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UNIT 1

ANALYSIS OF THE TERM EVIDENCE

Evidence" is the raw material which a judge or adjudicator uses to reach "findings of fact". The findings of fact that the evidence generates are - for all their flaws - "what happened" for all intents and purposes of the legal proceeding. If you do not agree with the fact-finding that has been made (or even if you know it to be wrong), recognize that the rules of evidence are the best rules that law know of to reach the necessary goal of fact-finding.

"In its original sense the word 'evidence' signifies, the state of being evident i.e. plain, apparent or notorious. But It is applied to that which tends to render evidence or generate proof The fact sought to be proved is called the principal fact; the fact which tends to establish it, the evidentiary fact"

Law of Evidence is the most important branch of adjective law. The Law of Evidence helps the Judges to separate wheat from chaff amongst the mass of facts that are brought before him, besides upon their just and Material bearing, learns to

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draw correct inferences from circumstances to weigh the value of direct testimony

Fundamental Rules/ Principles of Evidence:

One of the great object of Evidence Act is to prevent uncertainty in the admissibility of the evidence and to introduce more correct and uniform rule of practice. The main principles which underline the law of evidence are as follows:

1) Evidence should be confined to matter / fact in issue:

According to this rule evidence can be given only on those facts, which might be asserted by one party and denied by the other party. Section 5 of the Indian Evidence Act, 1872 provides that evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant and no others.

For instance - 'A' claims repayment of a debt on the basis of promissory note executed by 'B'. 'B' Denise it. 'A' has a letter in which 'B' admitted that he had written/ executed a promissory note. It is not sufficient / relevant because in fact in issue is whether 'B' had executed a promissory note (but not the letter). Similarly, if X claims to be qualified, he has to show the testimonials relating to his qualifications. For example degree certificates and not the document pertaining to his properties.

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Hearsay Evidence

Hearsay evidence signifies the evidence heard and said. It is also known as second hand unoriginal evidence, a witness is merely reporting not what he himself saw or heard but what he has learnt in respect of the fact through the medium of the third person. It is a statement made by a witness of what has been said and declared out of Court by a person and not before the Court. Evidence given by a witness may be oral or documentary. According to the Section 60 of the Indian Evidence Act, 1872 oral evidence to be admissible, it must be direct. In other words, hearsay evidence is no evidence.

Best Evidence must be given in all the cases:

It is well established that the best means of evidence must be given in all cases. This rule is based on the principle that if anybody wants to know about a fact, the best proof is what he perceives through his own senses. This principle is used in connection with documentary evidence to prefer primary evidence to secondary evidence and in connection with oral evidence to exclude hearsay evidence.

The main object of the evidence Act is to prevent laxity in the admissibility of evidence, and to introduce a more correct and uniform rule of practice that was previously vague.

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In other words, its main object is to help the Courts to ascertain the truth, and to avoid confusion. The rules relating to law of evidence in the administration of justice of great importance. No substantive law can be enforced without the help of rules of the law of evidence.

Meaning and Definition:

Meaning:

Meaning the expression 'Evidence' is derived from the Latin word 'Evidentia'. Evidentia means 'being clear' or 'plain' or 'apparent clear'.

The Latin term 'evidens evidare' means to "show clearly". According to Phispon, evidence means, the testimony, whether oral, documentary, or a real, which may be legally received. In order to prove or disprove some fact in dispute.

Definitions:

According to Taylor, "evidence is adduced to prove or disprove any fact the truth of which is submitted to judicial investigation."

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Advanced Learner Dictionary:

"Evidence means anything that gives reason for believing something that makes clear or prove something."

The Definition of Evidence given under Section.3 of Indian Evidence Act:

"Evidence". "Evidence" means and includes

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

(2) All documents including electronic records (w.e.f. 17/10/2000) produced for the inspection of the Court, such documents are called documentary evidence.

The word evidence as defined in Section 3 of the Evidence Act signifies only the instruments by means of which relevant facts are brought before the court. The instruments adopted for this purpose is witnesses and documents.

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Kinds of Evidence:

There are following kinds of evidence:

Direct Evidences

It is the testimony of a witness to the existence or non-existence of the fact or fact-in-issue. It is evidence of fact actually perceived by a witness with one of his own senses.

Personal evidence:

Personal Evidence is an oral testimony of the witnesses, which is afforded by human agent by way of disclosure or by voluntarily signs.

Original Evidence

Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses for example - A says that he saw B murdered C with sword.

Hearsay Evidence:

It is also known as second hand or unoriginal evidence, a witness is merely reporting not what he himself saw or heard but what he has learnt in respect of the fact through the medium of the third person. It is a statement made by a witness of

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what he has been said and declared out of court by a person and not before the Court.

