LIMITED CIRCULATION FOR THE JUDICIAL OFFICERS OF UTTARAKHAND ONLY

STUDY MATERIAL
ON
"APPRECIATION OF EVIDENCE"
FOR TWO DAYS TRAINING PROGRAMME OF
ADDITIONAL SESSIONS JUDGES & SPECIAL SESSIONS JUDGES
FROM 22.05.2026 TO 23.05.2026

PREPARED BY:
UTTARAKHAND JUDICIAL AND LEGAL ACADEMY, BHOWALI

APPRECIATION OF EVIDENCE

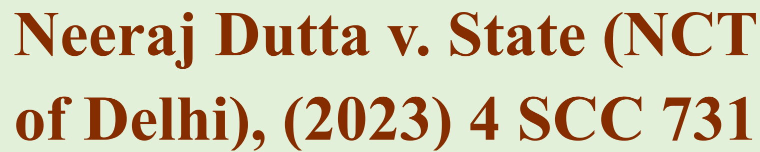
Evidence is the medium through which the court is convinced of the truth or otherwise of the matter under enquiry i.e. the actual words of witnesses or documents produced and not the facts which have to be proved by oral and documentary evidence. The word 'Evidence' is defined under section 2(e) of BSA as under–

*"**S. 2(e) "Evidence" means and includes**—*

(i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;

(ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence."

Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731



In the Hon’ble Supreme Court observed in para 49 and 50 that:

Para-49. “It is well settled that evidence is upon facts pleaded in a case and hence, the principal facts are sometimes the facts in issue. Facts relevant to the issue are evidentiary facts which render probable the existence or non-existence of a fact in issue or some relevant fact.”

Para-50. “In criminal cases, the facts in issue are constituted in the charge, or acquisition, in cases of warrant or summon cases. The proof of facts in issue could be oral and documentary evidence. 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. Of course, the term evidence is not restricted to only oral and documentary evidence but also to other things like material objects, the demeanour of the witnesses, facts of which judicial notice could be taken, admissions of parties, local inspection made and answers given by the accused to questions put forth by the Magistrate or Judge under Section 313 of the Criminal Procedure Code, 1973 (CrPC).”

Ganesh K. Gulve Vs State of Maharashtra AIR 2002 SC 3068

Para-14- "In order to appreciate the evidence, the court is required to bear in mind the set-up and the environment in which the crime is committed. The level of understanding of the witnesses. The overzealousness of some of the near relations to ensure that everyone even remotely connected with the crime be also convicted. Everyone's different way of narration of the same facts. These are only illustrative instances. Bearing in mind these broad principles, the evidence is required to be appreciated to find out what part out of the evidence represents the true and correct state of affairs. It is for the courts to separate the grain from the chaff."

Some other definitions under section 2 of BSA are as

"(f) "Fact" means and includes—

Anything capable of being perceived by the senses, and any mental condition of which a person is conscious.

(g) “Facts in issue” means any fact from which, by itself or together with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability asserted or denied in a suit or proceeding necessarily follows; and when a court frames an issue of fact, the fact to be asserted or denied in answering that issue is a fact in issue.

(i) “Not proved”—A fact is said to be not proved when it is neither proved nor disproved;

(j) “Proved”—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists;

(k) “Relevant”—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”

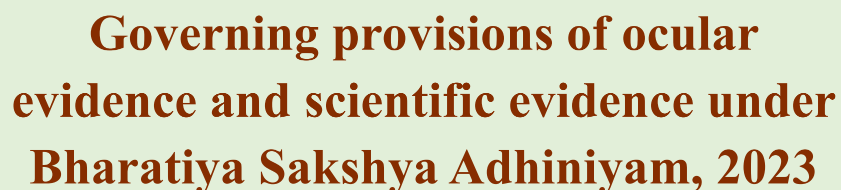
Ocular evidence

Ocular evidence is a form of oral evidence and consists of the direct account given by a witness regarding what he or she has personally seen, heard, felt, smelled, or tasted. When a witness appears before the court and narrates facts based on personal observation and experience, such testimony is known as ocular evidence. As a general rule, the facts in issue may be proved through oral evidence. The main exception to this rule relates to the contents of documents, which must ordinarily be proved by documentary evidence rather than oral testimony.

Medical evidence

While ocular evidence is directly admissible as oral testimony, medical evidence is admissible in the nature of expert opinion. The court may consider expert opinions whenever it is required to form an opinion on matters involving foreign law, science, art, or any subject requiring specialised knowledge. However, such opinion is only advisory in nature, and the court is not bound to decide the case solely on the basis of that opinion.

Medical evidence generally includes X-rays, biopsies, blood tests, MRI scans, post-mortem reports, and injury reports. It represents the opinion of a medical expert and is primarily used as corroborative evidence to assist the court in arriving at a just conclusion.



Governing provisions of ocular evidence and scientific evidence under Bharatiya Sakshya Adhiniyam, 2023

The provisions related to ocular evidence is given under Sections 54 and 55 of Bharatiya Sakshya Adhiniyam (the BSA), as follows-

“S. 54. All facts, except the contents of documents may be proved by oral evidence.

S. 55. Oral evidence shall, in all cases whatever, be direct; if it refers to—

(i) a fact which could be seen, it must be the evidence of a witness who says he saw it;

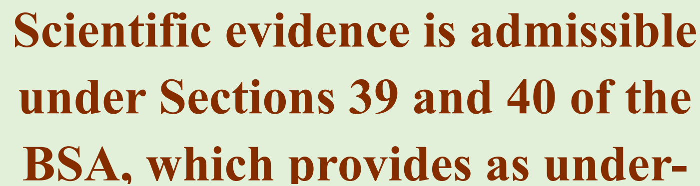
(ii) a fact which could be heard, it must be the evidence of a witness who says he heard it;

(iii) a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(iv) an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.”



S. 39. (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

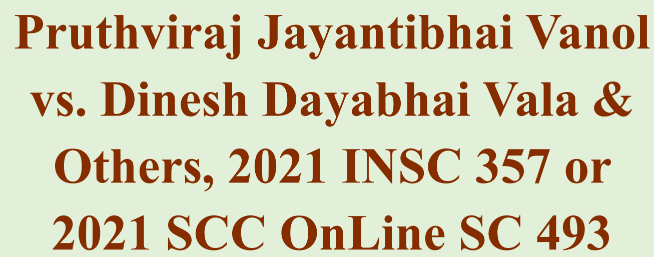
(2) When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

Explanation—For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

S. 40. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant there were no such sea-walls, began to be obstructed at about the same time, is relevant."

Sukhwant Singh v. State of Punjab, (1995) 3 SCC 367 (para 21)

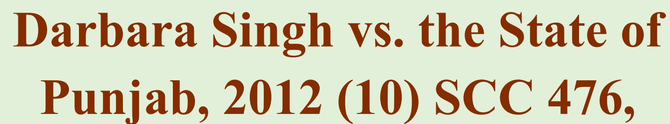
Para-21. “There is yet another infirmity in this case. We find that whereas an empty had been recovered by PW6, ASI Raghubir Singh from the spot and a pistol alongwith some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty and the seized pistol to the ballistic expert for the examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before us. It hardly needs to be emphasized that in cases where injuries are caused by fire-arms, the opinion of the Ballistic Expert is of a considerable importance where both the fire-arm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.”



Pruthviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala & Others, 2021 INSC 357 or 2021 SCC OnLine SC 493

In the case of the Hon’ble Supreme Court observed in para 17 that the courts should maintain a balance while evaluating eyewitness testimony. Ocular evidence is regarded as the best form of evidence unless there are valid reasons to doubt its credibility. The court has further held that such evidence may be rejected only when there is a material contradiction between the ocular and medical evidence, and the medical evidence is so cogent and reliable that it renders the ocular testimony improbable or untrustworthy.

Para -17. “Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that muddamal no. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.”



The Hon’ble Supreme Court in para 10 observed that the courts shall give importance to ocular evidence over the opinion of medical experts.

Para-10. “So far as the question of inconsistency between medical evidence and ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liale to be disbelieved.”

The Hon’ble Supreme Court in the case of in para 40 explained the role of expert opinion and said that the primary purpose of expert opinion is to aid the court in making the final decision.

Para-40. "We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. The Court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the Court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the Court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eye-witnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye version given by the eye-witnesses, the Court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the Court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise."

Adalat Yadav v. State of Bihar 2026 SCC OnLine SC 660,

Para-11 "In our view, both these testimonies are consistent for both, albeit in different terms, say that the deceased was shot on his head. That apart, if it was the case that there had been some contradictions between the testimonies, the generally applicable rule that eyewitness testimony would be superior to the medical opinion which is in the nature of expert testimony, would be applicable."

Raju Vs. State of MP, (2025) 8 SCC 281,

In the Hon'ble Supreme Court in Para 30, has observed that:

Para-30 "Where occular evidence is clear, it will prevail over the medical evidence."

Section 138 of the BSA

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.

