:: TOPICS ASSIGNED ::

Session – I:

***** Res-gestae

***** Relevancy of motive preparation and conducted

***** Test Identification periods

***** Alibi

Session – II:

***** Admission and confessions – Relevancy in criminal cases

***** Confession of Co- Accused

***** Extra Judicial confession**.**

***** Retracted confessions

We all know that the the heart of the case is the presentation of evidence and the assessment of evidence adds more life to the facts and circumstances of each case. We know that The Meaning of the Word "Evidence" The term "evidence" comes from the Latin word "evidens evidere," which means **"to show clearly; to make clear, certain, or to prove."**A set of regulations for determining disputed facts in judicial investigations is known as the "Law of Evidence" which governs this system of gathering facts, which are the fundamental components of a right or liability and are the main and possibly most challenging role of the Court.

Lord Denning says that "A Good Judge listens attentively;Weighs the Evidence objectively and delivers a just decision".

To begin with, Sections 6 to 9 of Indian Evidence Act, 1872 enumerates the ways in which facts though not in issue are so connected with fact in issue as to form part of principle fact in issue.

SESSION – I

:RES-GESTAE:

Section 6: Relevancy of facts forming part of same transaction: Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Under the definition of the word relevant in **section 3,** a fact is said to be relevant to another when one is connected with other in any of the ways referred to in the provisions of the Act relating to the relevancy of fact .These particular ways which the law regards as **" Relevancy"** have been described in **Sections 6 to 55** which deal with relevant facts . Facts which are not themselves in issue may effect the probability of the existence of facts in issue and be used as the foundation of inferences respecting them such facts are described in the Act as relevant facts .Facts relevant to the issue have been arranged in the Act in the following manner :-

Meaning of Res Gestae:

The term **'Res'** is a Latin word which means **"thing"** and the expression **"Res Gestae"** literally which means **"the thing done, a subject matter, a transaction or essential circumstances surrounding the subject".** In the law of evidence, it means things done including words spoken, forming part of the same transaction. There is a fact story behind every case before the court of law. In (fact story) contains certain acts, omissions or statements, which are not in issue but are capable of throwing some light on the nature of the transaction revealing its true quality and character. Such acts, omissions, or statements from part of the same transaction in issue and are allowed to be proved.

Definition of Res Gestae:

Black's Law Dictionary defines the word " Resgestae" as follows :

Latin : "Things done"- The events at issue [or] other events contemporaneous with them. In evidence law, words and statements about the res-gestae are usually admissible under a hearsay exception[such a present sense impression[or] excited utterance .

The Principle of Res-gestae was first propounded in the year of 1693, in the case known as Thompson Vs. Trevanion

S.6 embodies the rule of Admission of Evidence know as Res gestae. This phrase means simply a transaction, thing done, subject matter Res gestae of any case properly consist of that portion of actual happening of the world out of the rights or liability, complained or asserted in the proceeding, necessarily, arise .

Basis for the Rule" Every Fact is a part of other facts ." The affairs of men consist of a complication of circumstances so intimately, interwoven as to be hardly separable from each other.Each owes its birth to some preceding circumstance and in its turn becomes the prolific parent of others and each during its existence has its inseparable attributes and its kindred facts materially affecting its character and essential to be known in order to right understanding of its nature " **Section 6** lays down that the facts which are son connected with the facts in issue that they form part of the same transaction are relevant facts .

Principle: Sections 6, 7 and 8 deal with the facts which are relevant to the fact in issue. As a amatter of fact, the rule formulated in section 6 is expounded and illustrated in sections 7, 8 and 9 as such these four sections should be reas together . These sections, taken together, formulate that the facts which, as a matter of ordinary logis [or] experience, tend to tender the main fact probable [or] improbable, are also relevant. Such items of evidence taken individually, may prove nothing but when taken in conjunction with other facts, may be dispositive of the case.

In every case, the question of the relevance of a particular item of evidence can be decided only by looking at it in the context of the whole evidence of the case. Such facts may themselves be proved either by direct testimony [or] by circumstantial evidence [ie by other relevant facts]

A party to give evidence of any collateral facts which are not in issue provided that they are so closely connected with a fact in issue as to form part of the same transaction. These evidences, are allowed to be put in to make the evidence as facts in issue more intelligible .It very often happened that the principal fact in conjunction with other collateral facts may constitute such a state of things that the inference of the right [or] liability in question becomes inevitable. Accordingly, collateral facts are admissible in evidence .

Conditions: A Statement to be admissible under Section.6, the following conditions are to be satisfied:

1) The statement must be a statement of fact and not opinion
2) The statement must have been made by a participant or witness of the transaction.
3) The statement made by bystander is Admissible, if he was present at the scene of the offense.
4) The statement must explain, elucidate or characterize the incident in the same manner.

The section provides for the admission of several classes of facts related to the transaction under inquiry which are :-

1. As being the occasion or cause of a fact,

2. As giving an opportunity for its occurrence,
3. As being its effect, and
4. As constituting the state of things under which it happened.

Ilustrations:

- An injured or injured person's cry.
- The witness's cry to see a murder happen.
- The sound of a shot of a bullet.
- The person being attacked is crying for help.
- Gestures made by the person dying etc.

Interpretation to the words "Facts forming part of same transaction":

[a] A transaction consists of both of the [1] Physical acts and [2] Psychological acts [eg., declarations, shouting's etc.,] that is the words accompanying such physical acts, whether spoken by the person by the person doing such acts, or the person to whom such acts are done [or] any other person [s] .

[b] In the terms of section 5, evidence may be given of :

[i] Facts in issue and

[ii] Collateral facts which have declared as "Relevant facts". Any fact, though not issue, when connected with a fact in issue in such a way as to form part of the same transaction is a relevant fact. To ascertain whether a series of acts are parts of same transaction, it is essential to see whether they are linked together to present a continuous whole. The question whether a particular fact is [or] is not a part of the transaction of which another part is a fact in issue, depends upon the circumstances of each individual case.

Transaction: " cited in Chain Mahto Vs Emperor [11 CWN 266]" For legal purposes a transaction is a group of facts so connected together as to be referred to by a single name, as a **crime,a contract, a wrong[or] any other subject of a enquiry** which may be in issue"

Working test for deciding a Transaction

A good working test of deciding what is a transaction is:

- Unity or proximity of place,
- Proximity of time,
- Continuity of actions, and
- Community of purpose.[Reference : **AIR 1951 Ori 53 – Hadu Vs State]**

Continuity of action and community of purpose must be the key test. The condition for admissibility of a statement made by a person at the occurrence scene is time proximity, police station proximity, and continuity of action. The expression does not necessarily suggest time proximity as much as action and purpose continuity.

A transaction may be a single incident occurring for a few moments or it may be spread across a variety of acts, statements, etc. All of these constitute incidents that accompany and tend to explain or qualify the fact in question, although not strictly constitute a fact in the matter. All these facts are only relevant when they are connected by time proximity, unity or location proximity, continuity of action and community of purpose or design.