Primary Evidence:

Primary evidence means the document itself produced for the inspection the Court. (Section 62)

Secondary evidence:

Secondary evidence means inferior or substitutionary evidence which itself indicates the existence of more original sources of information (Section 63) [See also... When Secondary Evidence is Admissible.

Oral Evidence

All statements which the Court permits or requires to be made before it by the witnesses, in relation to matter of fact and inquiry; such statements are called oral evidence.

Documentary Evidence:

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

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Judicial Evidence:

It is evidence received by Courts of Justice in proof or disproof of facts, the existence of which comes in question before them. Judicial evidence is a species of the genus evidence and is for the most part nothing more than natural evidence, modified by rules of positive law

Non-Judicial Evidence:

Evidence given in the proceeding before the Magistrate or Officer not in a judicial capacity but in an administrator one, is non-judicial evidence, for example evidence in proceedings under Section 164 of Cr. P. C. for example recording of confession and Statements.

Indirect or Circumstantial Evidence:

In Cases, Where direct evidence is not available, then circumstantial evidence can be resorted to

Circumstantial Evidence is that which tends to establish the fact-in-issue by proving another fact which does not itself conclusively established that fact, affords and interference as to its existence.
Real Evidence: Real material Evidence is the evidence of fact brought to the knowledge of the court by inspection of physical object and not by information

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derived from witness or documents for example - stolen property, weapons, etc.

The idea of circumstantial evidence is dealt with in the Act elaborately. Circumstantial evidence means the evidence of circumstances and is sometimes referred to as presumptive evidence.

Suppose, A is charged with the murder of B. At the trial a witness C. on behalf of prosecution, gives evidence that he saw a stab B or, C may make the statement that he saw A running away from the place where B's corpse was found, with a blood-stained knife in his hand. In the first case the evidence given by C is usually referred to as direct evidence, and in the second, as circumstantial evidence. Because, in the first case, C makes a statement about the very question which the Court has to decide, namely, whether A stabbed B ; and the second case, C makes a statement about the circumstance, a relevant fact, which, if believed, may convince the court of the guilt of A , therefore, we might say that we when Evidence is given of the very fact in issue, that is , of the matter in controversy, it is called direct evidence, and when evidence is given of circumstances, or relevant facts, from which an inference may be drawn about the fact in issue, then it is called circumstantial evidence.

Relevant Cases

1) A.C. Lagu vs. State of Bombay, AIR 1960 SC 500 ; 1960 SCJ 779

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In this case the accused was a family doctor. He was tried for the murder of his patient, a rich women and sentenced to death on the basis of circumstantial evidence.

2) Kalua Vs. State Of U.P. AIR 1958 SC 180

In this case Kalua was charged with the murder of the deceased by shooting him a pistol. The Circumstantial evidence proved were :

A) Few days before the killing of the deceased the accused had held out a threat against him

B)A cartridge was found near the cot of the deceased.
C)A pistol was recovered from his house
D) Fire-Arm Expert gave his opinion that cartridge found near the cot of the dead body was fired from pistol produced by accused.

It was held that there could be no room for thinking in the circumstances established in this case, that anyone else than the accused might have shot the deceased.

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CIRCUMSTANCIAL EVIDENCE

Circumstantial evidence is used in criminal courts to decide the fate of accused by establishing guilt or innocence through reasoning. According to Benthem witnesses are the "eyes and ears of justice". But testimony of witnesses is not always credible; therefore, facts are provable not only by witnesses but also by circumstances.

In words of Stephen Leacock, “My evidence for this assertion is all indirect, it’s what we call circumstantial evidence the same the people are hang for..”. Giving the importance of circumstantial evidence in criminal cases and discussing the present role of circumstantial evidence, in nailing the two most leading cases, of Manu Sharma and Santosh Kumar, the same evidence that the trial court had dismissed as being insufficient or inadequate for conviction. Although it seems self-evident, that meaning of evidence must be articulated first, before the next steps in the analytical process may be pursued.

Presumptions As To Indian Evidence Act Documents

Presumptions are inferences which are drawn by the court with respect to the existence of certain facts. When certain facts are presumed to be in existence the party in whose favor they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which

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alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.

Presumptions can be defined as an affirmative or negative inference drawn about the truth or falsehood of a fact by using a process of probable reasoning from what is taken to be granted. A presumption is said to operate where certain fact are taken to be in existence even there is no complete proof. A presumption is a rule where if one fact which is known as the primary fact is proved by a party then another fact which is known as the presumed fact is taken as proved if there is no contrary evidence of the same. It is a standard practice where certain facts are treated in a uniform manner with regard to their effect as proof of certain other facts. It is an inference drawn from facts which are known and proved. Presumption is a rule which is used by judges and courts to draw inference from a particular fact or evidence unless such an inference is said to be disproved.