It can be seen that the main change in the provision is the substitution of the word "uncorroborated" occurring in Section 133 of the Evidence Act with the word "corroborated" in Section 138 of the BSA. The purpose of incorporating the word "corroborated" in Section 138 of the BSA, in place of the word "uncorroborated", is to remove the apparent contradiction between the two provisions (Section 133 of the Evidence Act and illustration (b) to Section 114 of the Evidence Act). It can be found that the substitution of the word "corroborated" in Section 138 of the BSA, in place of the expression "uncorroborated", has made these two provisions compatible with each other. The provision under Section 138 of the BSA is now made consonant with illustration (b) to Section 119(1) of the BSA.

Relevancy of evidence of accomplice

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M.O. Shamsudhin v. State of Kerala, (1995) 3 SCC 351

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Para-21. “Section 133 of the Evidence Act lays down that an accomplice is a competent witness against an accused person. The conviction based on such evidence is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, there is a rider in Illustration (*b*) to Section 114 of the Act which provides that the court may presume that the accomplice is unworthy of credit unless he is corroborated in material particulars. This presumption is in the nature of a precautionary provision incorporating the rule of prudence which is ingrained in the appreciation of accomplice's evidence. Therefore the courts should be guarded before accepting the accomplice's evidence and look for corroborating evidence. The discretion of the court upon which the rule of corroboration rests must be exercised in a sound and reasonable manner. Normally the courts may not act on an uncorroborated testimony of an accomplice but whether in a particular case it has to be accepted without corroboration or not would depend on an overall consideration of the accomplice's evidence and the facts and circumstances. However, if on being so satisfied the court considers that the sole testimony of the accomplice is safe to be acted upon, the conviction can be based thereon. Even if corroboration as a matter of prudence is needed it is not for curing any defect in the testimony of the accomplice or to give validity to it but it is only in the nature of supporting evidence making the other evidence more probable to enable the court to satisfy itself to act upon it.

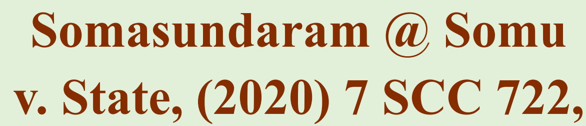
Bhiva Doulu Patil v. State of Maharashtra, 1962 SCC OnLine SC 133,

Para-8. An accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

Haricharan Kurmi v. State of Bihar, 1964 SCC Online SC 28 & AIR 1964 SC 1184,

The Hon'ble Constitution Bench had observed that:

Para-14. "An accomplice is a competent witness; prudence requires that his evidence should not be acted upon unless it is materially corroborated; and that is the effect of judicial decisions dealing with this point. The point of significance is that when the court deals with the evidence by an accomplice, the court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars."



Somasundaram @ Somu v. State, (2020) 7 SCC 722,

A three-Judge Bench of the Supreme Court has summarized the principles on the point as follows:

Para-77. "To summarize, by way of culling out the principles which emerge on a conspectus of the aforesaid decisions, we would hold as follows : the combined result of Section 133 read with Illustration (b) to Section 114 of the Evidence Act is that the courts have evolved, as a rule of prudence, the requirement that it would be unsafe to convict an accused solely based on uncorroborated testimony of an accomplice. The corroboration must be in relation to the material particulars of the testimony of an accomplice. It is clear that an accomplice would be familiar with the general outline of the crime as he would be one who has participated in the same and therefore, indeed, be familiar with the matter in general terms. The connecting link between a particular accused and the crime, is where corroboration of the testimony of an accomplice would assume crucial significance. The evidence of an accomplice must point to the involvement of a particular accused. It would, no doubt, be sufficient, if his testimony in conjunction with other relevant evidence unmistakably makes out the case for convicting an accused."

80. An accomplice or an approver are competent witnesses. An approver is an accomplice, who has received pardon within the meaning of Section 306. We would hold, that as between an accomplice and an approver, the latter would be more beholden to the version he has given having regard to the adverse consequences which await him as spelt out in Section 308 CrPC as explained by us.

It is also settled principle that the competency of an accomplice is not impaired, though, he could have been tried jointly with the accused and instead of so being tried, he has been made a witness for the prosecution.

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83. What is the object of recording the statement, ordinarily of witnesses under Section 164 has been expounded by this Court in R. Shaji v. State of Kerala **R. Shaji v. State of Kerala, (2013) 14 SCC 266: (2014) 4 SCC (Cri) 185**: (SCC p. 279, paras 27-28)

"27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted.

28. "Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 CrPC, can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence."

Hostile witnesses & appreciation of their evidence (S. 154, Evidence Act & S. 157 BSA):

Law is settled that the evidence of a hostile witness cannot be rejected outright. Both parties are entitled to rely on such part of his evidence which assists their case.

Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731,

In para 84 Hon'ble Supreme Court observed that a witness who does not support the prosecution need not be formally declared hostile, and even if cross-examined under Section 154 of the Evidence Act, his testimony is not to be rejected entirely but may be relied upon to the extent it supports the prosecution case.

Para-84. "The learned Senior Counsel Shri Nagamuthu submitted that when the prosecution examines a witness who does not support the case of the prosecution he cannot be "declared" to be a "hostile witness" and his evidence cannot be discarded as a whole. Although, permission may be given by the court to such a witness to be cross-examined by the prosecution as per sub-section (2) of Section 154 of the Evidence Act,

it is not necessary to declare such a witness as a "hostile witness". This is because a statement of a "hostile witness" can be examined to the extent that it supports the case of the prosecutor."

Further in para 87 court observed that the evidence of a hostile witness cannot be discarded altogether, it must be carefully scrutinized, and any credible portion, especially if corroborated by other reliable evidence, may be relied upon even to sustain a conviction.

Para-87. "Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence."

Reliance upon Hostile witness

If the prosecution witness has turned hostile, the court may rely upon so much of his testimony which supports the case of the prosecution & is corroborated by other evidence.

Shyam Lal Gosh Vs. State of West Bengal (2012) 7 SCC 646,

Para-54.3 "Statement of a hostile witness reiterated, can be relied upon by court to the extent it supports case of prosecution."

Ilangovan v. State of T.N. (2020) 10 SCC 533,

The Hon'ble Supreme Court had observed that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was observed as under.

Para-11. "The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The counsel is, in effect, relying on the legal maxim "falsus in uno, falsus in omnibus", which Indian Courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in Nisar Ali v. State of U.P. 1957 SCC OnLine SC 42 : AIR 1957 SC 366] held on this point as follows:

9. … "This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. …"

10. “The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence.”

21. “Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still, further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity.”

Ram Vijay Singh v. State of U.P., (2021) 15 SCC 241,

A Three-Judge Bench of the Hon’ble Supreme Court had observed that:

Para-20. “A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim falsus in uno, falsus in omnibus is not the rule applied by the courts in India.”

Edakkandi Vs. State of Kerala, (2025) 3 SCC 273 in Para 20&21,

It was observed that:

Para-20. “Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the

entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons, etc. At this stage, it may not be out of place to refer to the principle called as “falsus in uno, falsus in omnibus”.

21. “It is a settled position that “falsus in uno, falsus in omnibus” (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgments.”

31. The entire submissions of the appellants were that since there are contradictions, the entire story of the prosecution is false. As we have already mentioned above, the principle of “falsus in uno, falsus in omnibus” does not apply to the Indian criminal jurisprudence and only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false. It is the duty of the Court to separate the grain from the chaff. In a given case, it is also open to the Court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons, like in the present case.

Related witnesses & interested witnesses

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

wherein it was held that:

Para-13. "A related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused."

Para-14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, (1953) 2 SCC 36, wherein this Court observed that

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

Para-15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent.

Dalip Singh v. State of Punjab, (1953) 2 SCC 36,

wherein Hon'ble Court in para-24 observed that:

Para-24. "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

Jayabalan v. State (UT of Pondicherry) (2010) 1 SCC 199,

The Hon'ble court observed that:

Para-23. "In cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.'

Goverdhan Vs. State of Chhattisgarh, (2025) 3 SCC 378,

In the case of Hon'ble Supreme Court in Para 110 observed that:

Para-110. "The evidence of the sole eyewitness, a hapless rustic illiterate woman visited with the vicissitude and tragedy of her son being fatally assaulted by co-villagers before her own eyes, has withstood intensive cross-examination and judicial scrutiny. She has answered the questions put to her during her cross-examination with spontaneity without any jitteriness and her response was natural and not elusive and prevaricating, which all are signs of truthfulness of the witness. We, therefore, have no hesitation to hold that her testimony is trustworthy and reliable."

Edakkandi Vs. State of Kerala, (2025) 3 SCC 273,

It was observed in Para 28 that:

Para -28 "The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with little care."

Raju v. State of T.N. (2012) 12 SCC 701,

It has been held by the Hon'ble Supreme court in para 29 that:

Para-29. "The evidence of a related or interested witness should be meticulous and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law."

Sarwan Singh v. State of Punjab, (1976) 4 SCC 369,

Para-10. … "The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth such evidence could be relied upon even without corroboration."

