench).

(ii) Josh Vs. Sub-Inspector of Police, Koyilandy, (2016) 10 SCC 519.

29. Disposal of objections regarding relevancy of questions put to witness during examination & duty of trial judge : "Criminal Trial- Sections 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. Court should now make a note of objections, mark objected document tentatively as

exhibited and decide the objection at final stage." See: Bipin Shantilal Panchal Vs. State of Gujarat, 2001 CrLJ 1254 (SC)

30. **Trial Judge has vast and unrestricted power to put any question, relevant or irrelevant, to witness u/s 165 of Evidence Act (now Section 168 of BSA, 2023):** Section 165 of the Evidence Act (now Section 168 of BSA, 2023) confers vast and unrestricted powers on the trial court to put any question it 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 caricature 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).

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

32. **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:

(i) Goverdhan Vs. State of Chhattisgarh, (2025) 3 SCC 378 (Paras 92-94)

(ii) Bable Vs. State of Chhattisgarh, (2012) 11 SCC 181 (Para 14)

33. **Evidence of character or consent of rape victim when not relevant ? (Section 53-A, Evidence Act w.e.f. 03.02.2013, now Section 48 of the BSA, 2023)** : In a prosecution for offence u/s 354, 354-A, 354-B, 354-C, 354-D, 376, 376-A, 376-B, 376-C, 376-D, 376-E of the Indian Penal Code, 1860 (now under BNS, 2023) or for attempt to commit any such offences, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

34. **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. Section 114(e) of the Evidence Act is also **relevant** here.See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernandeo Lopez, AIR 1989 SC 2206 (Three-Judge Bench).

35. **Mere absence of certificate of doctor would not render the DD unreliable :** Mere absence of certificate of doctor would not render the DD unreliable particularly when the doctor was not present in the hospital at the relevant time. See : Raju Devade Vs. State of Maharashtra, AIR 2016 SC 3209.

36. **Dying Declaration made by gestures and writings admissible in evidence:** DD made by gestures and writings is admissible in evidence. Such DD is not only admissible but possesses evidentiary value. See :

Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)

37. Relevancy of entry in public record or an electronic record made in performance of duty: As per Section 35 of the Evidence Act (now Section 29 of the BSA, 2023), 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.

38. Pre-conditions for admissibility of tape recorded conversation: A tape recorded statement is admissible in evidence, subject to the following conditions:

(i) 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.

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

(iii) Possibility of tampering with, or erasure of any part of, the tape recorded statement must be totally excluded.

(iv) The tape recorded statement must be relevant.

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

(vi) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances. See :

(1) Ram Singh & others Vs. Col. Ram Singh, 1985 (Suppl) SCC 611

(2) State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Criminal) 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.*

39. Disc" is a 'document' in Evidence Act and admissible in evidence as per Section 294(1) CrPC (now Section 330 of the BNSS, 2023) 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 the document filed by the defence. See : State of UP Vs. Ajay Kumar Sharma, 2016 (92) ACC 981 (SC)*(para 14)*.

40. **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 description 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 creditworthy 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)

41. **CCTV, DVD, CD, Pen Drive etc and mode of proving their contents**: 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.

42. **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)

43. **Mode of proving contents in primary or secondary electronic devices like CCTV footage, 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.

44. '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 machinery even on govt. facebook page does not by 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.

45. Whatsapp message not being in public view not to constitute offence under 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.

46. 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. **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

48. **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. **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. **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.

51. **Right of private defence and 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 malicious. 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

52. Alibi (Section 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) Kamal Prasad Vs. State of MP, (2023) 10 SCC172 (Para 24)
(ii) Binay Kumar Singh Vs. State of Bihar, AIR 1997 SC 322
(iii) State of Haryana Vs. Sher Singh, AIR 1981 SC 1021

53. **Alibi and burden of its 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) Kamal Prasad Vs. State of MP, (2023) 10 SCC172 (Para 24)
(ii) Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)
(iii) Sandeep Vs. State of UP, (2012) 6 SCC 107

54. **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.