Applicability of Doctrine of Res-gestae : Section 6 is an exception to the general rule where under hearsay evidence becomes admissible. But, as for bringing such hearsay evidence within the ambit of section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication . In other words, the statements said to be admitted as forming part of res-gestae must have been made contemporaneously with the act [or] immediately thereafter.

:Relevant Case Law:

Bhairon Singh Vs State -2010 SCC [Crl] 955 Has held that " The rule embodied in Section 6 is usually known as the rule of res gestae . What it means is that a fact a fact which, though not in issue, is so connected with the fact in isse " as to form part of the same transaction' becomes relevant by itself. To form a particular statement as part of the same transaction utterances must be simultaneous with the incident [or] substantially contemporaneous that is made either during [or] immediately before [or] after its occurrence
Javed Alam Vs State of Chattisgarh - 2009 Indlaw SC 714 and in Gentele Vijayavardhan Rao Vs State of Andhra Pradesh [AIR 1996 SC 2791]: Has held that " The test for applying the rule of Res-gestae is that the statement should be spontaneous and should form part of the same transaction ruling out any possibility of concoction".
Krishan Kumar Malik v. State of Haryana : (2011) 7 SCC 130 has held that " There must be no interval between the criminal act and the recording or making of the statement in question "[In this case the victim girl met her mother and sister soon after the occurrence. Thus, they could have been the best Resgestae witnesses }.
Rattan Singh Vs State of HP –AIR 1997 SC 768 : Has held that **:"** Statement made by a person who is dead is admissible under section 32 of the Act when the statement so made is " as to the cause of his death" [or] as to any of the circumstances of the transaction which resulted in his death and it becomes admissible under section 6 of the Act .

7. Facts which are the occasion, cause or effect of facts in issue.—Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Principle: Under section 6 of the Act, facts forming part of the same transaction are admissible, yet a very large number of facts, which do not form part of the transaction although connected with facts in issue[or] relevant fact, come within the ambit of this

section. Broadly speaking, section 6 is concerned with the immediate present, while section 7 embraces the immediate past and the immediate future. The various contributory and consequential factors rendered admissible under section 7 are admitted on the assumption that they render probable the existence of the fact in issue and this section provides for the admission of the same transaction as the fact in issue, are still connected with it in particular modes and as such, are relevant when the transaction itself is under inquiry.

These modes of connection are :

[a] As being the occasion of relevant facts [or[facts in issue.

[b] As being its cause.

[c] As being its effect.

[d] as constituting the state of things under which the fact happened and,

[e] as giving an opportunity for its occurrence .

In our common experience that there are facts which do not strictly form part of the transaction, but are so closely connected with it that they tend to prove [or] disprove [or] clarify the transaction under enquiry. Evidence of collateral facts is admissible when such facts, if established , tend to prove [or] disprove the matter in dispute and when such evidence itself is conclusive.

Ilustration: Under section 7 the relevancy of the facts is to be determined by human experience .

[a] If a living being is cut into pieces [or] is seriously injured at a place there shall be bleeding and blood will be found on that place. If the blood is found on a particular place it may be inferred that some living being has been cut into pieces at least has been seriously injured at that place. That is to say, the fact of blood being found is the effect of some living being having been cut [or] injured there .In criminal cases , the fact that human blood was found on the alleged place of occurrence is proved to fix the place of occurrence and it is relevant as an effect of crime .

[b] Some other illustrations are Foot prints at scene, Injuries on body of Accused, Finger prints at the scene, Tape recorded conversations, conducting of identification parades.

The use of elastic phraseology like the " cause[or] effect, immediate[or] otherwise" if taken literally, may include the remotest causes, which, in turn, may open up a field for endless inquiries.Neither that was the intention nor the section has been interpreted in that way.

Afforded an Opportunity: Opportunity is always relevant.The presence of the accused at the time and place of an alleged crime is some thing which must be proved by the prosecution on practically every criminal charge and the establishment of an alibi in

conclusive in favour of innocence. Any evidence which tends to prove either of the above facts is, therefore, relevant and admissible. Proof of opportunity possessed by accused to commit a crime may give rise to an inference that he committed the crime. It is obvious that for a person to be able to committed an offence, the Physical presence within a proper range of time and place near the place of occurrence is necessary.

:Relevant caselaw :

Jainandh VS Rex-AIR 1949 ALL 291: has held that Illustration[c] of the section refers to circumstances affording an opportunity for the administering of poison .The deceased came to the house of the accused, stayed there and slept there in night.All those afforded an opportunity to the accused for murdering the deceased.

Yusuf Ali Vs State- AIR 1968 SC 147 : has held that the potentiality of section 7 as regards scientific evidence is vast .

Section 8 in The Indian Evidence Act, 1872

8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Principle: This section is virtually an enlargement of section 7 and embraces a wider circle of facts. Dealing the facts covered by section 7 in consideration of the question whether the man charged with an offence committed it [or] not the following questions frequently arise ::

Whether the accused was actuated by interest [or] motive in its commission.

1. Whether the accused did acts constituting preparation [previous attempt to bring it about is akin to preparation] and;
2. Whether the conduct, either previous [or] subsequent,of the person an offence against whom is subject of the proceeding [ie the conduct of the complainant] influences [or] is influences by any fact in issue[or] relevant fact.Thus, the classes of facts which become relevant under section 8 fall into three broad groups-in each, it

being necessary that some connection between the fact sought to be brought under section 8 and some other fact already in issue [or] relevant, is established

Illustrations [a]&[b] are instances of facts showing **" Motive"**
Illustrations [c]&[d] are instances of **" Preparations ".**
Illustrations [e]&[i] are instances of facts showing **" Conduct of a party to the proceeding".**
Illustrations [f][g]&[h] are instances of facts showing**" Statements affecting conduct ".**
Illustrations [j]&[k] are instances of facts showing **" Statements accompanying and explaining facts ".**

Motive : According to **Murray's dictionary**, is," that which moves[or] induces a person to act in a certain way; a desire;a fear; [or] an other emotion [or] a consideration of reason which influences [or] tends to influence a person's volition, also often applied to a contemplated result[or] object , the desire of which tends to influence volition.

:Relevant case law :

I: Motive ::(a) *In **Nathuni Yadav vs. State of Bihar** **(1978 9 SCC 238-DB)**: "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 murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable.*

(b) ***Lord Chief Justice Champbell struck a note of caution in R.V. Parlmer (Shourth and Report at p.308 CCC May 1856)*** *thus: But it there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.' Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."*

(c) *In **Subedar Tewari v. State of Utter Pradesh & Ors, AIR 1989 SC 733; Suresh Chandra Bhari v. State of Bihar, AIR 1994 SC 2420; and Dr. Sunil Clifford Daniel v. State of Punjab, (2012) 11 SCC 205** held that :The evidence regarding the existence of a motive which operates in the mind of the accused is very often very limited, and may not be within the reach of others. The motive driving the accused to commit an offence may be known only to him and to no other. In a case of circumstantial evidence, motive may be a very relevant factor. However, it is the perpetrator of the crime alone who is aware of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime.Therefore, if the evidence on record suggests adequately, the existence of the necessary motive required to commit a crime, it may be conceived that the accused has in fact, committed the same.*

(d) ***G. Parshwanath v. State of Karnataka, AIR 2010 SC 2914*** *It was held that in a case based on circumstantial evidence where proved circumstances*

complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted. Effect of absence of motive would depend on the facts of each case.