Who is Interested Witness?

A 'related witness' is not equivalent to an 'interested witness'. A witness may be called 'interested' only when he or she derives some benefit from the result of the litigation in the decree in a civil case or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be an 'interested witness'. Only requirement would be that evidence of such witnesses should be scrutinized with greater care and circumspection.

Edakkandi Vs. State of Kerala, (2025) 3 SCC 273 in Para 20&27,

It was observed that:

Para-27. “On the account of defective investigation, the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency.”

Edakkandi Dineshan v. State of Kerala, (2025) 3 SCC 273,

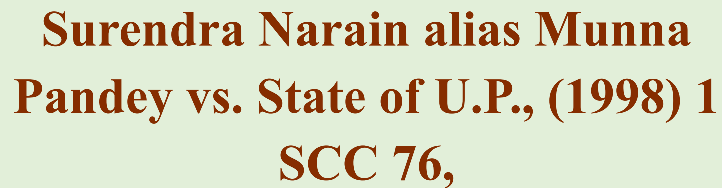
The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of Rammi v. State of M.P. [Rammi v. State of M.P., (1999) 8 SCC 649, It was observed that:

Para-25. "It is common practice in the trial court to make out contradictions from the previous statements. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. …

26. … Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness."

State of Rajasthan Vs. Hanuman, (2001) SCC 337,

Para-7 "The position is well settled that evidence of eye-witnesses cannot be discarded merely on the ground that they are relatives of the deceased. Normally close relations of the deceased are not likely to falsely implicate a person in the incident leading to the death of the relation unless there are very strong and cogent reasons to accept such criticism."



The Hon'ble the Supreme Court,

Para-21. "The test identification parade even after a demand by the accused is not always fatal and it is only one of the relevant factors to be taken into consideration along with the other evidence on record. If the claim of the ocular witnesses that they knew the accused already is found to be true, the failure to hold a test identification parade is inconsequential."

22. "The name of the accused in the FIR which was given within 15 minutes of the occurrence. The other two eye witnesses, PW 2 and PW3 also knew the accused previously. The crucial factor is that the accused was related to the deceased as a son his "Sala" and PW I was also related to the deceased. The accused had never denied the relationship.

As the trial Judge has observed," there is not a scintilla of evidence" that PW 1 had a grudge against the accused. There is also no evidence that the wife of the deceased had any enmity with the accused. She would not have allowed a false case to be foisted on her brother's son. On the facts of the case, his application for the test identification parade on his surrender after such a long time does not appear to be bone fide. In any event, the evidence on record as accepted by the Courts below is sufficient to prove the guilt of the accused. Further the point does not seem to have been argued before the trial court or the High Court. On the facts of this case there is no doubt that the failure to hold a test identification parade in spite of an order passed by the Sessions Court is not fatal to the prosecution."

23. The evidence adduced by the prosecution is adequate to prove the charge. The non-examination of another person who was on the scene of occurrence does not make the evidence of PWs 1 to 3 unreliable. It is needless to point out that evidence has to be weighed and not counted.

24. “The medical report showed that two gunshot wounds were on the left side of the upper part of the chest inner to the nipple. Another gunshot wound was found in the spine medial part in thoracic region. The fact that PW 3 was travelling in the same rickshaw as his master, the deceased is established beyond doubt. His clothes which got stained by the blood which oozed out of the wounds of the deceased were taken by the investigating officer. The High Court has discussed this aspect of the matter at some length and we agree with the reasoning of the High Court. As pointed out by the High Court the witness having seen the exit wound on the back of the deceased bleeding, thought that he had been hit in the back. Hence, we reject this contention.

25. “The argument is that PW 1 would have in the first instance taken the victim to the hospital instead of the police station and in any event would have accompanied PW 3 to the hospital. According to the learned counsel the fact that PW 1 stayed in the police station to give a statement after sending PW 3 and the victim to the hospital throws considerable suspicion on his credibility. We are unable to accept this contention. The evidence shows that the victim died immediately after the firing. The witness thought it fit to stay back at the police station to get his complaint registered. Here again, the reasoning of the High Court is unassailable and we agree with the same.

26. “There is ample evidence on record to show that there was a dispute between the appellant and the deceased which remained unsettled. The way in which the deceased was killed shows that the appellant had the intention to commit the offence of murder and accordingly carried out the same. But it is well settled that when the fact of murder has been proved, there is no necessity to prove motive.”

Chance Witness

It is not the rule of law that chance witness cannot be believed. The reason for a chance witness being present on the spot and his testimony requires close scrutiny and if the same is otherwise found reliable, his testimony cannot be discarded merely on the ground of his being a chance witness. Evidence of chance witness requires very cautious and close scrutiny.

Chetan Vs. State of Karnataka, (2025) 9 SCC 31 (Para 66)

Para-66. Moreover, even if he (PW 5) is considered to be a chance witness who happens to witness the appellant and the deceased together going on a motorcycle by chance, yet the testimony cannot be ignored in the light of the decision of this Court in Rajesh Yadav v. State of U.P. (2022) 12 SCC 200 : wherein it was held as follows:

"29. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in State of State of A.P. v. K. Srinivasulu Reddy [State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC 660,

‘12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.

13. Coming to the plea of the accused that PWs 4 and 9 were “chance witnesses” who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In a murder trial by describing the independent witnesses as “chance witnesses” it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere “chance witnesses”. The expression “chance witness” is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.”

90. “The forensic and ballistic opinion along with the subsequent recovery of the gun, pellets and wads and other object like gold chain from the appellant literally obliterates the doubtful element which can be attributed to the gap in time and space of the last seen together aspect of the circumstantial evidence. Had this scientific evidence and subsequent recoveries not been available, certainly, the time lapse between the fact of last seen together and the time of death could have proved fatal to the prosecution case in the present case. Thus, this submission of the appellant that there was a long-time lapse, does not hold water.”

State of Goa v. Sanjay Thakran, (2007) 3 SCC 755,

Para-31... "It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence."

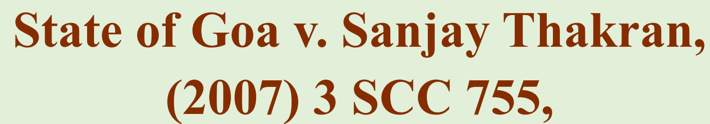
Bodhraj v. State of J&K, (2002) 8 SCC 45,

Para-31. "The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172,

The Hon'ble Supreme Court observed that:

"Even in the cases where time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration."



State of Goa v. Sanjay Thakran, (2007) 3 SCC 755,

Para-34. "The circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time-gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time-gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time-gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time-gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time-gap would not affect the prosecution case."

Inquest Report

Rhea Chakraborty vs The State of Bihar AIR 2020 Supreme Court 3826

It was held that:

"The proceeding under section 174 Cr.P.C. is limited to the inquiry carried out by the police to find out the apparent cause of unnatural death. These are not in the nature of investigation, undertaken after filling of FIR under Section 154 Cr.P.C. Two inquest reports in the same case are not maintainable, because there is no rule prescribed under the code."

Bimla Devi vs. Rajesh Singh (2016) 15 SCC 448,

Section 157 of the Code. This was reiterated wherein it was held that:

“The section aims a preserving the first look at the body recovered and it does not need to contain every minute detail.”

Madhu Alias Madhuranatha vs. State of Karnataka (2014) 12 SCC 419,

In two-judge bench of the Apex Court has observed that:

“An inquest report is not substantive evidence.”

Yogesh Singh vs. Mahabeer Singh 2017 (11) SCC 195,

"The inquest report can only be looked into for testing the veracity of the witnesses of the inquest."

Tehseen Poonawala vs. Union of India AIR 2018 Supreme Court 3354,

In the case of the Hon'ble Supreme Court has discussed the scope of Section 174 of the Code of Criminal Procedure.

Pedda Narayana vs. State of Andhra Pradesh (1975) 4 SCC 153,

"The scope of an inquiry under section 174 of the Cr.P.C. is limited in nature. It is only to ascertain whether a person has died under suspicious circumstances or unnatural death and the apparent cause of death."

Eqbal Baig vs State of Andhra Pradesh 1987 (2) SCC 476,

"Non mentioning of name of eye witness in inquest report is not a ground to reject the testimony of such witness. Court further observed that, even the absence of name of accused in inquest report cannot lead to an inference that he was not present at the time of commission of offence.

There is no requirement in law under 194BNSS/174 Cr.P.C. that the details of FIR, names of accused or eye witness must be mentioned. Neither the gist of statement of witness is mandatory to mention in inquest report nor it is required."

Amar Singh vs. Balwinder Singh
2003 (2) SCC 518,

"The section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report."

Shakila Khader vs, Nausher Gama
(1975)4 SCC 122,

In the accused argued that the name of eye witness was not mentioned in inquest report and thereof testimony of such witness should not be relied upon. But court held that inquest report under section 174 Cr.P.C. is concerned to establish the cause of death only and mere omission of name of any witness is not fatal to testimony of that witness.