55. **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 :

(i) Kamal Prasad Vs. State of MP, (2023) 10 SCC172 (Para 24)
(ii) Om Prakash Vs. State of Rajasthan & another, (2012) 5 SCC 201

56. **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.

57. **Principles regarding plea of alibi:** Principles regarding plea of alibi are as under:

(i) It is not part of the General Exceptions under IPC and is instead a rule of evidence under Section 11 of the Evidence Act, 1872.

(ii) This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

(iii) Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

(iv) The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

(v) It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of "strict scrutiny" is required when such a plea is taken. See: Kamal Prasad Vs. State of M.P., (2023) 10 SCC 172 (para 24).

58. 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)*

59. Findings of civil court whether relevant in criminal cases? : 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.

60. 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

61. 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).

62. Authenticity of entries of public document like school register or T.C. may be tested by court: So far as the entries made in the official record by an official or person authorized in performance of official duties are concerned, they may be admissible u/s 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register or school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal case. See:

(i) C. Doddanarayana Reddy Vs. C. Jayarama Reddy, (2020) 4 SCC 659 (Para 18)

(ii) Madan Mohan Singh Vs. Rajni Kant, (2010) 9 SCC 209 (Para 20)

(iii) Updesh Kumar Vs. Prithvi Singh,(2001) 2 SCC 524

(iv) State of Punjab Vs. Mohinder Singh, (2005) 3 SCC 702.

63. **Family Settlement: Whether its registration is compulsory?:** A memorandum of family settlement or family arrangement requires compulsory registration as per Section 17 (2) (v) of the Registration Act, 1908 only when it creates or extinguishes for the first time any right, title or interest in an immovable property among the family members. If it records only pre-existing right in the immovable property or arrangement or terms already settled between the parties in respect of the immovable property, it does not require registration. See:
    (i) Ravinder Kumar Grewal Vs. Manjit Kaur, (2020) 9 SCC 706
    (ii) Kale Vs. Director of Consolidation, (1976) 3 SCC 1194

64. **A compromise decree in respect of immovable suit property does not require registration:** A compromise decree passed by a court in respect of immovable property which is subject matter of the suit would ordinarily be covered by Section 17(1)(b) of the Registration Act and would not require registration. But if the compromise is entered into in respect of an immovable property other than the subject- matter of the suit or proceeding would be covered under Section 17 (2) (vi) of the Registration Act and the same would require registration**.** See: Khushi Ram Vs Nawal Singh, AIR 2021 SC 1117 (Paras 18 &19)

65. **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)

66. **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 common 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.

67. **Sniffer Dog and value of evidence of its 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.

68. **Tracker dogs' performance report and 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

69. **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)

70. **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.

71. **Admissibility of evidence, and not manner of its collection, matters:** The Indian Evidence Act does not necessitate procedural morality during evidence collection. The general rule continues that if the evidence is admissible, it does not matter how it has been obtained**.** See:

(i) Umesh Kumar Vs State of AP, (2013) 10 SCC 591
(ii) State of MP Vs Paltan Mallah, (2005) 3 SCC 169
(iii) K.S. Puttaswami Vs Union of India, (2017) 10 SCC 1
(iv) PUCL Vs Union of India, (1997) 1 SCC 301

72. **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).

73. **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) Sambhubhai RaisangbhaiPadhiyar, 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

74. 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

75. 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.

76. 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)

77. Oath to child witness: Proviso to Sec. 4(1) of the Oaths Act, 1969 reads thus: "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."

78. Omission to administer oath (Sec. 7 of the Oaths Act, 1969): Section 7 of the Oath Act, 1969 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."

79. **IP in presence of Police officer or IO inadmissible as per Section 162 CrPC:** TIP conducted in presence of police officer or IO is inadmissible as per Section 162 CrPC. See: Gireesan Nair vs State of Kerala, (2023) 1SCC180.

80. **Admission of a fact not in issue and not relevant does not amount to admission:** If a statement in relation to a fact is not in issue and not relevant, then it is not an admission. See: Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)

81. **Admission to be admissible must be clear, unequivocal and not ambiguous:** An admission to be admissible in evidence must be clear, unequivocal and not ambiguous. See: Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)

82. **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.