Presumptions can be classified into certain categories:

- ***Presumptions of fact.***
- ***Presumptions of law.***
- ***Mixed Presumptions.***

Presumptions of fact are those inferences which are naturally and logically derived on the basis of experience and observations in the course of nature or the constitution of the human mind or springs out of human actions. These are also

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called as material or natural presumptions. These presumptions are in general rebuttable presumptions.

Presumptions of law are those inferences which are said to be established by law. It can be subdivided into rebuttable presumptions of law and irrebuttable presumptions of law. Rebuttable Presumptions of law are those presumptions of law which hold good until they are disproved by evidence to the contrary. Irrebuttable Presumptions of Law are those presumptions of law which are held to be conclusive in nature. They cannot be overturned by any sort of contrary evidence however strong it is.

Mixed Presumptions are certain inferences which can be considered as observations of law due to their strength or importance. These are also known as presumptions of mixed law and fact and presumptions of fact recognized by law.

This project primarily deals with discretionary presumptions with respect to documents under the Indian Evidence Act. Discretionary presumptions relating to documents are given under Section 86, 87, 88, 90 and 90-A of the Indian Evidence Act.

ANALYSIS OF SECTION 4 OF THE INDIAN EVIDENCE ACT

Section 4 of the Indian Evidence Act deals with three categories of presumptions

- Discretionary Presumptions
- Mandatory Presumptions

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- Conclusive Proof

The Sections of the Indian Evidence Act which deal with Discretionary Presumptions relating to documents are sections 86, 87, 88, 90 and 90-A. These Presumptions are those in which the words may presume are used in the sections and the words may presume is used signifies that the courts of law have discretion to decide as to whether a presumption is allowed to be raised or not. In the case of such presumptions the courts of law will presume that a fact is proved unless and until it is said to be disproved before the court of law or it may call for proof of a fact brought before it. The Sections of the Indian Evidence Act which deal with Mandatory Presumptions are Section 79, 80, 80-A, 81, 82, 83 85 and 89. These Presumptions are those in which the words shall presume is used. In case of such presumptions the courts of law will presume that a fact before it is proved until and unless it is disproved. The words shall presume signify that the courts have to mandatorily raise a presumption and such a presumption which is raised shall be considered to be proved unless and until the presumption is said to be disproved and there is no discretion left to the court therefore there is no need for call of proof in this case. It is like command of the legislature to the court to raise a presumption and the court has no choice but to do it. The similarity between discretionary and mandatory presumptions is that both are rebuttable presumptions.

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Conclusive Proof is defined under Section 4 that one fact is said to be conclusive proof of another fact when the court shall on the proof of a certain fact regard another fact to be proved and the court shall not allow any evidence which shall to be given for the purpose of disproving such a fact. Conclusive Proof is also known as Conclusive Evidence. It gives certain facts an artificial probative effect by law and no evidence shall be allowed to be produced which will combat that effect. It gives finality to the existence of a fact which is sought to be established. This generally occurs in cases where it is in the larger interest of society or it is against the governmental policy. This is an irrebuttable presumption.

The general rule about burden of proof is that it lies on the party who alleges the fact to prove that the fact exists. But a party can take advantage of the presumptions which are in his favor. If the prosecution can prove that the conditions of a presumption are fulfilled and such a presumption is of rebuttable nature then the burden of prove to rebut it is always on the party who wants to rebut it.

RES GESTA

Res gestae (a Latin phrase meaning "things done") is an exception to the rule against Hearsay evidence. Res gestae is based on the belief that because certain statements are made naturally, spontaneously and without deliberation during the course of an event, they leave little room for misunderstanding / misinterpretation upon hearing by someone else (i.e. by the witness who will later repeat the

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statement to the court) and thus the courts believe that such statements carry a high degree of credibility. Statements which can be admitted into evidence as Res gestae fall into three headings:

1. Words or phrases which either form part of, or explain a physical act,
2. Exclamations which are so spontaneous as to belie concoction, and
3. Statements which are evidence as to someone's state of mind.

(In some jurisdictions the Res gestae exception has also been used to admit police sketches.)

The principle underlying S.6, the following is sometimes termed as res gestae. This phrase means simply a transaction, "thing done", "the subject matter", "res gestae" of any case properly consists of that portion of actual world's happenings out of the right or liability, complained or asserted in the proceeding, necessarily, arises. Apparently the phrase is well established in the Law of Evidence. It is necessary therefore, to understand what it really means. That has been used in two senses. In the restricted sense it means world's happening out of which the right or liability in question arises. In wider sense it covers all the probative facts by which res gestae are reproduced to the tribunal where the direct evidence of witness or perception by the court is unattainable. In restricted meaning res gestae imports the conception of action by some person producing the effects for which the liability is sought to be enforced in action. To be clear, in the restricted sense "facts which constitute the res gestae must be such as so connected with the very transaction or fact under investigation as to constitute a part of it."