Evidence of Eye witnesses

Ramcharan reddy Chennareddy Vs. State of A.P., (1999) 3 SCC 97,

It is held by the Hon'ble Supreme Court that:

Para-6. "... The sole ground of attack made by the learned counsel for the appellants is that the witnesses are the relations of the deceased. In our considered opinion, that can hardly be a ground to discard their version. On the other hand the relation of the deceased will not try to implicate any innocent person in the murder of the deceased. That apart no personal enmity has been alleged towards the accused persons. Conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided that the witness passes the test of reliability. The Court has also further held that mere relationship of the witness with the deceased is no ground to discard his testimony if it is otherwise found to be reliable."

"Nirmal Singh and another Vs. State of Bihar (2005) 9 SCC 725,

Para-18 "With these facts in the background, we have to consider whether the ocular testimony of Pws. 1, 3, 4, 5, 6, 8 & 11 should be discarded. It is no doubt true that the eye witnesses are related to each other but that is to be expected since the occurance took place in the dalan of the house of the deceased. The evidence of the eye witnesses does not suffer from any infirmity, and appears to be convicting, no significant contradiction or infirmity has been brought to our

notice. In these circumstances, we do not feel persuaded to discard the case of the prosecution only on account of some infirmities which we have noticed earlier, there appears to be no reason why so many eye witnesses should falsely implicate the appellants, and there is in fact, nothing on record to suggest that the witnesses had any reason to falsely implicate them."

Chunthuram Vs. State of Chhattisgarh, 2020 INSC 616,

"Testimony of eye witness. PW4 knew the victim, allegedly saw fatal assault on victim and yet kept quiet about the incident. If PW4 had occasion to actually witness assault, his reaction and conduct does not match to ordinary reaction of a person who knew deceased and his family. Testimony of eye witness discarded. No proximate and immediate motive. Guilt of accused not proved. accused acquitted."

Amar Singh Vs. The State (NCT of Delhi), 2020 INSC 587

"Unnatural conduct totally against natural human behaviour of brothers of decease. It is very unnatural that two brothers present on the spot will not even make slightest attempt to intervene and try to save the other brother being assaulted, merely on the threat extended by assailants armed with hockey sticks and a knife. Thus, unnatural conduct is totally against natural human behaviour which casts a serious doubt on the presence of eye witnesses on the spot at the time of occurrence."

Shri Satish Kumar & Anr. Vs. State of Himachal Pradesh & Anr., 2021(2) Criminal Court Cases 554 (S.C.) Supreme Court of India,

"Prosecution failed to prove role of accused in causing death of deceased. Entire prosecution case based upon telephone call made by accused 'S', but no call details produced to verify correctness of telephone call. Motive of crime not proved. In absence of any evidence led by prosecution as to who fired fatal shot, benefit of doubt must go to accused. Conviction and sentence set aside."

Defective Investigation

Karnel Singh v. State of M.P. (1995) 5 SCC 518,

Para-5 "In case, of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

State of Punjab vs. Gurmit Singh & others, 1996 SCC (2) 384,

"Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how car that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. Trial Court fell in error for discrediting the testimony of the prosecutrix on that account.

.... In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honor of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

Paras Yadav v. State of Bihar (1999) 2 SCC 126,

Para-8. ..It is true that there is negligence on the part of the investigating officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favor of the accused. In such a situation, the lapse on the part of the investigating officer should not be taken in favor of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not."

Ram Bihari Yadav v. State of Bihar (1998) 4 SCC 517,

"If primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice."

Ram Bali v. State of Uttar Pradesh, 2004 (10) SCC 598,

Para-13. "Before parting with this case we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favor of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Exh. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favor of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favor the appellant. In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice."

Arvind Kumar @ Nemichand vs. The State of Rajasthan 2021 INSC 764,

“An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a correct conclusion. He is concerned with the offense as against an offender. It is the offense that he investigates. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC.

We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.

There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not ensure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality."

Charan Singh vs, State of Punjab, AIR 1998 SC 323,

The Hon'ble Supreme Court has held that:

"If all accused persons were waiting for complainant and have taken active part in occurrence all persons shall be liable."

Delayed FIR

Ponu Samy Vs. State of Tamil Nadu (2008) 5 SCC 587,

The Hon'ble Supreme Court has held that

"Police Apathy and village women's endeavor, social condition of complainant can be taken into account while considering delay in lodging FIR."

Vishwanathan Vs. State (2008) 5 SCC 354,

The Hon'ble Supreme Court held that:

"Prosecution case should not be thrown out on ground of delay other factors like trauma suffered by victim, sociological factors along with other evidence should be taken into consideration."

Animireddy Venkatramana Vs. Public Prosecutor High Court A.P. (2008) 5 SCC 368,

Para-13 " A first information report is not meant to be encyclopedic. While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution."

Ravinder Kumar and Anr. Vs. State of Punjab, (2001) 7 SCC 690

Para-13. "The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course, a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein."

State of Uttar Pradesh v. Naresh & ors (2011) 4 SCC 324,

Para-32 “It is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favor of the accused."

Zahoor & ors vs. State of U.P. 1991 Supp (1) Supreme Court Cases 372,

Para-3."Mere delay by itself is not enough to reject the prosecution case unless there are clear indications of fabrication."

ON MOTIVE

Nathuni Yadav v. State of Bihar (1998) 9 SCC 238,

Para-17. "Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murder has been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable."

State of Himachal Pradesh vs. Jeet Singh (1999) 4 SCC 370,

Para-33."No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

State of U.P. vs. Babu Ram,
2000 (4) SCC 515,

The Hon'ble Supreme Court (Division Bench) in the case of para-11 has observed as follows:

Para-11. "We are unable to concur with the legal proposition adumbrated in the impugned judgment that motive may not be very much material in cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. "

Recovery under Proviso of
S.23(2) BNSS/27Cr.P.C.

K. Chinnaswamy Reddy v.
State of A.P., AIR 1962 SC 1788,

Para-9. "Let us then turn to the question whether the statement of the appellant to the effect that "he had hidden them (the ornaments)" and "would point out the place" where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments."

H.P. Admn. v. Om Prakash, (1972) 1 SCC 249,

Para-8. … We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the investigating officer, the protection afforded by Section 25 and Section 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible."

Amit singh Bhikam singh Thakur v. State of Maharashtra, (2007) 2 SCC310

Para 18. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this

Para 19. The various requirements of the section can be summed up as follows:

1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered,

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved.

The rest is inadmissible.

Navaneethakrishnan v. State, (2018) 16 SCC 161,

Para-23. "The learned counsel for the appellant-accused contended that the statements given by the appellant-accused are previous statements made before the police and cannot be therefore relied upon by both the appellant-accused as well as the prosecution.

Selvi v. State of Karnataka, (2010) 7 SCC 263,

wherein para 133, it was held as under:

Para-133. We have already referred to the language of Section 161CrPC which protects the accused as well as suspects and witnesses who are examined during the course of investigation in a criminal case. It would also be useful to refer to Sections 162, 163 and 164CrPC which lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution."

State of Himachal Pradesh vs. Jeet Singh (1999) 4 SCC 370,

Para-25. Both the aforesaid premises were not of any use to reject the evidence tendered by PW 24 investigating officer. It must have been during the interrogation of the accused that he would have made the disclosures. It is not necessary that other witnesses should be present when the accused was interrogated by the investigating officer. On the contrary, investigating officers

used to interrogate accused persons without the presence of others. So, the mere fact that any witness to the recovery did not overhear the disclosure statements of the accused is hardly sufficient to hold that no such disclosures were made by the accused.

26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

27. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it.

28. In the present case, the fact discovered by the police with the help of (1) the disclosure statements and (2) the recovery of incriminating articles on the strength of such statements is that it was the accused who concealed those articles at the hidden places. It is immaterial that such statement of the accused is inculpatory because Section 27 of the Evidence Act renders even such inculpatory statements given to a police officer admissible in evidence by employing the words "whether it amounts to confession or not".

30. “It is not the requirement of law that unless the prosecution establishes a motive of the accused to murder the deceased, the prosecution must necessarily fail.”

Kusal Toppo v. State of Jharkhand, (2019) 13 SCC 676,

Para-25. “The law under Section 27 of the Evidence Act is well settled now, wherein this Court in Geejaganda Somaiah v. State of Karnataka, (2007) 9 SCC 315, has observed as under:

‘22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act.”

26. “The basic premise of Section 27 is to only partially lift the ban against admissibility of inculpatory statements made before the police, if a fact is actually discovered in consequence of the information received from the accused. Such condition would afford some guarantee. We may additionally note that, the courts need to be vigilant while considering such evidence.”