(e) *When facts are clear, it is immaterial whether motive was proved. Absence of motive does not break the link in the chain of circumstances connecting the accused with the crime. Further, proof of motive or ill-will is unnecessary to sustain conviction where there is clear evidence.* ***(vide:Bhimsingh v. State of Uttarakhand,(2015) 4 SCC 281).***

From the said legal principles it is clear that basically the element of Motive of Accused must be established by the Prosecution in the cases based on circumstantial evidence but,in certain cases where the evidence is clear as to the occurrence, the proof of motive become less significant and even it is not proved it is not fatal to the case .

II: <u>Preparation and attempt</u>:

Any fact which shows that preparation was being made for a fact in issue[or] a relevant fact, is relevant under section 8 of the Act. Preparation consists in devising [or] arranging the means [or] measures necessary for the commission of an offence ,an attempt is the direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to connect a crime, he must be shown to have had an intention to commit the offence and secondly to have done an act which constitutes the actus reas of a criminal attempt.

[Reference : Malkian Singh Vs State [1969[1]SCR 157].

Preparation itself is not punishable unless and until it is carried out or executed. But there are certain crimes where preparation itself is punishable.

[a] As for instance, Section 122 of the IPC punishes the collecting of arms etc with intention of waging war against the Government of India. It very clearly says that, Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

[b] Similarly, Section 399 of the IPC envisages punishment for making preparation to commit dacoity. It states that, Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

III: <u>Conduct</u> :

A man's conduct not only includes what he does and what he omits to do but also, includes silence[or] inaction, provided under the situation one if not expected to remain totally silent [or] aloof . A conduct is the expression in outwards behaviour of the

quality [or] condition operating to produce those effects. These results are the traces by which court may infer the moving cause.

The particulars of external relation and moral conduct will in general correctly indicate the character of the motive in which they have originated.

Ilustration: Where the husband inspite of seeing his wife burning did not take any step to extinguish the flame[or] make any arrangement to take the injured to the hospital at the earliest, his conduct becomes suspicious and is relevant under section 8 of the Act.

The presence [or] absence of motive, of means, opportunity, preparation [or] previous attempts on the part of the accused to do the act, his knowledge of circumstances enabling it to be done;his declaration of intention, [or] threats to do it [or] his enmity towards the injured party, are admissible. Preparation is an instances of previous conduct of the party influencing the fact in issue [or] of his agent whether previous[or]subsequent and whether influencing [or] influences by a fact in issue [or] relevant fact, is also admissible.As a matter of fact the conduct of a party is always very important .

Para 2 of the this section specifies conduct of three kinds:

[i] Firstly, conduct of any party [or] his agent to a civil suit [or] criminal proceedings in reference to such suit[or] proceeding
[ii] conduct in reference to any fact in there in[or] relevant thereto;
[iii] conduct of the person an offence against whom is the subject of any proceeding.

Section 8 and 27 of the Act :

In A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714, : Has held that ::: "By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not in Prakash Chand Vs. State (Delhi Admn.) [(1979) 3 SC 90]. Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

2. **In the State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600**, the two provisions i.e. Section 8 and Section 27 of the Act were elucidated in detail with reference to the case law on the subject and apropos to Section 8 of the Act, wherein it was held:

> "Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or

relevant fact. It could be either previous or subsequent conduct. There are two Explanations to the Section, which explains the ambit of the word 'conduct'.

They are: **Explanation 1** : The word 'conduct' in this Section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other Section of this Act.

Explanation 2 : When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute 'conduct' unless those statements "accompany and explain acts other than statements". Such statements accompanying the acts are considered to be evidence of res gestae.

Two illustrations appended to Section 8 deserve special mention.

(f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence --the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime. The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

Further, held that between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in **Prakash Chand Vs. State (Delhi Admn.) [(1979) 3 SC 90].**

3. Recently, by referring to the said **A.N. Venkatesh and Navjoth Sandhu's case in Shahaja @ Shahajan Ismail Mohd. Sheik Vs State of Maharastra - 2022 LiveLaw (SC) 596** by reiterating the legal principles held in said rulings further held that "Although the conduct of an accused may be a relevant fact under Section 8 of the Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. Like any other piece of evidence, the conduct of an accused is also one of the circumstances which the court may take into consideration along with the other evidence on record, direct or indirect. What we are

trying to convey is that the conduct of the accused alone, though may be relevant under Section 8 of the Act, cannot form the basis of conviction".

Section 8, 14 and 53 of the Act :

In criminal proceeding the evidence that the person accused is of good character is relevant[section53] so is the evidence as to the state of his mind[section 14].In Criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence[or] criminality.

Section 8 and 162 CRPC :

What is excluded by section 162 of criminal code is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused persons [not amounting to a statement] when questioned by a police officer. There is, there fore, no reason to rule out the evidence relating to the conduct of the accused which lends circumstantial assurance to the testimony of the witness[Reference : Prakash Chand Vs Delhi Administration – AIR 1979 SC 400.

Previous and Subsequent Conduct::

In any case where a crime has been committed, the court has to take into account both the previous and subsequent conduct of the accused pertaining to the commission of the crime. In certain cases the previous conduct of the accused throws light on whether the accused is innocent or guilty whereas in some cases it is the subsequent conduct that becomes very important in determining the innocence or guilt of the accused. So it is the bounden duty of all the concerned courts to analyse carefully both the previous and subsequent conduct of the accused before drawing any definite-conclusions.As for instance, in **Basanti v State of UP**, AIR 1987 SC 1572, the conduct of the accused women in telling the villagers including her brother-in-law that the deceased, whose dead body was recovered from a place of concealment, had left the village and had not returned was held by the Supreme Court to be relevant at her trial for murder.

Also, in yet another case titled **Khalil Khan v State of MP**, AIR 2003 SC 4670, the fact that the accused involved in a serious crime like murder would still be wearing blood-stained clothes even four days after the incident, was held by the Supreme Court to be opposed to normal human conduct.

In **Ramesh Kumar v State, 2010 CrLJ 85**, it was held that the fact that the accused set up a false plea of alibi is relevant under Section 8 as conduct to shield himself.

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"**Section 9**: Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or persons whose identity is relevant, or fix the time or place at which any fact in issue or relevant

Principle : Admissibility of facts which are the occasion cause [or] effect of relevant facts[or] facts in issue, are dealt within section 7; whereas facts showing motive [or] preparation for any fact in issue [or] relevant fact are made admissible under section 8. Facts which are necessary to explain [or] introduce a fact in issue [or] relevant fact are admissible under section 9, 7, and 8 provide generally for admission of facts causative of a fact in issue [or] relevant fact whereas section 9 generally provides for facts explanatory of any such fact .