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Whatever act or series of acts constitute, or in point of time immediately accompany and terminate in. The principal act charged as an offence against the accused from its inception to its consummation and whatever may be said by either of the parties during the continuance of the transaction, with reference to it, including herein what may be said by the suffering party, though in absence of the accused during the continuance of the action or the latter, form part of the principal transaction and may be given in evidence as part of res gestae of it. While, on the other hand, statements made by the complaining party, after all action on the part of wrong-doer has ceased and some time has elapsed do not form part of res gestae and should be excluded.

Section 6 of the Indian Evidence Act, 1872 states that, "facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

CRIMINAL CONSPIRACY SECTION 10

Things said or done by conspirator in reference to common intention:- Where there is reasonable ground to believe that two or more person have conspired together to commit an offence or an actionable wrong, anything said, done, or written by any one of such person in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the person believed to be so conspiring, as well for

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the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

This section talks about the things said, done or written by the conspirator in reference to common intention. In this section there are some expressions have been used as thins said, done or written, in reference to their common intention. Each of the word has its own importance in the application of this section and all these things must be properly taken into consider by the courts before applying this section.

This section is based on the "theory of implied agency". So the things said or done by one conspirator are admissible against the other if they relate to the conspiracy.

Meaning of conspiracy:-

The term conspiracy means a secret plan by a group to do something unlawful and harmful or something which is not unlawful but by unlawful means.

According to Stephen, "when two or more persons agree to commit any crime, they are guilty of conspiracy whether the crime was committed or not".

It is not necessary in order to constitute a conspiracy that the acts agreed to be done should be acts which if done should be criminal. A conspiracy consists of unlawful combination of two or more persons to do that which is contrary to law or to do

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that which is wrongful towards other persons. A mere agreement to commit an offence becomes criminal conspiracy.

In Indian penal code section 120A the term conspiracy has been defined as: When two or more persons agree to do, or cause to be done, an illegal act or an act which is not illegal but illegal by means, such an agreement amount to criminal conspiracy.

The Supreme Court also defined in bhagwant swarup v. State of Maharashtra, conspiracy as two or more corrupt persons agreeing together to do, by concerted action, something unlawful either as a mean or as an end. Thus the conspiracy is a kind of agreement to do an unlawful act, or a lawful act by lawful means. Being contrary to law the conspiracy is always hatched in secrecy, and executed in darkness of the facts.

ADMISSIONS

Admission is a voluntary acknowledgment of a fact but importance is given to those admissions only that go against the interests of the person making the admission. An admission becomes an important piece of evidence against a person.

On the other hand, anybody can make assertions in favor of themselves. They can be true or false and therefore, such assertions do not have much evidentiary value.

Like, for example, one can keep on saying that a certain house belongs to him, but that does not mean it is necessarily true.

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Admission as per Indian Evidence Act

Section 17 of Indian Evidence Act defines Admission as a statement which may be in oral, documentary, or electronic form, suggesting any inference as to any concerned fact and is made by any of the persons and under the circumstances mentioned below:

Section 18 Admissions by party to proceeding or his agent; by suitor in representative character; by party interested in subject-matter; by person from whom interest derived –

- Statements made by the persons who are directly or indirectly a party to a suit.
- Statements made by persons who are suing or being sued in a representative character are admissions, only if those statements were made by the party while being in that representative character.

Similarly, statements made by persons who have a pecuniary interest in the subject matter of the proceeding and statements made by persons from whom such interest is derived by the parties in suit, are also admissions if they are made while the maker had such an interest.

For example, A bought a piece of land from B. Statements made by B at the time when B was the owner of the land is admissions against A.

Section 19 – Admissions by persons whose position needs to be proved:

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Statements made by persons whose position or whose liability is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against the made if they are made whilst the person making them occupies such position or is subject of such liability.

Illustrations:

P undertakes to collect rent for Q.

Q sues P for not collecting rent due from R to Q.

X denies that rent was due from Z to Y.

X statement by Z that he owned Y rent is an admission, and is a relevant fact as against X, if X denies that Z did owe rent to Y.

Section 20 – Admission by persons expressly referred to by party to suit – Statements made by any persons to whom a party (to the suit) has expressly referred in reference to a matter in dispute for information, are admissions.

Illustration –

The question is, whether a horse sold by P to Q is sound P says to Q "Go and ask R. R knows all about it" R's statement is an admission.

In the case of Chekham Koteshwara Rao v. C Subbarao, AIR 1981, SC held that- before the right of a party can be taken to be defeated on the basis of an alleged

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admission by him, the implication of the statement must be clear and conclusive. There should not be any doubt or ambiguity.