27. This Court in multiple cases has reiterated the aforesaid principles under Section 27 of the Evidence Act and only utilized Section 27 for limited aspect

concerning recovery (refer Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47, Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872. As an additional safeguard we may note that reliance on certain observations made in certain precedents of this Court without understanding the background of the case may not be sustainable. There is no gainsaying that it is only the ratio which has the precedential value and the same may not be extended to an obiter. As this Court being the final forum for appeal, we need to be cognizant of the fact that this Court generally considers only legal aspects relevant to the facts and circumstances of that case, without elaborately discussing the minute hyper technicalities and factual intricacies involved in the trial."

Jafarudheen v. State of Kerala, (2022) 8 SCC 440,

Para-37. "Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offence. Thus, it incorporates the theory of "confirmation by subsequent facts" facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso."

38. “The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.”

Narayan Yadav V. State of Chhattisgarh 2025 INSC 927,

Applicability of Section 27 of the Evidence Act, 1872

The conditions necessary for the applicability of Section 27 of the Act of 1872 are:

i. That consequent to the information given by the accused, it led to the discovery of some fact;

ii. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact for the first time was derived from the information given by the accused;

iii. The discovery of a fact which is the direct outcome of such information;

iv. Only such portion of the information as connected with the said discovery is admissible;

v. The discovery of the fact must relate to the commission of some offence.

Rohit Jangde Vs. The State of Chhattisgarh, 2026 INSC 162,

The Hon'ble Court observed that for the recovery under sec. 27 Evidence Act/Proviso of Section 23(2) BSA accused must be in Police custody. The Statements made outside Police custody are not admissible under Section 27 of the Evidence Act.

Dying Declaration

A dying declaration is a declaration made by a person as to the cause of his death or as to any of the circumstances, which resulted in his death.

For example:

If A has been assaulted by B or has been attacked by B, such a person shortly before his death makes a declaration holding B responsible for the injuries inflicted on him. This is a dying declaration provable at the trial against B.

Legal Provision under the Bharatiya Sakshya Adhiniyam, 2023

Section 26 of the BSA, 2023, replaces Section 32(1) of the Indian Evidence Act. It states as under:

Section 26 – Relevancy of the Statements of Relevant Fact by Person Who is dead or cannot be found,etc.

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who is unable to give evidence… are relevant when the statement is made by a person about the cause of their death or about any circumstances of the event leading to their death, where the cause of that person's death is in question."

Pakala Narayana Swami v. Emperor (1939 PC 47)

It was observed that:

"The husband's statement of intent to meet a particular person (who turned out to be the accused) was admissible under Section 32(1) of the Evidence Act as a dying declaration. The ruling clarified the meaning of "circumstances of the transaction" in the dying declaration exception – it includes statements explaining the victim's actions and intentions leading up to death (e.g. where he was going and with whom). However, general expressions of fear or suspicion not directly related to the cause of death are excluded as too remote."

How to appreciate the evidentiary value of a dying declaration:

Courts have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses

a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there, is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. The Court has to weigh all the attendant circumstances and come to the independent circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. Once the Court is convinced that the dying declaration is so recorded, it may be acted upon and can be made a basis of conviction. The Courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned.

Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517,

Para-6. "The law relating to dying declaration — the relevancy, admissibility and its probative value — is fairly settled. More often the expressions "relevancy and admissibility" are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant may not be admissible, for example, communication made by spouses during marriage or between an advocate and his client though relevant are not admissible; so also facts which are admissible may not be relevant, for example, questions permitted to be put in cross-examination to test the veracity or impeach the credit of witnesses,

though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case. In this case, the thrust of the submission relates not to relevancy or admissibility but to the value to be given to Exh. 2. A dying declaration made by a person who is dead 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 cause of his death comes in question, is relevant under Section 32 of the Evidence Act and is also admissible in evidence. Though dying declaration is indirect evidence being a specie of hearsay, yet it is an exception to the rule against admissibility of hearsay evidence. Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused. But then the question as to how much weight can be attached to a dying declaration is a question of fact and has to be determined on the facts of each case.

State of Gujarat Vs. Jayrajbhai Punjabhai Varu, (2016) 14 SCC 151 (para 15,17& 18)

15. The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.

17. A number of times the relatives influence the investigating agency and bring about a dying declaration. The dying declarations recorded by the investigating agencies have to be very scrupulously examined and the court must remain alive to all the attendant circumstances at the time when the dying declaration comes into being. In case of more than one dying declaration, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocent dying declarations have to be rejected. Such a trend will be extremely dangerous. However, the courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests.

18. The court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. Once the court is convinced that the dying declaration is so recorded, it may be acted upon and can be made a basis of conviction. The courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned.

Whether conviction can be based on dying declaration alone?

Bijoy Das Vs. State of West Bengal, (2008) 4 SCC 511 (para 11),

Para-11. "If a dying declaration is found to be reliable then there is no need for corroboration by any witness, and conviction can be sustained on its basis alone."

Reasons behind holding dying declaration reliable:

A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding the circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination. The dying declaration, if found reliable can form the base of conviction. A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Matthew Arnold said, "truth sits on the lips of a dying man".

The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

Khushal Rao v. State of Bombay,1957 SCC OnLine SC 20,

The Hon'ble Supreme Court formulated the yardstick against which dying declarations may be evaluated

"16. … (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

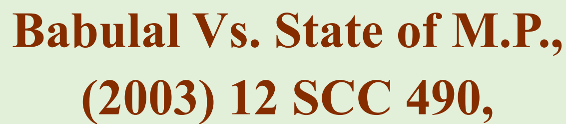
(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

(6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."



Babulal Vs. State of M.P., (2003) 12 SCC 490,

In para -7 it was observed that:

Para-7. "The pivotal point which was pressed into service with some amount of vehemence was acceptability of the dying declaration. There is no legal bar for the information given by the deceased to be treated as a dying declaration. A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentiri). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. Merely because some persons have not been named in the FIR and have been given the benefit of doubt, that cannot be a reason for discarding the dying declaration or the evidence of the witnesses."

State of Jharkhand v. Shailendra Kumar Rai, (2022) 14 SCC 299,

Para-44. "There is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate. Although a dying declaration ought to ideally be recorded by a Magistrate, if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The issue of whether a dying declaration recorded by the police is admissible must be decided after considering the facts and circumstances of each case."

Whether corroboration of dying declaration is required?

Bijoy Das Vs. State of West Bengal, (2008) 4 SCC 511

It was observed that if a dying declaration is found to be reliable then there is no need for corroboration by any witness and conviction can be sustained on its basis alone.

Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161: 2018 INSC 590,

It was observed that:

Para-365. "As we have narrated the incident that has been corroborated by the medical evidence, oral testimony and the dying declarations, it is absolutely obvious that the accused persons had found an object for enjoyment in her and, as is evident, they were obsessed with the singular purpose sans any feeling to ravish her as they liked, treat her as they felt and, if we allow ourselves to say, the gross sadistic and beastly instinctual pleasures came to the forefront when they, after ravishing her, thought it to be just a matter of routine to throw her along with her friend out of the bus and crush them. The casual manner with which she was treated and the devilish manner in which they played with her identity and dignity is humanly inconceivable. It sounds like a story from a different world where humanity has been treated with irreverence. The appetite for sex, the hunger for violence, the position of the empowered and the attitude of perversity, to say the least, are bound to shock the collective conscience which knows not what to do. It is manifest that the wanton lust, the servility to absolutely unchained carnal desire and slavery to the loathsome bestiality of passion ruled the mindset of the appellants to commit a crime which can summon with immediacy a "tsunami" of shock in the mind of the collective and destroy the civilized marrows of the milieu in entirety."

397. "Dying declaration is a substantial piece of evidence provided it is not tainted with malice and is not made in an unfit mental state. Each case of dying declaration has to be considered in its own facts and circumstances in which it is made. However, there are some well-known tests to ascertain as to whether the

statement was made in reference to cause of death of its maker and whether the same could be relied upon or not. The court also has to satisfy as to whether the deceased was in a fit mental state to make the statement. The court must scrutinize the dying declaration carefully and ensure that the declaration is not the result of tutoring, prompting or imagination. Once the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. That the deceased had the opportunity to observe and identify the assailants and was in a fit state to make the declaration."

Multiple dying declarations

Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161: 2018 INSC 590,

Para-399. "In cases where there are more than one dying declaration, the court should consider whether they are consistent with each other. If there are inconsistencies, the nature of the inconsistencies must be examined as to whether they are material or not. In cases where there are more than one dying declaration, it is the duty of the court to consider each one of them and satisfy itself as to the voluntariness and reliability of the declarations.

Mere fact of recording multiple dying declarations does not take away the importance of each individual declaration. Court has to examine the contents of dying declaration in the light of various surrounding facts and circumstances. This Court in a number of cases, where there were multiple dying declarations, consistent in material particulars not being contradictory to each other, has affirmed the conviction."