When a party's identity is in issue, it may be proved [or] disproved not only by direct testimony [or] opinion evidence but presumptively by similarity [or] dissimilarity of personal characteristics .

Eg: *Age , height, size, hair,.complexion ,voice, handwriting, manner , dress, distinctive marks, faculties, as well as of residence, occupation, family relationship ,education, travel,religion, knowledge of particular people, places , or facts and other details of personal history.*

Illustrations [a],[b],[d],[e] and [i] illustrate the meaning of the expression' facts necessary to explaint [or] introduce a fact in issue [or] relevant fact "
lIlustrations [b] and [c] illustrate the meaning of the words 'in so far as they are necessary for that purpose ".In testifying to the matters in issue therefore, witnesses are required to state them, not in their barest possible form, but with a reasonable fullness of detail and circumstances.It is not, of course,all the incidents of a transaction that may be proved. For the narrative might be run down into purely irrelevant and unnecessary details.
The second clause of illustration[c] shows how an interference under section 8 from the act of absconding can be rebutted by an explanation by showing that the absconder left home suddenly on account of an urgent business .
Illustrations [d] and [e] indicate that explanatory statements are admitted under this section irrespective of the fact that the person against whom it was made, remained present [or] not when it was made. This is certainly a dangerous innovation in as much as a person may suffer from the statements made behind his back .

A part from section 9 of Evidence Act, we did not have earlier any specific provision pertaining to test identification parade. But by the amendment made in 2005

in Code of Criminal Procedure, a new Section 54A pertaining to identification was inserted which runs as follows :

"Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the Officer incharge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit."One of the methods of establishing the

Apart from section 9 of Evidence Act, we did not have earlier any specific provision pertaining to test identification parade. But by the amendment made in 2005 in Code of Criminal Procedure, **a new Section 54A pertaining to identification was inserted which runs as follows** :

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"One of the methods of establishing the identity of the accused is "test identification parade".identity of the accused is "test identification parade".

Purpose of Identification:

The object of conducting the test identification is two fold.

[1] To enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime.

[2] Secondly, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Therefore, the following principles regarding identification parade emerge:

[a] An identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses.

[b] This condition can be revoked if proper explanation justifying the delay is provided.

[c] The authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses.

Accompanying Facts [Illustrative cases]:

This section deals with relevancy of facts which are introductory of fact in issue [or] explanatory there of and necessarily such fact must be connected with facts in issue .

Illustration:

Whether A wrote an anonymous letter to B threatening him and requiring him to meet him at a particular place at an appointed time. The fact that A went to that place at the appointed time would be conduct relevant under this section and that A has some other business to transact at that place and at that time would be relevant as tending to rebut the inference raised by his going to the place that he was the author of that anonymous letter.

In this context, Rule 35 of the Criminal Rules of Practice, 1990 is relevant, which reads as under.

"35. Identification of property:-
(1) Identification parades of properties shall be held in the Court the Magistrate where the properties are lodges;
(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects;
(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property.

Section 291 A of CRPC: Identification report of Magistrate:

(1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Magistrate is not called as a witness:

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 21, section 32, section 33, section 155 or section 157, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject-matter of the said report.

:Relevant Case law :

Budhsen Vs State – AIR 1970 SC 1321: Has held the Guiding principles while holding test identification parade of Accused :
Dana Jadav Vs State – 2002 [7] SCC 295 :: The very purpose of conducting identification parade is to test the observation, grasp, memory, thiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court . If a witness identifies the accused in court for the first time, the probative value of such un-corroborated evidence of the witness becomes minimal so much that it becomes , as a rule of prudence and not law, unsafe to rely on such a piece of evidence .
State VS Lekh Raj –AIR 1999 SC 3916 : Held that Test identification is considered as a safe rule of prudence to generally look for corroboration of the sworn , testimonye of witnesses in court as to the identity of the accused who are strangers to them. There may,however, be exceptions to this general rule when for example , the court is impressed by a partuclar witness of whose testimony it can safely rely without such other corroboration.
Identification in T.I. Parade Vs. Identification in Court: Deepak@Wirless Vs State of Maharastra-2012(8)SCC 785 It is well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Hence, when the identification of an accused for the first time in court in absence of any test identification parade can be made the basis of the conviction depends on case to case.

Refusal of Accused to Participate in TIP: Munna Vs State[NCT-Delhi] 2003 AIR[SC]3805: Where in held that when accused refused to participate in parade then he is estopped to take a plea on first time identification before the court and prosecution can proceed in a normalmanner like other cases and rely upon the testimony of the witnesses, which is recorded in court during the course of the trial of the case .

Identification of Speech : State of UP VS Babu[DB] -2003(3)Apex CJ 686 : Has held that when the persons are known, identification is possible from the manner of speech, manner of walking and gesticulating and special features of a person like the physical attributes **.**

Identification of articles of personal use :

State of Rajasthan Vs Talevar and Another –In Earabhadrappa Vs State of Karnataka -1983 Indlaw SC 161 and AIR 2011 SC 2271 held that : Testimony of witness admissible since it is a matter of common knowledge that usually every one have an uncanny sense of identifying their own belongings , particularly articles of personal use in the family.

Who can hold a test identification:

Ramesh Vs State of Karnataka -2009(15) SCC 35 :

Held that there is no legal bar to any person recording the statement of another (provided the statement has voluntary made) any person can conduct a test identification. Any person can conduct a test identification, but magistrates are preferred .His Identification memo is a record of the statement which the identified expressly [or] impliedly made before him.The statement is a former statement of the identifier and in court is usable not only for contradicting him under section 145[or]155 of the Act but for corroborating him under section 157 , except that if was made before the police it would be hit by section 162 Crpc and would therefore not be admissible for purposes of corroboration.[Refer section 291A of CRPC].

Identification of crime weapon:In Kothareddi Aswartha Reddy vs. State of Andhra Pradesh[decided on 09-03-2018].

No Identification Test of the weapon as contemplated under Rule 35 of the Criminal Rules of Practice and Circular Orders, 1990 (for short, the Rules) When only one weapon was produced by the prosecution in the Court without being mixed up with other weapons, that by itself is suggestive of the fact that the prosecution seeks to project the same as crime weapon. Therefore, it is not difficult for any prosecution witness to take the hint and identify such weapon as the crime weapon. Indeed, to avoid such a situation, Rule 35 of the Rules envisaged the Identification parade of the

properties in the presence of the Magistrate. When such test not conducted identification is not believable.

<u>Identification of Gold articles</u>:

Banoth Ranga vs State Of Telangana, Rep Pp.,[decided on on 6 October, 2023; CRLA NO.1042 OF 2015] held that :

Test Identification parade of the articles as per Rule 35 of the Cr.P.C., was not conducted by the police. Therefore, recovery of gold ornaments which are not tallying with the evidence of Pw.2 is no way helpful to the prosecution to connect the accused with the death of the deceased.