Further, it held that it is necessary to read all of his statements together and hence, stray elements elicited in cross examination cannot be taken as admission.

Section 21 Proof of admissions:- Admissions are relevant and may be proved as against the person

- who makes them or
- his representative in interest and
- not by or on behalf of the person
- who makes them or by his representative in interest

Except in following cases:

- it is of a nature that the person making it, if were dead, it would be as relevant as between third persons under section 32 of the code
- it consists of a statement of existence of any state of mind or body,
- it is relevant otherwise than as an admission.

What is the impact of an admission?

In **Biswanath v. Dwaraka Prasad** The apex court held that the: Admissions are usually telling against the maker unless reasonably explained. There is no

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necessary requirement of the statement containing the admission having to be put to the party because it is evidence proprio vigore.

Bharat Singh case:

The court observed that the: Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions does not matter.

Bhogilal chunilal Pandya v. State of Bombay

The court observed held: Statements made by persons may be used as admissions against them even when they mayn't have been communicated to any other person. Like, for example, statements in the Account books of a person which shows that he was indebted to another person are admissions and can be used against him even though these statements were never communicated to any other person.

CONFESSION OF CO-ACCUSED

Under the Indian Evidence Act, confession comes under the heading of admission, and that implies that confessions are a subset of admissions. However, surprisingly, the term "confession" has not been defined in the Act. Justice Stephen in defined confession as "an admission which is being made by a person who has

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been charged with any crime and such admission suggests the inference that he had committed the crime".

In the case **of Palvinder Kaur v. State of Punjab** the Supreme Court stated that, for any admission to be a confession, the person in such statement must either admit the guilt in terms or admit substantially all the facts which constitute the offence. The court further stated that a mixed up statement which contains some confessional statement will still lead to the acquittal of accused, and hence isn't a confession.

However in the case of **Nishi Kant Jha v. State of Bihar** the Supreme Court held that there was nothing wrong or relying on a part of the confessional statement and rejecting the rest. The court further stated that when there is enough evidence to reject the exculpatory part of the accused person's statements, the Court may rely on the inculpatory part.

SECTION 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence

"When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person makes such confession."

Underlying Principle

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When more than one person is jointly tried for the same offence, then in such cases the confession of one of the accused if found to be admissible as evidence, must be taken as a confession against all other accused persons who are being jointly tried.

Where the confession of one accused is accepted as evidence by the court, the other accused persons in the case don't have opportunity to cross-examine such accused, and hence, this is entirely contradictory to the principle of jurisprudence according to which it is opposed to using a statement against a person without giving him the opportunity to cross-examine the person making the statement.

In the case of Kashmira Singh v. State of Madras, the accused Kashmira, Gurudayal who was the brother of Kashmira, Prithipal son of Gurudayal and one Gurubachan, a rickshaw puller in this case was being jointly accused of conspiracy and killing a child. The Supreme Court in this case issued some conditions which needed to be fulfilled before taking into consideration the confession of one of the accused against all others.

- ***Joint trial:*** The person who is making a confession and the other accused persons are being tried jointly.
- ***Same offence***: All the accused are being tried for the same offence.
- ***Confessions***: The confession must affect the confessioner as well as the other accused persons.

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Section 30 of the Indian Evidence Act is in the nature of empowering the Court to take into consideration a confession made by one of the accused against the others when they are jointly tried. On one hand the confession, if is voluntary and is considered true and admissible by the court, of an accused is a very strong piece of evidence against himself, however on the other hand it is a weak piece of evidence against other co-accused.

In its strict legal sense, the confession of a co-accused does not come within the definition of evidence. The reason behind this is that the person who is making such confession hasn't stepped into the witness box and that his testimony has not been subjected to cross-examination, thus such confession is, in reality, a type of ex-parte evidence against other accused persons.

DYING DECLARATION

Section 32: Cases in which statements of relevant fact by person who is dead or cannot be found.- statement, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expanse which, under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death.

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(2) Or is made in course of business.

(3) Or against interest of maker.

(4) Or gives opinion as to public right or custom or matters.

(5) Or relates to existence of relationship.

(6) Or is made in will or deed relating to family.

(7) Or in document relating to transaction mentioned in section 13, clause (a).

(8) Or is made by several persons and expresses feelings relevant to matter in question.

But here, we are studying about 'dying declaration' which deals with the cases relate to cause of death. It is mentioned in sub-section (1) of section 32 of Indian Evidence act.

Section 32 (1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under exception of death, and whatever may be the

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nature of the proceeding in which the cause of his death comes into question.

Illustration

The question is, whether A was murdered by B; or
A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration wrong under consideration are relevant facts.