400. "In Amol Singh v. State of M.P. [Amol Singh v. State of M.P., (2008) 5 SCC 468, while discarding the two inconsistent dying declarations, laid down the principles for consideration of multiple dying declarations as under: (SCC p. 471, para 13)

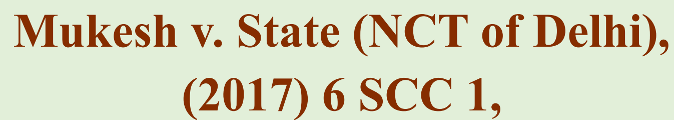
13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. Kundula Bala Subrahmanyam v. State of A.P., (1993) 2 SCC 684, However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

Lakhan v. State of M.P., (2010) 8 SCC 514,

The Hon'ble Court considered a situation where in the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between two dying declarations and non-mention of certain features in the dying declarations recorded by the Judicial Magistrate does not make both the dying declarations inconsistent.

Ganpat Mahadeo Mane v. State of Maharashtra, 1993 Supp (2) SCC 242,

"There were three dying declarations. One recorded by the doctor; the second recorded by the Police Constable and also attested by the doctor and the third dying declaration recorded by the Executive Magistrate which was endorsed by the doctor. Considering the third dying declaration, this Court held that all the three dying declarations were consistent and corroborated by medical evidence and other circumstantial evidence and that they did not suffer from any infirmity."



Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1,

Para-406. "When a dying declaration is recorded voluntarily, pursuant to a fitness report of a certified doctor, nothing much remains to be questioned unless, it is proved that the dying declaration was tainted with animosity and a result of tutoring. Especially, when there are multiple dying declarations minor variations do not affect the evidentiary value of other dying declarations whether recorded prior or subsequent thereto."

409. "Dying declaration made through signs, gesture or by nods are admissible as evidence, if proper care was taken at the time of recording the statement. The only caution the court ought to take is to ensure that the person recording the dying declaration was able to correctly notice and interpret the gestures or nods of the declarant. While recording the third dying declaration, signs/gestures made by the victim, in response to the multiple-choice questions put to the prosecutrix are admissible in evidence."

410. "A dying declaration need not necessarily be by words or in writing. It can be by gesture or by nod. In **Meesala Ramakrishan v. State of A.P. [Meesala Ramakrishan v. State of A.P., (1994) 4 SCC 182: 1994 SCC (Cri) 838], this Court held as under: (SCC p. 188, para 20)**

"20. … that dying declaration recorded on the basis of nods and gestures is not only admissible but possesses evidentiary value, the extent of which shall depend upon who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked—whether they were simple or complicated—and how effective or understandable the nods and gestures were."

419. "Going by the version of the prosecutrix, as per the dying declaration and the evidence adduced, in particular medical evidence and scientific evidence, I find the evidence of the prosecutrix being amply corroborated. As discussed earlier, in rape cases, the court should examine the broader probabilities of a case and not get swayed by discrepancies. The conviction can be based even on the sole testimony of the prosecutrix. However, in this case, dying declarations recorded from the prosecutrix are corroborated in material particulars by : (i) medical evidence; (ii) evidence of the injured witness, PW 1; (iii) matching of DNA profiles, generated from bloodstained clothes of the accused, iron rod recovered at the behest of deceased accused Ram Singh and various articles recovered from the bus with the DNA profile of the victim; (iv) recovery of belongings of the victim at the behest of the accused viz. debit card recovered from A-1 Ram Singh and Nokia mobile from A-4 Vinay. The dying declarations well-corroborated by medical and scientific evidence strengthen the case of the prosecution by conclusively connecting the accused with the crime."

Form of dying declaration:

Laxman Vs. State of Maharashtra, (2002) 6 SCC 710,

It was observed that:

Para-3 "No statutory form for recording dying declaration is necessary. A dying declaration can be made verbally or in writing and by any method of communication like signs, words or otherwise provided the indication is positive and definite. A dying declaration can be made by the declarant even verbally. Reducing the dying declaration to writing is not mandatory."

Certificate of doctor regarding mental fitness of declarant of dying declaration not required:

Laxman Vs. State of Maharashtra, (2002) 6 SCC 710,

It was observed that:

"Certificate by doctor as to mental fitness of the deceased not necessary because certificate by doctor is only a rule of caution. Voluntary and truthful nature of the declaration can be established otherwise also."

Contradictory dying declarations & their appreciation:

Sanjay Vs. State of Maharashtra, AIR 2007 SC 1368,

It was observed that:

Para-16 "Where there are different contradictory dying declarations, the accused is entitled to benefit of doubt and acquittal."

Rasheed Beg Vs. State of M.P., (1974) 4 SCC 264,

It is observed that:

"Where dying declaration is suspicious, it should not be acted upon without corroborative evidence."

Evidentiary value of successive dying declarations:

Naeem v. State of Uttar Pradesh (2024 SCC OnLine SC 237)

Para-14. "Dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

Successive dying declarations & their appreciation:

Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161,

Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

Value of dying declaration when the declarant survives:

Ramcharan Vs. State of MP, (2023) 2 SCC 163,

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

CONVICTION ON THE TESTIMONY OF SOLE WITNESS (S. 134 INDIAN EVIDENCE ACT / 139 BSA 2023)

Sole witness:

Whether conviction can be based on the evidence of a sole witness? It has been held by the Supreme Court in the cases noted below that in a criminal trial quality of evidence and not the quantity matters. As per Section 134 of the Evidence Act/ 139 of BSA 2023, no particular number of witnesses is required to prove any fact. Plurality of witnesses in a criminal trial is not the legislative intent. If the testimony of a sole witness is found reliable on the touchstone of credibility, accused can be convicted on the basis of such sole testimony, observed in **State of MP Vs. Balveer Singh, (2025) 8 SCC 545 (Para 64)**

(i) Joy Devaraj Vs. State of Kerala, (2024) 8 SCC 102

(ii) Khema Vs. State of UP, (2023)10 SCC 451

Amar Singh v. State (NCT of Delhi) (2020)19 SCC 165,

The Hon'ble Supreme Court observed:

"16. …As a general rule the court can and may act on the testimony of single eyewitness provided, he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time-honored principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.

Sterling witness

Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21
Hon'ble S.C Court observed:

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely,

at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

Naresh v. State of Haryana
(2023) 10 SCC 134,

The Hon'ble Supreme Court observed:

"16. As noticed hereinabove, the evidence of the eyewitness should be of very sterling quality and calibre and it should not only instill confidence in the court to accept the same but it should also be a version of such nature that can be accepted at its face value."

Number of witnesses

Ramratan & Ors. v. State of Rajasthan AIR 1962 SC 424,

"The prosecution having examined three eye-witnesses, in our opinion, there was no necessity of multiplying the number of witnesses and no adverse inference could be drawn against the prosecution merely on the ground that Kashmira Singh or Pritam Singh were not examine. If the incident had not taken place as suggested by the prosecution but had happened in a different manner, there was no impediment in the way of the accused-respondents to examine the aforesaid persons as defense witnesses, but they did not choose to do so. Having given our careful consideration to the submission made by learned counsel for the parties, we are of the opinion that the judgment and order of the High Court is wholly perverse and illegal inasmuch as it completely failed to consider the testimony of the eye-witnesses and the reason given for discarding the prosecution case are also unsustainable in law."

Lallu Manjhi v. State of Jharkhand (2003) 2 SCC 401,

The Hon'ble S.C Court observed:

"10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely,

(i) wholly reliable,

(ii) wholly unreliable, and

(iii) neither wholly reliable nor wholly unreliable.

In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness.

CONFESSIONAL STATEMENT AND RETRACED CONFESSION

Confessions are considered strong evidence, as a person ordinarily would not admit guilt unless it is true. Under Section 24 of the Indian Evidence Act, 1872, a confession is irrelevant in a criminal proceeding if it is caused by any inducement, threat, or promise from a person in authority that gives the accused reasonable grounds to expect advantage or avoid harm. A valid confession must be voluntary, clear, and made with full knowledge of its consequences. If it is obtained through

fear, force, violence, threat, or promise of benefit, it is not admissible. The Court must be satisfied that the confession is free and voluntary; otherwise, it may reject it. A Magistrate or competent authority recording a confession must ensure that it is made without any pressure or influence. Confessions made to police officers are generally inadmissible, especially if given under fear, anxiety, or coercion. Section 164 of the Criminal Procedure Code lays down safeguards to ensure voluntariness while recording confessions.

A retracted confession is one that is later withdrawn by the maker. Such a confession is not automatically treated as involuntary merely because it is retracted. If proved to be voluntary and true, it can be considered along with other evidence, though courts usually seek corroboration as a matter of prudence. A retracted confession can form the basis of conviction if it inspires confidence.

However, the confession of a co-accused is not substantive evidence and can only be used to support other evidence. If the prosecution relies mainly on a retracted confession of a co-accused and other evidence is weak, the presumption of innocence may lead the Court to acquit the accused. The Supreme Court has emphasized that retracted confessions generally require corroboration in material particulars, though no rigid rule applies.