Identification by Dog tracker/Sniffer:

*In **Babu Maqbul Shaikh Vs. State of Maharashtra 1993 Cr. L.J. 2808(Bombay)** it was held that tracker dog's evidence must pass the test of scrutiny and reliability as in the case of any other evidence.*

<u>The following guidelines were laid down</u> :

*"**(a)** There must be a reliable and complete record of the exact manner in which the tracking was done and a panchnama in respect of the dog tracking evidence will have to be clear and complete. It will have to be properly proved and will have to be supported by the evidence of the handler.*

***(b)** There must be no discrepancies between the version as recorded in the panchnama and the evidence of the handler as deposed before the Court.*

***(c)**The evidence of the handler will have to pass the test of cross examination independently.*

***(d)**Some material will have to be placed before the court by the handler, such as the type of training imparted to the dog, its past performance, achievements, reliability, etc. supported, if possible, by documents."*

*The said case is recently referred in **Sugali Dungavath Lakshma Naik @ Anda and others Vs State of Andhra Pradesh; 2020 1 ALD Crl 172(AP) In this case it is held that** The evidence of dog tracking even if admissible is not ordinarily given much weight and when , there is no incriminating material on record to show that there was any positive smelling/identification of the criminal by the dog. Apart from that, the evidence of the Investigating Officer would show that no articles or finger prints belonging to the accused were found at the scene of offence. There was also no iota of evidence as to the objects, which were smelled by the dog at the scene it will be most unsafe to attach any weight to the evidence adduced by the prosecution, as regards the dog quad tracking the accused.*

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18

: ALIBI :

The word **'alibi'** is of Latin origin which means "**elsewhere**". It is used by the accused in order to safeguard himself, to show that when the offence took place, he was present elsewhere and that it would be exceptionally unrealistic for him to have been able to reach that specific place where the offence has taken place.

ESSENTIALS OF PLEA OF ALIBI

1. The accused must have allegedly committed an offence which is punishable under the law. For example- the plea of alibi is not maintainable in different defamatory suits or in any matrimonial suit.
2. The person who is making the plea of alibi must be the accused.
3. According to the plea of alibi, the accused raises a reasonable doubt in the mind of the judges of the court that he is not present at the place where the crime has been committed at that particular time.
4. The plea needs to be supported by any other strong evidence.

Principle::

The object of a trial being the establishment [or] disproof by evidence of a particular claim[or] charge, it is obvious that any fact which proves[or] tends to prove [or] disproves [or] tends to disprove is relevant /Section 11 makes those facts relevant .Evidence becoming relevant under this section should be allowed to put in for ends of justice and also to find out truth which is sole object of a trial .Keeping in mind , at the same time, that this section though expressed in very wide language is controlled by the provisions regarding relevancy contained in the other sections of the Act

Evidence of collateral facts admitted under this section either

[i] to disprove a fact asserted by the adversary [or]

[ii] to prove a fact asserted by the party adducing evidence .

In the former case , the facts must be inconsistent with the fact which is desired to be disproved [or] such as to render it highly improbable .

Key Elements Of Plea Of Alibi In The Evidence Act:: To substantiate the defense of an alibi plea, specific criteria must be satisfied, such as:

- Occurrence of a punishable crime.
- Accusation of the accused in relation to the crime.
- Establishment of the accused's absence from the crime scene during the commission of the crime.
- Presentation of evidence that places the accused in a different location, rendering their presence at the crime scene implausible.
- The plea of alibi defense should be raised at the earliest opportunity during the legal proceedings.

Pertinent Sections Of The Evidence Act Regarding The Alibi Plea::

The Indian Evidence Act, 1872 acknowledges the plea of alibi in Section 11 and Section 103, highlighting its relevance within the legal framework.

Section 11 of the Indian Evidence Act: Relevance of Facts Otherwise Irrelevant

Section 11 of the Indian Evidence Act, of 1872 addresses the admissibility of seemingly irrelevant facts, stating that these facts become relevant if they contradict any pertinent fact or if they render the existence or non-existence of any fact in question highly probable or improbable.

Example Illustrating the Plea of Alibi::

In the context of the plea of alibi, consider this example: if the question revolves around whether individual A committed a crime in Calcutta on a particular day, the fact that A was in Lahore on that day becomes relevant. Furthermore, the fact that A was at a considerable distance from the location where the crime was committed, rendering it highly improbable (but not impossible) for A to have committed the crime, is also considered relevant under this section.

While **Section 7** of the Indian Evidence Act defines the meaning of the term 'relevancy', the practical effect of this section is to make every relevant fact, which is related to the case, admissible as evidence. This section attempts to state the general theory of relevancy of different facts and therefore, be described as the residuary section which deals with the relevancy of different facts.

Section 103 of the Indian Evidence Act: Burden of Proof for Specific Facts:: Section 103 of the Indian Evidence Act, 1872 addresses the burden of proof concerning specific facts. It states that the burden of proof rests on the individual who seeks the court to accept the existence of that fact unless a law dictates otherwise.

Example Illustrating Section 103::In the context of the example, if the matter under consideration is whether individual A committed a crime in Calcutta on a certain day, the fact that A was in New Delhi on that day becomes relevant. The responsibility of proving this fact lies in the individual asserting it.

::Relevant case law ::

Dudhnath Vs State [1981[2]SCC166:: Wherein it has held that " The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place.The plea can there fore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed ".

Jayantibhai Bhenkarbhai v. State of Gujarat (2002) 8 SCC 165:: **Burden of Proof::**

The Plea of alibi taken by the accused should be viewed as just when the burden of proof lies on the accused that has been discharged acceptably

and if the prosecution has failed in the discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But that as it may, when the prosecution has prevailed with regards to releasing its burden then it is on the accused taking the plea of alibi to demonstrate it with certainty in order to prevent the chance of his presence at the spot and time of the event with all due respect. A commitment is on the Court to take a look at the proof given by the prosecution in demonstrating the blame of the accused and the proof which have been introduced by the accused in demonstrating his safeguard for justification. In the event that the proof introduced in the court by the accused is for such a quality and of such a norm, that the Court may engage to guarantee the sensible uncertainty in regards to his presence at the spot and time of the event, the Court would assess the prosecution proof or the pieces of evidence to check whether the proof given or submitted in the interest of the charge fits the defence of alibi. [Reiterated in State of Kerala Vs Anil Chandran @ Madhu-2009[13]SCC 565.

Mukesh vs. State of N.C.T. of Delhi, AIR 2017 SC 2161[Nirbaya case]

In this instance, the accused's assertion of attending a musical program with his family during the time of the crime was dismissed by the court due to contradictory evidence, including the victim's dying declaration, DNA analysis, and fingerprint analysis. Additionally, park authorities confirmed that no permission was granted for any musical program on the day of the incident.

Subramaniam Vs State -2009[3] Crime 140 [SC] has held that " Mere failure of the Accused to prove the plea of alibi and /or giving false evidence by itself may not be sufficient to arrive at a verdict of guilt .It may be an additional circumstance.The prosecution must prove all other circumstances to prove his guilt.