83. **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)

84. **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 appellant was set aside by the Supreme Court. See: Raja Alias Ayyappan Vs. State of Tamil Nadu, (2020) 5 SCC 118

85. **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) Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731 (Five-Judge Bench).
(ii) Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri, AIR 2011 SC 760.
(iii) Mukul Rani Varshnei Vs. Delhi Development Authority, (1995)6 SCC 120.
(iv) Sunder Lal Vs. State of Rajasthan, (2007) 10 SCC 371

86. **Hearsay evidence supported by substantive evidence of other witnesses is admissible:** Normally, a hearsay witness would be inadmissible but when it is corroborated by substantive evidence of other witnesses, it would be admissible. See**:** Neeraj Dutta Vs. State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Para 52)

87. **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.

88. **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)

89. **Statement of a witness recorded u/s 161 CrPC is inadmissible in evidence:** Statement of a witness recorded u/s 161 CrPC is inadmissible in evidence and cannot be relied upon or used to covict the accused. However, statement recorded u/s 161 CrPC can be used only to prove contradictions and/ or omissions. See**:** Parvat Singh Vs. State of M.P., (2020) 4 SCC 33.

90. Statement of witness u/s 161 CrPC not substantive piece of evidence :The statement of a witness made during investigation u/s 161 CrPC is not a substantive piece of evidence but can be used primarily for the following limited purposes :

(i) to contradict such witness by the accused u/s 145, Evidence Act.

(ii) to contradict such witness also by the prosecution but with the leave of court.

(iii) to re-examine the witness, if necessary. See : V.K. Mishra Vs. State of Uttarakhand, (2015) 9 SCC 588 (Three-Judge Bench).

91. No conviction merely on statement of witness u/s 164 CrPC : 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.

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)

92. Prior statement of witness u/s 161 CrPC must be proved by IO before it is put to witness to contradict him u/s 145 of Evidence Act: Unless the portion of the prior statement of the witness u/s 161 CrPC shown to him in order to contradict him has been proved through the Investigating Officer, it cannot be reproduced in the deposition of the witness to contradict him. The correct procedure is that the trial judge should mark the portion of the prior statements of the witness to contradict him. The said portions can be put in bracket and marked as AA, BB, etc. The marked portions cannot form a part of the deposition unless the same are proved. See: Vinod Kumar Vs. State NCT of Delhi, (2025)3 SCC 680 (Para 16)

93. "Integrity" & its meaning : As regards the meaning of the word "integrity", the Hon'ble Supreme Court in the case of Vijay Singh Vs. State

of UP, (2012) 5 SCC 242 has defined the said word thus : "integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity."

94. Dismissal of Civil Judge for demand and acceptance of graft found proportionate: There was proof for demand and acceptance of illegal gratification to do judicial work by a probationer Civil Judge of Maharashtra. Evidence adduced during disciplinary enquiry was sufficient to prove proclivity and corrupt conduct on his part. The probationer Judge was dismissed from service by the Bombay High Court. The Supreme Court held that it cannot re-appreciate evidence charge by charge and reach a conclusion different from that of the Disciplinary Authority. Allegations of bias against the enquiry Officer were not warranted. Punishment of dismissal was found proportionate. See: High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil & Another, AIR 1997 SC 2631.

95. Enquiry officer cannot examine-in-chief prosecution witnesses as representative of disciplinary authority: An enquiry officer has to be independent and he cannot act as a representative of the disciplinary authority. If the enquiry officer starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting the evidence to punish the employee, principle of bias comes into play. In the present case, the enquiry officer had himself led the examination-in-chief of the prosecution witnesses by putting questions and acted as a prosecutor also. The Supreme Court held that capacity of the enquiry officer of an independent adjudicator was lost which adversely affected his independent role of adjudicator. Since the principle of bias as envasiged in the principles of natural justice had come into play, the enquiry proceedings had got vitiated and were set aside. See: (i) Union of India vs Ram Lakhan Sharma, (2018) 7 SCC 670 (Paras 28 & 29) & (ii) State of U.P vs Saroj Kumar Sinha, (2010) 2 SCC 772 (Para 28 & 30).

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