An extra-judicial confession made by an accused can be relied upon and conviction on the basis thereof can be recorded by the court only when the following conditions are proved. The witness proving the extra-judicial confession must state in his testimony regarding the exact words used by the accused or in the words as nearly as possible in making the extra-judicial confession to such witness. Prosecution should prove the motive, occasion or reason for making extra judicial confession by the accused. It should be proved as to why the accused reposed his confidence in the witness proving the extra-judicial confession and the connection or relation of the witness with the accused making extra-judicial confession. In case of non-judicial retracted confession, it has to be seriously considered as to why the accused reposed confidence in the witness. The testimony of the witness deposing about confession should be credible. The circumstances under which the extra-judicial confession was made by the accused. It must be proved by prosecution that the extra-judicial confession was made voluntarily, observed in **Ramu Vs. State of Maharashtra, (2025) 3 SCC 565 (para 21 and 35)**

Extra judicial confession is very weak type of evidence:

An extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra judicial confession is surround by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra judicial confession. Observed in **Pritinder Singh Vs. State of Punjab, (2023) 7 SCC 727 (para 22)**

Even if a confession is treated as retracted, still conviction can be recorded on the strength of the original confession, if there is corroborative evidence:

In case of retraction of earlier confession, probative value of the original confession is not discarded but may be reduced. Even if a confession is treated as retracted, still the conviction can be recorded on the strength of the original confession, if there is corroborative evidence, observed in **Manoharan Vs. State, (2020) 5 SCC 782 paras 23 to 32.**

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

Narayan YadavVs. State of Chhattisgarh 2025 INSC 927,

"Confessional FIR is not Admissible in Evidence."

DNA PROFILES IMPACT ON CRIMINAL INVESTIGATIONS

Anil v. State of Maharashtra (2014) 4 SCC 69,

"The Hon'ble Supreme Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected. We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process the samples remain in pristine, hygienic and biologically suitable conditions."

Prakash Nishad v. State of Maharashtra (2023) 16 SCC 357,

This case was related to the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted. DNA evidence was rejected by the Hon'ble S.C on the grounds that there was a delay in sending the samples to the FSL, which was unexplained. It was observed by the Hon'ble Court that because of the delay, the concomitant prospect of contamination could not be ruled out. The need for expediency in sending samples to the concerned laboratories was underscored.

Kattavellai @ Devakar Vs State of Tamil Nadu, 2025 INSC 845,

The Hon'ble S.C.in para 44-has issued various directions for collection, packaging, storage& examination of DNA evidence.

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48-hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.

3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorization of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.

Contradiction on the evidence of witnesses

Rattan Singh vs. State of H.P. (1997) 4 SCC 161,

Para-12 "If the said statement had been made when the deceased was under expectation of death it becomes dying declaration in evidence after her death. Nonetheless, even if she was nowhere near expectation of death, still the statement would become admissible under Section 32(1) of the Evidence Act, though not as dying declaration as such, provided it satisfies one of the two conditions set forth in the sub-section. This is probably the one distinction between English law and the law in India on dying declaration."

Para-13 "Section 32(1) of the Evidence Act renders a statement relevant which was made by a person who is dead in cases in which cause of his death comes into question, but its admissibility depends upon one of the two conditions: Either such statement should relate to the cause of his death or it should relate to any of the circumstances of transaction which resulted in his death."

Para-14 "Three aspects have to be considered pertaining to the above item of evidence. First is whether the said statement of the deceased would fall within Section 32(1) of the Evidence Act so as to become admissible in evidence. Second is whether what the witnesses have testified in Court regarding the utterance of the deceased can be believed to be true. If the above two aspects are found in the affirmative, the third aspect to be considered is whether the deceased would have correctly identified the assailant?"

Baladin and Others VS State of Uttar Pradesh, AIR 1956 SUPREME COURT 181,

"Statements made by prosecution witnesses before the investigating police officer being the earliest statements made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witnesses examined in court, with particular reference to those statements which happen to be at

variance with their earlier statements; but the statements made during police investigation are not substantive evidence. Hence the record made by police investigating officer has to be considered by the court only with a view to weighing the evidence actually adduced in Court. If the police record becomes suspect or unreliable police record becomes suspect or unreliable as in the present case, on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the court in judging the case of a particular accused has to weigh the evidence given against him in court keeping in view the fact that the earlier statements of witnesses as recorded by the Police is tainted record and has not as great a value as it otherwise would have in weighing all the material on the record as against each individual accused."

Abdul Gani v. State of Madya Pradesh AIR 1954 SC 31,

"The Court should make an effort to disengage the truth from falsehood and to sift the grain from the chaff. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved.

But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

INJURY ON THE PERSON OF ACCUSED

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

Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy that it outweighs the effect of the omission on the part of the prosecution to explain the injuries.

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

Para-19 It was observed that Mere failure to mention in FIR about injuries received by accused is not a ground to discard the explanation of injuries given at the trial.

Unexplained injuries sustained by accused when fatal for prosecution?

Kumar Vs. State represented by Inspector of Police, (2018) 7 SCC 536,

It was observed in the case of that generally failure of prosecution to offer any explanation regarding injuries suffered by accused shows that evidence of prosecution witnesses relating to incident is not true or at any rate not wholly true. In the present case of murder, admittedly the appellant-accused was also injured in the same occurrence and he too was admitted in hospital.

But the prosecution did not produce his medical record, nor doctor was examined on nature of injuries sustained by the accused. Trial court instead of seeking proper explanation from prosecution for injuries sustained by the accused simply believed what the prosecution witnesses had disposed in one sentence that the accused had sustained simple injuries only. The Supreme Court set aside the conviction of the appellant-accused for non-explanation of injuries sustained by the accused-appellant.

Test identification parade and Dock Identification

Kanta Prashad v. Delhi Admn. AIR 1958 SC 350,

In Hon'ble Supreme Court held that:

"Failure to hold test identification parade does not make inadmissible the evidence of identification in court and that the weight to be attached to such identification is a matter for the courts of fact and it is not for the Supreme Court to reassess the evidence unless exceptional grounds are established necessitating such a course."

State v. Dhanpat Chamara, AIR 1960 Pat 582

"It was held that if the witnesses do not give the name of any accused, it is necessary to hold a test identification parade and where a witness gives the name of the accused, ordinarily no such parade is necessary. The Court however said that if any accused holds out a challenge and says that he will not be identified by the witnesses or makes a prayer that he should be put upon a test identification parade, such a parade must always be held in order to meet the challenge. The Court also said that if the accused was arrested on the spot and was in custody from that time up to the date of trial, there could be no question at all about his identity."

Budhsen v. State of U.P. (1970) 2 SCC 128,

It was held that "Identification parades belong to the investigation stage and generally held with the primary object of enabling the witnesses to identify persons concerned in the offence who were not previously known to them. The legal effect of identification parades was stated as follows: (SCC p. 132, para 7)

"That certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognize as having been concerned in the crime. They do not constitute substantive evidence."

Tek Chand v. State AIR 1965 Punj 146,

A Division Bench of the Hon'ble Punjab High Court held that "the accused cannot compel the prosecution to hold their identification during the investigation and there is no law or procedure under which the Magistrate could pass such an order.

The Bench proceeded to hold that if such a prayer is made by the accused and the prosecution opposes the same, it exposes the witnesses of identification to a genuine criticism that they would probably not be able to identify the offenders correctly if the parade was held. The Court held that when the request for identification parade was refused for no valid reason and the court identification was made long afterwards, the identification evidence in court could not be relied on, unless it was corroborated."

Jadunath Singh v. State of U.P. (1970) 3 SCC 518,

A Bench of three Judges of the Hon'ble Supreme Court held that "Failure to hold test identification of accused is not fatal in all cases.

State of U.P. v. Rajju (1971) 3 SCC 174,

"In the absence of request from the accused, the State is not bound to hold identification parade when they were arrested on the spot.

Golam Majibuddin v. State of W.B. (1972) 4 SCC (N) 39,

Three Judges Bench of Hon'ble S.C held that "when the witness stated that he already knew the accused before the day of occurrence and it was not the case of the accused that he was not known to the witness previously, test identification would serve no purpose."

Jadunath Singh case [(1970) 3 SCC 518 : 1971 SCC (Cri) 124 : AIR 1971 SC 363] and held that failure of the investigating officer to hold identification parade is not necessarily fatal.

Kanan v. State of Kerala (1979) 3 SCC 319,

The Hon'ble Court held that "where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous test identification parade to test his powers of observation."

This extract is taken from Surendra Narain v. State of U.P., (1998) 1 SCC 76: 1998 SCC (Cri) 14 at page 84.

Narendra Singh v. State of U.P. (1987) 2 SCC 236

"The attack on the deceased was witnessed by an uninterested and independent witness who knew the accused already. That witness snatched from the accused the kirpan and the turban when he escaped and deposited the same in the police station. The FIR was lodged within 15 minutes and the accused was named therein. The Court held that the question of identification was of no consequence."

State v. Dhanpat Chamara, AIR 1960 Pat 582

It was held that "If the witnesses do not give the name of any accused, it is necessary to hold a test identification parade and where a witness gives the name of the accused, ordinarily no such parade is necessary. The Court however said that if any accused holds out a challenge and says that he will not be identified by the witnesses or makes a prayer that he should be put upon a test identification parade, such a parade must always be held in order to meet the challenge. The Court also said that if the accused was arrested on the spot and was in custody from that time up to the date of trial, there could be no question at all about his identity."