In Ulka Ram v. State of Rajasthan Apex Court held that, "when a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted into his death, in case in which cause of his death comes in question is admissible in evidence, such statement in law are compendiously called dying declaration."

The Apex Court in its decision in P.V. Radhakrishna v. State of Karnataka held that 'the principle on which a dying declaration is admitted in evidence is indicated in latin maxim, nemo morturus procsumitur mentri, a man will not meet his maker

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with a lie in his mouth. Information lodged by a person who died subsequently relating to the cause of his death, is admissible in evidence under this clause.

In a leading case, wife of the accused had borrowed money from the deceased in the sum of Rs. 3000 at the interest of 18 percent. Related to his debt a number of letters had signed by the wife of accused which was discovered from the house of deceased after his death. One letter which was not signed by someone had been received by the deceased K.N. on 20th March,1937, it was reasonably clear that it would had come from the wife of accused, who invited him to come Berhampur on that day or next day.

Widow of K.N. had told to the court that his husband had told him that Swami's wife had invited him to come to Berhampur to receive his payment. Next day K.N. left his house to go to Berhampur & on 23rd March, his body, which was cut in to seven pieces, found in a trunk in the compartment of a train at Puri. The accused was convicted of murder & sentenced to death because there were many evidence against him.

In Wazir Chand v. State of Haryana in which Court observed pakala ruling & said, 'applying these to the facts of the case their Lordships pointed out that the transaction in the case was one in which the deceased was murdered on 21st March & his body was found in a trunk proved to be bought on behalf of the accused. The

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statement made by the deceased on 20th March that he was setting out to the place where the accused was living, appeared clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. Thus the statement was rightly admitted.

In the case of R. v. Jenkins the accused was charged with the murder of a lady. He attacked her at midnight but she had recognized her because there were sufficient light to identify him. When magistrate's clerk asked her about the accused to record her statement, she told that he was Jenkins who had done the crime. The clerk asked her that, did she make the statement with no hope of her recovery then, she replied that she was making that statement with no hope of recovery. But when the clerk read that statement over to her, before her signing, she told her to add the word 'at present' in that statement.

It was held by the court that the statement was not a dying declaration as her insistence upon the words "at present" showed that she had some, however faint hope of recovery.

PRESUMPTION AS TO DOWRY DEATH

The term "dowry death" and "dowry murder" first began to be used around 1977-78 when investigations revealed that deaths of married women, which for years had been camouflaged by the police as accidents or suicides, were actually murders or abetted suicides, preceded by prolonged physical and mental torture by the

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husband and in-laws in connection with dowry demand. Instead of describing them as "wife murders" or "abetted suicides" the women's organizations began calling them "dowry deaths".

The section 113B of the Indian Evidence Act deals with the dowry death. Section 113B states that:

Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

Explanation- For the purposes of this section 'dowry death' shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860) This section and the section 304B of Indian Penal Code has been added by the Dowry Prohibition (Amendment) Act No.43 of 1986 which was with effect from 19th November 1986. This was done in order to solve the increasing problem of dowry death. The word dowry death has been defined in 304B Indian Penal Code and the term dowry has deen defined in section 2 of the Dowry Prohibition Act 1961.

Section 304B of the Indian Penal Code states that

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Dowry death - (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. - For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

The definition of dowry as stated in s2 Dowry Prohibition Act 1961 is- 'Dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by parents of either party to a marriage or by any other to either party to the marriage or to any person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of person to whom the Muslim Personal Law (Shariat) applies.

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In the case of Keshab Chandra Pandey v State the presumption under s 113B of the Indian Evidence Act shall be raised only on the proof of the following essentials:

(i) Whether the accused has committed the dowry death of a woman. So the presumption can be raised if the accused is being tried for an offence under s 304B, Indian Penal Code.

(ii) The woman was subjected to cruelty or harassment by her husband or his relatives.

(iii) Such cruelty or harassment was for or in connection with the any demand for dowry.

(iv)Such cruelty or harassment was soon before her death.

Nature of Presumption

Section 113B uses the word "shall" and not 'may' so it is a presumption of law .On proof of the essentials mentioned above, it becomes obligatory on the court to raise a presumption that the accused caused the "dowry death". The court has no discretion to draw the presumption under this section if the essential ingredients are proved then they are bound to draw this presumption under s113B of the Indian Evidence Act. The legislature has made this presumption a mandatory presumption of law, of course, rebuttable, Though this may sound to be a violent departure from the accepted norms of criminal law. The legislature thought that the presumption

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under Section 113B should be a mandatory presumption if the evil of dowry deaths is to be eradicated from the roots of our society.