In Thakur Prasad Vs State –AIR 1954 SC 30 and Ramdahin Singh Vs State -1970 SCC[CRL]949 : It has held that the plea of alibi is a question of fact .Further, held that generally in most cases, the prosecution evidence and the evidence of alibi should not be considered in compartments.The evidence of one part will have impact on the other and the court has to consider the entire materials on the records as constituting one complete picture .

2023 LiveLaw (SC) 891-Kamal Prasad Vs State of Madhya Pradesh[DB]: has held at Para 19 as follows::

" The principles regarding the plea of alibi, as can be appreciated from the various decisions[Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220;

Binay Kumar Singh (supra) Jitender Kumar v. State of Haryana (2012) 6 SCC 204; Vijay Pal v. State (Govt. of NCT of Delhi) (2015) 4 SCC 749; Darshan Singh v. State of Punjab (2016) 3 SCC 37; Mukesh v. State (NCT of Delhi) (2016) 6 SCC 1; Pappu Tiwari v. State of Jharkhand 2022 SCC OnLine SC 109.] of this Court, are:

- It is not part of the General Exceptions under the IPC and is instead a rule of evidence under Section 11 of the Indian Evidence Act, 1872.
- This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.
- Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.
- The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.
- It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of 'strict scrutiny' is required when such a plea is taken.

: SESSION II :

:ADMISSIONS AND CONFESSION RELEVANCY:

ADMISSIONS:

Sections 17 to 31 of the Act deal with admissions in general and more elaborately with a particular species of admissions, namely, confessions. "Confession" is confined only to criminal cases but "admission" as defined in section 17, is not confined only to civil cases .Rather, in the scheme of the Act, the expression" Admissions" is applicable to criminal also.This is because the **" Statement" is genus, "admissions" is the species and the confession is "Sub species**" .

Section: 17 Admission :

Three Requirements are :

1. It must be either oral [or] documentary .
2. It must suggest any inference as to the fact in issue[or] a relevant fact.
3. It must be made by the specified person and under the specified circumstances .

In the legal principle reported in **AIR 1966 SC 40 – Sahoo Vs State** – It has held that' Every confession is an admission, but every admission is not a confession.This is obvious from the fact that section 24 to 30 of the Act deliberately use the word" Confession" as distinct from " Admission".Further, also held that **" suggests any inference** " are used to include statements which do not amount to a direct admission of a fact in issue [or] relevant fact but which suggest an inference about it.That is why

an admission differs from a confession.It is to be remembered that admissions are not confined to civil caxes only.They are attracted in criminal cases also.

In *Bishwanath Prasad v. Dwarka Prasad*, the court said "Admissibility is substantive evidence of the fact which is admitted when any previous statement made by the party used to contradict a witness does not become substantive evidence. The Admissibility of evidence serves the purpose of throwing doubt on the veracity of the witness."

In *Basant Singh v. Janki Singh*, the High Court mentioned some principles regarding admissions:

- Any kind of statement in the plaint is admissible in evidence.
- No obligation on the Court to accept all the statements as correct and the court may accept some of the statements as relevant and reject the rest.
- There is no distinction between an admission made by a party in a pleading and other admissions.
- An admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits.
- Admissions are always examined as a whole, hence they cannot be divided into parts.
- Any admission cannot be regarded as conclusive and it is open to both parties to show whether it's true or not.
- Admissibility of a plea of guilt can be determined only if the plea is recorded by the accused in his own words.
- An admission to have a substantive evidence effect should be voluntary in nature.
- Admissions do not carry a conclusive value, it is only limited to being prima facie proof.
- Admissions that are clear in the words of the accused are considered as good evidence of the facts submitted.

  In Ajodhya Vs Bhawani-AIR 1957 ALL 1[FB] has held that an Admission is a Self Harming [and not self serving], statement express [or] implied, oral [or] written which is adverse to a aprty's case.And a party's statement to his case is received as evidence of the truth of their contents in civil and criminal cases. An admission is confession [or] voluntary acknowledgement made by a party [or] some one identified with him in legal interest of the existence of certain facts which are in issue[or] relevant to an issue in the case.

Admissions Classification:

Formal Admissions /Judicial admissions:These admissions are made by a party and can be made the foundation of the rights of the parties.Judicial admissions which are

made in pleadings of the parties stands on higher footing that evidentiary admissions and binds the maker and constitutes a waiver of proof .

Informal Admissions/Extra Judicial Admissions:

Extra Judicial Admissions are only partly binding and does not appear on record of the case. These kind of admissions finds its place in evidence.These are merely evidence which may be explained away[or] contradict by other evidence, but are not confined in operation to any particular litigation, so that an admission made by X, a witness in a case between A and B may be used against X in any litigation to which X is a party. Evidentiary admission at the trial is not conclusive .They can be shown to be wrong." **Nagindas Ramdas Vs Dalpatram Iccharam @ Brijram-AIR 1974 SC 471]**

Admissibility of evidence in the criminal proceeding

In criminal proceedings, evidence can only be produced when it is considered admissible and relevant to the facts or issues. Here, the evidence is used to prove whether the accused in a disputed matter is guilty or not beyond a reasonable doubt. The general rule is that the burden of proof always lies with the prosecution to prove the guilt of the defendant. The substantive law in the criminal proceedings defines what the prosecution has to prove to convict the accused . In criminal proceedings, the prosecution must prove all the necessary elements of the offence laid out in the Criminal Code against the defendant.

In the case of **Lachhuman Munda Vs State of Bihar – AIR 1964 Pat 210** It has held that Accused committed an offence and himself lodged FIR, Motive, Opportunity, Description leading to the crime, conduct after thecrime, confessional statement leading to the discovery of certain facts disclosed are admissible since there is no ban to the admissibility of an admission of any relevant fact by the an accused person to a police officer prior to the commencement of an investigation and not hit by section 162 of Cr.P.C.

In **Faddi Vs State –AIR 1964 SC 1850** has held that the accused was prosecuted and tried though he originally lodged the FIR .It is held to be admission, and not confession, of certain facts which have a bearing on the question to be determined by the court and this admission of the accused can be proved against him .

In **AIR 1955 SC 585 Mohanthy Vs State of Orissa** – Has held that Admission of accused under the influence of liquor cannot be relied upon.

II:: Sections 18 to 20 mention the persons by whom a statement such as referred to in section 17, can be made in order that it may rank as an admissions in a proceeding, either civil [or] criminal.Under section 18 the following five classes of persons come in this category:

1. Party to the proceedings.

2. An agent authorised expressly[or] impliedly by such party.
3. Party suing [or] sued in representative character while holding such character.
4. Persons having proprietary [or] pecuniary interest in the subject matter of the proceeding during continuance of such interest.
5. Persons from whom the parties to the suit have derived the interest in the subject matter of the suit during the continuance of such interest.