State of U.P. v. Rajju (1971) 3 SCC 17

"In the absence of request from the accused, the State is not bound to hold identification parade when they were arrested on the spot."

Kanan v. State of Kerala (1979) 3 SCC 319

"Where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous test identification parade to test his powers of observation."

Golam Majibuddin v. State of W.B. (1972) 4 SCC (N) 39,

"When the witness stated that he already knew the accused before the day of occurrence and it was not the case of the accused that he was not known to the witness previously, test identification would serve no purpose."

Mehtab Singh v. State of M.P. (1975) 3 SCC 407,

"The need for identification parade arises only if the assailants are not previously known to the witnesses"

Romesh Kumar v. State of Punjab 1994 SCC (Cri) 67,

"Holding of identification parade was not necessary as the murder took place in a rickshaw and the rickshaw-puller stated that he knew the accused and that conviction based primarily on his testimony was proper."

Surendra Narain v. State of U.P., (1998) 1 SCC 76,

Para-84 "The failure to hold the test identification parade even after a demand by the accused is not always fatal and it is only one of the relevant factors to be taken into consideration along with the other evidence on record. If the claim of the ocular witnesses that they knew the accused already is found to be true, the failure to hold a test identification parade is inconsequential."

CHILD IN NEED OF CARE AND PROTECTION (CNCP) AND CHILD CONFLICT WITH LAW (CCL)

The Juvenile Justice (JJ) Act of 2015 introduces enhanced provisions for children in need of care and protection, as well as those involved in conflicts with the law.

Child in need of care and protection

The definition of "child in need of care and protection" provided under section 2(14) incorporates elements from both the JJ Act of 2000 and the JJ Act of 1986, with certain omissions, augmentations, and alterations. The clauses defining a child in need of care and protection.

S. 2(14) “child in need of care and protection” means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of labor laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run-away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage.

This provision concerns a minor living with an individual, irrespective of their legal guardianship. Section 2(14), clause (iii), aims to establish preventive oversight for minors. These groups of children encompass those currently under a genuine threat of initial or recurring harm. This includes minors residing with an individual who has either previously inflicted harm upon them or poses a credible threat of causing harm to the child. The term "harm" encompasses both manifested harm towards a child and instances of harm directed at another child in the past.

Child in conflict with law

S. 2(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

JUDICIAL PRONONCEMENT REGARDING JUVENILE RIGHTS

Sheela Barse & Anr. v. Union of India & Ors. (1986) 3 SCC 596,

This petition was filed in the Hon'ble Supreme Court for getting directions regarding the release of children, below 16 years of age, from jails. The petitioners also prayed for the production of complete information about children in jails, and the existence of juvenile courts, homes, and schools in the country. The Hon'ble Supreme Court, acting on the petition, directed: State Legal Aid & Advice Board to send two lawyers to each jail within the State once a week to provide legal assistance to children (below 16 years of age), who are detained in prisons. All State Governments to report the number of children's homes, remand homes & observation homes for children in their States, and the number of inmates in each of those institutions. States to properly enforce the 'Children's Act' enacted by them. They must file affidavits to show cause why they are not implementing those Acts. District and Sessions Judges to make regular visits to the District Jails and to take particular care of child prisoners.

Sheela Barse and Ors. Vs. Secretary, Children's Aid Society and others (1987) 3 SCC 50,

In this case, the Hon'ble Supreme gave the following directions relating to juveniles:

In cases, where a child has been accused of an offence that is punishable with imprisonment of fewer than 7 years, the investigation must be completed within 3 months from the lodging of the FIR and the trial must be completed within 6 months from the filing of the charge sheet. Children must not be lodged in jails under any circumstance. Remand and observation homes must be set up by the State Governments. If there is no accommodation in these remand or observation homes, then the children should be released on bail. To ensure complete uniformity, the Union Government should enact a Children's Act for the trial of children below 16 years of age and ensure rehabilitation of such children.

Pratap Singh v. State of Jharkhand & Anr. (2005) 3 SCC 551

In this case, the Hon'ble Supreme Court held that the juvenility of a person in conflict with the law has to be reckoned from the date of the offence and not from the date on which cognizance was taken by the Magistrate.

Hari Ram v. State of Rajasthan & Anr. (2009) 13 SCC 211

Under the Juvenile Justice Act, 1986, the upper age limit for male children to be considered juveniles was 16 years. But, the Juvenile Justice (Care and Protection of Children) Act, 2000 ("JJ Act, 2000") treats children up to 18 years as juveniles. So, the primary issue before the court, in this case, was, whether JJ Act, 2000 applies to offences that have been committed before the coming into force of the JJ Act, 2000. The court held that upon conjoint reading of Sections 2 (k), 2 (l), 7A, 20, and 49, it is made clear that all the persons who were below the age of 18 years on the date of the commission of the offence even before the enforcement of JJ Act, 2000, would be treated as juveniles. It would be immaterial that the claim of juvenility was raised after the accused attained the age of 18 years.

Sampurna Behura v. Union of India & Ors. (2018) INSC 125

This case was primarily related to the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, and Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act, 2015"). The court observed that the children are the future of our country and they must be looked after. So, it issued several directions to ensure proper implementation of the JJ Act, 2015:

- Central and State Governments must ensure that all the vacancies in the National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights (SCPCR) are filled for the effective functioning of these statutory bodies.

- State-Level Child Protection Societies and District Level Child Protection Units should take assistance from NGOs and civil society for proper implementation of the JJ Act.

- State Government must ensure the filling up of all the positions in the Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs).

- JJBs and CWCs must have regular sittings to ensure that there is no backlog of inquiries and children in need of care & protection are being taken care of.

- National & State Commissions for Protection of Child Rights must take up studies on various societal issues so that the State Government can take remedial steps on those issues.

- State Governments must appoint the necessary number of Probation Officers for the effective implementation of the JJ Act, after getting reports from the NCPCR and SCPCRs.

- Special Juvenile Police Units must be set up so that the police can effectively fulfill their role as the first responder on issues arising out of offences committed by or against children.

- National & State Police Academies must consider including the topics related to child rights in their curriculum.

- State Governments were advised to ensure that all the Child Care Institutions (CCIs) are registered so that the issues of missing children & trafficking are addressed.

- Eminent Persons from civil society must be appointed as Visitors by State & UT Governments to monitor & supervise the CCIs.

- Members of the Juvenile Justice Boards, Child Protection Societies, District Child Protection Units, and Special Juvenile Police Units must be given adequate training and sensitization for the proper implementation of the JJ Act.

All the Chief Justices of the High Courts were urged to consider establishing child-friendly courts & vulnerable witness courts in each district to deal with inquiries under the JJ Act and trials under POCSO Act, etc.

Abuzar Hossain @ Gulam Hossain v. State of West Bengal (2012)10 SCC 489

In this case, the Hon'ble Supreme held that:

- The claim of juvenility can be raised even after the final disposal of a case. It can be taken up at any stage and any delay in making such a claim cannot be a ground for rejection of such claim.
- The burden of proof for making a prima facie case supporting the claim of juvenility rests upon the person making the claim.
- Production of any of the documents referred to in Rule 12 (3) (a) (i) to (iii) of Juvenile Justice (Care and Protection of Children) Rules, 2007,will be sufficient proof to initiate an inquiry regarding the claim of juvenility.
- Affidavit of the claimant in support of the claim of juvenility, filed for the first time in the appellate court, shall not be sufficient to discharge the burden of proof for initiating an inquiry regarding the claim.
- The courts must not adopt a hyper-technical approach while dealing with the plea of juvenility.
- Frivolous claims of juvenility must be rejected.

Om Prakash @ Israel vs Union of India 2025 SCC OnLine SC 47

The Supreme Court examined the constitutional mandate for protecting juveniles, emphasizing the principles of reformation, rehabilitation, and reintegration. The Juvenile Justice (Care and Protection of Children) Act, 2015 ("2015 Act") requires courts to determine the age of an accused if juvenility is raised at any stage, even after the final disposal of the case. Justice M.M. Sundresh emphasized that courts are obligated to act as active seekers of truth, particularly in cases involving juveniles. Procedural law must be subordinated to substantive justice when determining juvenility. The judgment reinforced the constitutional principles of Article 15(3), Article 39(e) and (f), and Article 45, which mandate the State to ensure special care and protection for children. The doctrine of parents patriae was invoked, emphasizing the court's duty to act as a guardian for juveniles.

Section 9(2) of the 2015 Act allows juvenility claims to be raised at any stage, including after the final disposal of a case. The court held that the appellant's claim should have been adjudicated in compliance with this provision. The court noted that both the Juvenile Justice Act, 2000, and the 2015 Act allow for retrospective application to cases where the claim of juvenility has not been adjudicated following law.

It was observed that:

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