If it is proved that soon before her death, the victim was subjected to cruelty or harassment in connection of a dowry demand, then the presumption under s 113B can be raised. If the prosecution has failed to prove the case under s 304B, IPC, even then, no presumption can be raised under 113B of the Indian Evidence Act. So 304B is an integral part of 113B of the Indian Evidence Act. Cruelty need not be physical. Even mental torture in a given case would be a case of cruelty or harassment under 304B and 498A. In Nem Chand v State of Harayana the parties were married on 24-5-1962. After staying at the matrimonial home for two months, she returned to her parents' house and told them that her husband wanted a television set and a fridge. Her father gave her a sum of Rs. 6,000 and she left for her matrimonial home. Her husband again demanded a sum of Rs. 25,000 for purchasing a plot. There after the husband took his wife to her parents' home saying that he would not take her back unless a sum of Rs. 25,000 was paid to him. After one year he took her back but he did not give up his demand for Rs. 25,000. Soon thereafter she left for her parents home and came back with a sum of Rs. 15,000 with a promised that the rest of the amount would be would be paid later on. She died of strangulation in her husband's home. The trial court found accused guilty. Supreme Court held that accused should be convicted.

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In a Shanti v State of Harayana , where the death took place within seven years of marriage, the in-laws of the deceased did not inform deceased's parents about the death but hurriedly cremated the deceased. The prosecution succeeded in establishing cruel treatment towards the victim. The death could not be said to be natural death and the presumption under s 113B of the Evidence Act was attracted.

The cruelty or harassment should be meet to the victim soon before the victim's death to bring under this presumption. In a case , there was dispute between parties regarding dowry and that wife, was sent back to her parent's home and was again taken back to her matrimonial home after a 'panchayat' which was held to resolve the dispute. This event happened 10-15 days prior to the occurrence of the incident as the death of the deceased. However, there was no evidence, which indicate that she was treated with cruelty or harassed with the demand for dowry during the period of between her taken back home to and her tragic end. In these circumstances, the presumption for dowry death cannot be raised. The court held that the, presumption of 113B could not be brought in.

IDENTIFICATION PARADE

Objects of identification parade are to enable witness to identify these persons or things, which are involved in commission of offence and which are not previously authority on involvement of such person or things in commission of offence.

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Identification Parade is related to those facts which are declared as relevant facts about place, name, person or date. The conduct of an identification parade is part of the investigation and is held not as a rule of law but as a rule of prudence to eliminate possibility of any mistake.

Identification Parade is identification of stranger offender, who is not previously known to the witness.

Importance of Identification Parade

Identification parade is a procedure to identify the accused by the witnesses under the custody of magistrate. It is admissible evidence in the court.

When identification parade should be conducted

Identification parade should be conducted at the earliest possible time because the witness to indentify the accused easily, as by the lapse of time of memory may fade. Identification parade held after 12 to 15 days loses its evidentiary value.

Who conducts identification Parade?

Identification Parade is conducted only by a magistrate having jurisdiction to do so.

Modes of conducting identification Parade

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Identification Parade is conducted or carried out by modern devices of tape recorders, cameras, videos, audios and maps or sometime the help animals like dog etc is taken.

Scope of Identification Parade

Identification parade is relevant both are civil as well as criminal cases.

Rules relating to identification Parade

Follow are the rules

(i) Time

Identification parade should be conducted at the earliest possible time.

(ii) Supervision

It is always supervised by a magistrate having jurisdiction to do so.

(iii) Place

It is conducted, generally, in jail or some other secured place.

(iv) Investigating officer

After beginning of identification parade, investigating officer or any police officer, who helps investigating office, should not have any access to identifying witnesses.

(v) Complainant a witness

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If the complainant is himself a witness, only then he can participate in the Parade.

(vi) Separation of witnesses from each other

For holding of identification parade, it is necessary that witnesses should be kept separated from each other so that cannot share any information about accused.

(vii) Separation of witness from accused

It is most important for holding of identification parade that witness should be kept separated from accused at some distance from place of deification parade that they cannot see accused or other concerned person until they are called for identification parade.

(viii) Bringing of witnesses for identification

It is necessary that witnesses should be brought separately for identification parade.

(ix) Dummies

For one accused there should be a serial of 1-9 Dummies.

Evidentiary value of Identification Parade

(i) Corroborative value

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When witness deposes during identification parade that he has seen some of persons, who are present in identification parade, on time, date and place of incident, it is considered that such deposition has corroborative value.

(ii) Admissible Evidence

Another view is that identification parade can be substantive piece of evidence especially when proper procedure is adopted for holding of identification and all legal requirements are fulfilled.

Conclusion

To conclude that the Identification Parade are held by the police in the course of their investigation for the purpose of enabling witness to identify the property which is the subject matter of the offence or to identify the person who is concerned in the offence. The identification parades are held a rule of prudence to eliminate the possibility of any mistake and not as a rule of law.