Section 18 Admission by party to proceeding[or] his agent :

In **Sakariya Vs State -1991 CrLJ 1925 [MP] :**In this case it was suggested by the defence counsel that the prosecutrix consented for the sexual intercourse .Held that because of his above submission it could not be said that the accused admitted commission of sexual intercourse with the prosecutrix but that was with her consent and the commission of sexual intercourse has to be proved like any other fact .

In **Rita Baran Singh Vs Emperor [19 Cri L J 789] and Kedar Nath Bajoria Vs State of West Bengal [AIR 1954 SC 660]** has held that the " Rules of admissibility are in general same for trials and civil and criminal. Whatever the agent does within the scope of authority binds his principal and is deemed his act.it must be shown that the agend has the authority and that the act is within his scope.it is a known, and familiar principle of criminal jurisprudence that he who commits [or] procures a crime to be done, if it is done,is guilty of the crime and the act is his act. Sometimes it so happens that the agent is quite innocent and the principal is held guilty as in the cases of insane and idiots employed to administer poison.According to Evidence Act admissions of an agent is relevant against the principal if made within his authority but the confession of the agent is not sol relevant.But in criminal trial in order to bind the principal by the statement of the agent, the agency must be strictly proved .

Section 20 Admission by persons expressly referred to by party to Suit: This section deals with another class of admission of persons otherthan the parties.When a party refers to a third person for some information for an opinion on a matter in dispute, the statement by third parties are receivable as an admission against the person referring .The reason is that when a party refers to another person for statement of his views, he approves of his statement in anticipation and adopts as his own.

Applicabilty of section 20: The preconditions for the applicability of this sections are :

1. The reference must be made by a party to the proceedings/suit.
2. Such reference must be made expressly;and
3. The information sought for from the referee must relate to a matter in the dispute .

Interpretation for the word" Information" referred in section 20:

In **Sadhuram Vs Ude Ram –AIR 1967 Punj 179** is has held that" Information " means a statement of fact and not decision of any kind. In **Hirachand Kothari Vs State – AIR 1985 SC 998]** held that Section 20 is the second exception to the general rule laid down in section 18.It deals with one class of vicarious admissions that demand of persons other than parties. Where a party refers to a third person, for some information [or] opinion on a matter in dispute , the statements made by the third person are receivable as

admissions against the person referring. The reason is that when a party to another for a statement of his views, the party approves of his utterance in anticipation and adopts that as his own. The principle is the same as that of reference to arbitration .The reference mat be by express[or] by conduct, but in any there must be clear admission to refer and such admissions are generally conclusive.

Section 21: Proof of admissions against persons making them, and by[or] on their behalf:

Under this section, three general propositions follow i.e.,

1. An admission is relevant .
2. It may be proved against the person who makes them or his representative in interest
3. An admission cannot generally be proved on behalf of the person who made it .

In **Bharath Vs Bhagirathi-AIR 1966 SC 405 and In Mahabir Vs Haripada – AIR 1982 SC 353** : **has held that Admissions are substantive evidence** .Accordingly, admissions may be proved by any witness who heard them without calling the party by whom they are made. Its weight however, is matter for consideration of the court. An admission duly proved is admissible evidence irrespective of whether the party making it appeared in the witness box [or] not and whether that party when appearing as a witness was confronted [or] not and whether that party when appearing as a witness was confronted [or] not in the event of making statements contrary to those admissions .

Exceptions to Section 21:Clause[1] Statements relevant under section 32 : This clause should be read along with section 32.Admission under the clause although in favour of the party making it , is received on the principle of **necessity** and **unavailability** of the person being dead [or] unavailable .

Clause[2] Statement of the existence of any state of mind[or] body etc., Clause [2] supplements section 14 , which declares that the fact showing existence of state of mind, or of body, or bodily feeling shall be relevant .Caluse[2] of section 21 lays down that the facts which are relevant under section 14 may be proved by admission of the party in this regard .

For example: , When the question is whether a person had bodily pain [or] not at a particular time, only contemporaneous declaration of the sufferer will be reliable evidence in this regard .

Clause[3] Statement relevant otherwise than as an admission: This clause aims at to prove res gestae evidence so also facts relevant under sections 8 and 11.Accordingly, clause[3] provides that any statement may be proved on behalf of the maker if it is relevant otherwise than as an admission.

CONFESSION DEFINED:

The word " **Confession"** is though not defined in the Act. Mr.Justice Stephen in his Digest of Law of Evidence , defined a " Confession" as " An admission made by a

person charged with a crime stating [or] suggesting the inference that he committed the crime "

After the authoritative pronouncement by the Privy Council in **Pakala Narayana Swamy v. Emperor AIR 1939 PC 47 – Atkin,** G Rankin, Porter, Thankerton, Wright **–** JJ, a confession has been understood as follows:-

"…..a Confession **must either admit in terms the offence**, or at any rate **substantially all the facts which constitute the offence**. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

The above definition was given by way of clarification of an earlier statement in the same verdict authored by Lord Atkin and which runs as under –

"…..no statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed."

The above definition was approved by the Supreme Court of India in **Palvinder Kaur v. State of Punjab AIR 1952 SC 354** – Three Judges bench –**; Om Prakash v. State AIR 1960 SC 409**– [DB] **; Veera Ibrahim v. State of Maharashtra (1976) 2 SCC 302**–[Three Judges Bench] **v. State of Rajasthan AIR 2004 SC 588 [DB].**

Confessions are considered to be highly reliable because no rational person would make an admission against his own interest unless prompted by his conscience to tell the truth. (Vide para 29 of **State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600 - [DB].**

Section 24 of the Act begins with a group of sections [Section 24 to 30] dealing with confession. In the scheme of the Act, confessions are treated as a species of admission so far as the basis of their relevance is concerned , the group of sections laying down certain special rules regulating the use of confession. A statement in order to be admissible in evidence with reference to the group of sections, it must satisfy the following conditions :

1. It must amount to an admissions[Sections 17 to 21]
2. It it is to be treated as a confession, it must not be excluded by sections 24-26 provided certain restrictions [or] doubts as to its admissibility are removed [sections 27-29] and certain special rules contained in section 30 of the Act and section 164 of CPC are complied with.

In Satbir Vs State –AIR 1977 SC 1924 : Has held that " In deciding whether a particular—

In deciding whether a particular confession attracts section 24 the question has to be considered from the poin of view of the connfessing accused as to houw the inducement, threat or promise proceeding from a person in authority would operate in his mind. Section 25 covers a confession which was made when the maker was free and not in police custody, as also a confession made before any investigation has begun. A statement or confession made in the course of an investigation may be recorded by a magistrate under section 165 Criminal Procedure Code subject to the safeguards imposed by that section. Except as provided in section 27 of the Evidenec Act, a confession by an accused to a police officer is absolutely protected under section 25 and if it is made in the course of an investigation, It is also protected by section 162 of the Criminal Code of Procedure, and a confession to any other person made by him, while in custody of a police officer, is protected by section 26 unless it is made in the immediate presence of a magistrate. These provistions seem to proceed upon the view that confessions made by the accused to a police officer or made by them while in custody of police officer ar not to be trusted and should not be used tin evidence against him. This principle is based upon grounds of public police and fullest effect should be given to them.