BURDEN OF PROOF

Chapter VII, S.101 to S.114 of Indian Evidence Act deals with the provisions of "burden of Proof".

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The word 'burden of proof' has not been defined in Evidence Act .It is a fundamental principle of criminal jurisprudence that guilt of accused is to be proved by the prosecution, and an accused should be presumed to be innocent.

The expression burden of proof is explained in S.101 of Indian Evidence Act as, " When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person". The question is which out of two parties has to prove a fact. The answer to this question decides the question as to burden of proof .

Meaning of 'Burden of Proof' –

In short The burden of proof means the obligation to prove a fact. Every party has to establish fact which go in his favour or against his opponent and this is the burden of proof . Evidence Act lays down some principle of burden of proof of general nature .

PRIMARY EVIDENCE

Primary evidence means the documents itself produced for the inspection of the Court.

Explanation 1—Where a document is executed in several parts, each part is primary evidence of the document : Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

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Explanation 2- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustrations

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

ACCOMPLICE WITNESS

In the basic sense Accomplice Witness mean a witness to a crime who, either as principal, Accomplice, or Accessory, was connected with the crime by unlawful act or omission on his or her part, transpiring either before, at time of, or after commission of the offense, and whether or not he or she was present and participated in the crime. The word 'accomplice' has not been defined by the Indian Evidence Act, 1872. An accomplice is one of the guilty associates or partners in the commission of a crime or who in some way or the other is connected with the commission of crime or who admits that he has a conscious hand in the commission of crime.

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To the lay man, accomplice evidence might seem untrustworthy as accomplices are usually always interested and infamous witnesses but their evidence is admitted owing to necessity as it is often impossible without having recourse to such evidence to bring the principal offenders to justice. Thus accomplice evidence might seem unreliable but it is often a very useful and even invaluable tool in crime detection, crime solving and delivering justice and consequently a very important part of the Law of Evidence.

Section 133 of the Indian Evidence Act, 1872 deals with the Accomplice Witness. It says that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Usually most of the crimes are committed at secluded places where there will not be any eye – witness to testify regard to these offences, and it would not be possible for the police to get sufficient evidence to prove the guilt of the accused. In such cases what police does is that it picks up one of the suspects arrested who is usually least guilty and offers to him an assurance that if he is inclined to divulge all information relating to the commission of the crime and give evidence against his own colleagues, he will be pardoned. So any such person who is picked up or who is taken by the police for the purpose of giving evidence against his own colleagues is known as an accomplice or an approver.

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An accomplice is a competent witness provided he is not a co accused under trial in the same case. But such competency which has been conferred on him by a process of law does not divest him of the character of an accused. An accomplice by accepting a pardon under Section 306 CrPC(Code of Criminal procedure,1973) becomes a competent witness and may as any other witnesses be examined on oath.

ESTOPPELS

The law for estoppel or the rule of exclusion of certain evidence under certain circumstances, like between tenant and landlord, licensee of person in possession and licensor (s. 116), or as between acceptor and drawer of a bill of exchange, as between Bailee and bailor and licensor and license (s. 117). Estoppel is a procedure of proof.815 Section 115 of evidence act reads: "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing". Illustration: "A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it; The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title".The doctrine

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embodied under this section is not a rule of equity, but is a rule of evidence formulated and applied in courts of law.

In Pickard v. Sears, the mortgagee of the machinery permitted it to remain in the possession of the mortgagor, against whom a judgment was executed. The machinery was seized in execution, but although the mortgagee spoke to the judgment creditors attorney he foolishly made no reference to the fact that machinery in which he had an interest had been seized to pay another man's debt, nor did he make any claim to the machinery for some time. When he eventually did so, it was held that he might be estopped from denying that the machinery was the debtor's, as his conduct amounted to a willful representation to that effect.

Section 116 reads - Estoppel of tenant; and of licensee of person in possession: No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given. The doctrine is generally recognized that a tenant is estopped, while the tenancy continues, to deny the title of his landlord. Section 117 - Estoppel of acceptor of bill of exchange, Bailee or licensee: No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any Bailee or

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licensee be permitted to deny that his bailor or licensor had, at the time with the bailment or licence commenced, authority to make such bailment or grant such licence. Explanation 1.-The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn. Explanation 2.-If a Bailee delivers the goods bailed to a person other than the bailor, the may prove that such person had a right to them as against the bailor. As per the stand taken by Supreme Court in the case of Mohan v. State, the rule of issue estoppel does not prohibit that evidence given at one trial against the accused cannot be given in another trial for another offence. Thus where the acquittal order of a Magistrate on a minor offence was set aside and the accused committed for trial on a major offence, the principle of issue estoppel will not apply.

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