Confession consisting several parts:

The statement of the acused may be either exculpatory or inculpatory. A statement in order to amount to a confession within the meaning of section 24 must either admit in terms of the offence or at any rate subnstantially all the facts which constitute the offence. An admission of an incriminating fact, however grave, is not by itself a confession. A statement which contains an exculpatory assertion of some fact, which if true, would negative the offence alleged, cannot amount to a confession [Veera V State AIR 1976 SC 1167: 1976 Cr LJ 860].

It must be accepted as a whole or rejected as a whole and the court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible [Palvinder v State AIR 1952 SC 354: 1953 Cr LJ 154].

A confession may consist of several parts. It may reveal comission of the offence as well as the motive, preparation, opportunity, provocation, intention, the weapon used, the concealment of the said weapon and even his subsequent conduct. If a statement contains an admission, not only that admission but, also every other admission of an incriminating fact contained in that statement is part of the confession.

The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that such confession was voluntarily made. Voluntary means one who makes such confession does so out of his own free will inspired by the sound of his own conscience to speak nothing but the truth. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally emerges when one is in despondency or in a perilous situation when he wants to shed the cloak of his guilt. Such feeling of guilt becomes so powerful that he is ready to face all consequences for clearing his

conscience.(Vide paras 23 and 24 of **Nazir Khan v. State of Delhi (2003) 8 SCC 461 [DB]**

A conviction on the strength of a "confession" is based on the maxim "**habemus optimum testem, confitentem reum**" which means that "confession of an accused is the best evidence against him." (Vide **Sahib Singh v. State of Haryana AIR 1997 SC 3247 [DB]**

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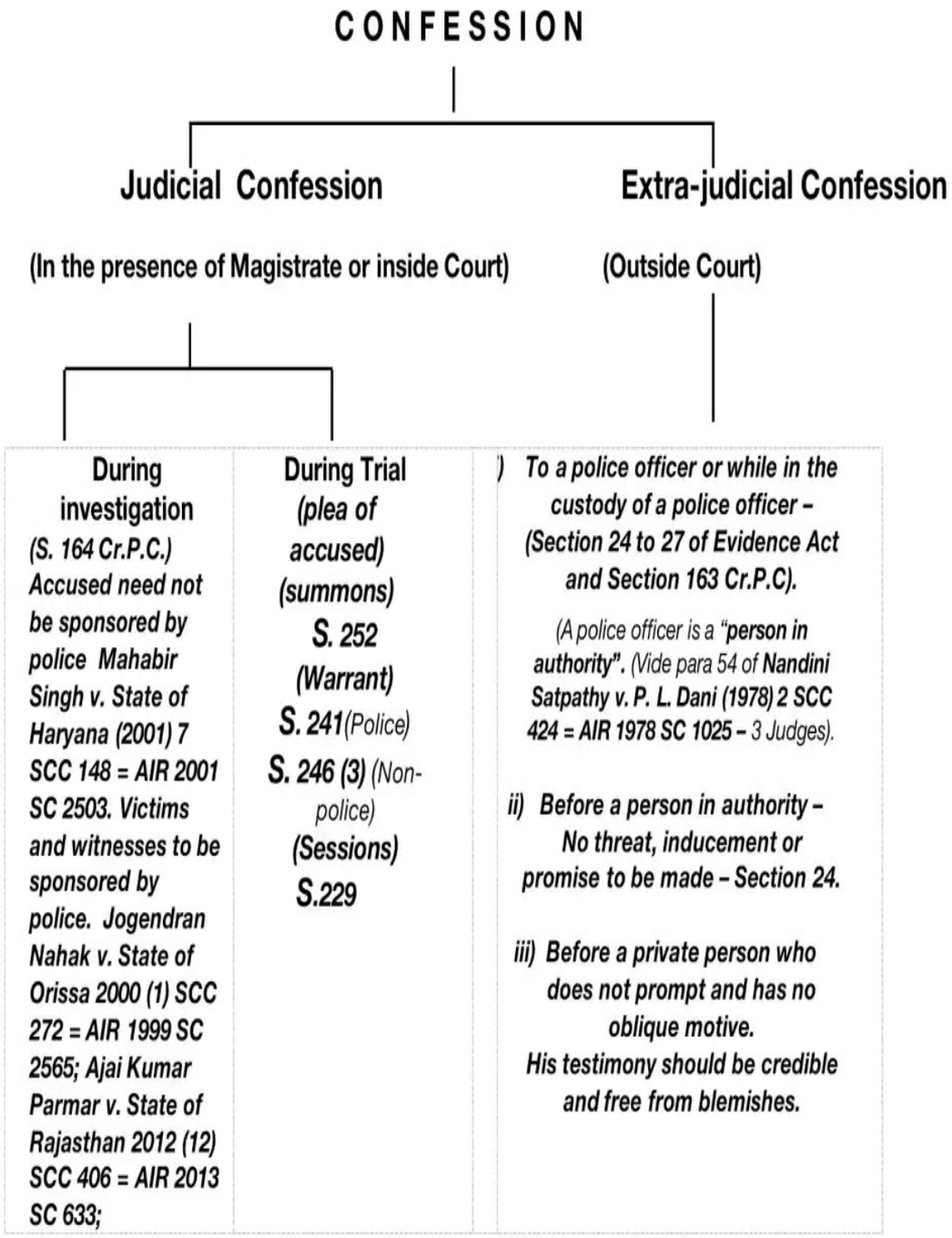
::CLASSIFICATION OF CONFESSIONS::



CONFESSION OF ACCUSED RECORDED UNDER SECTION 164 OF CPC :

AUTHORITY WHO CAN RECORD THE CONFESSION:

Section 164(1) empowers any **Metropolitan Magistrate** or other **Judicial Magistrate** to record any **confession** or **statement** made to him.This provision, therefore, indicates that a **Judicial Magistrate alone** is invested with the power to record a confession or statement under Section 164 (1) Cr.P.C. A confession recorded by an Executive Magistrate under Section 164 (1) Cr.P.C. is thus totally inadmissible in evidence (Vide **Asst. Collector of Central Excise v. Duncan Agro Industries Ltd. AIR 2000 SC 2901 – [DB]** Second proviso to Section 164(1) clarifies that a Police Officer on whom the power of a Magistrate has been conferred under any law also cannot record a confession under Section 164(1) Cr.P.C. What is not permissible is only the recording by a person other than a Judicial Magistrate of a confession by recourse to Section 164 Cr.P.C. But, anybody including an Executive Magistrate is entitled to record an extra *judicial confession. However, a Police Officer cannot record a confession in view of the interdict under Section 25 of the Indian Evidence Act, 1872***.** Section 164 Cr.PC recording confession has to be read along with the procedure lay down under section 281 of Cr.PC .

In **Kartar Singh v. State of Punjab (1994) 3 SCC 569 = 1994 Cri.L.J 3139 – [Five Judges Bench]**, the Supreme Court held that since an Executive Magistrate or a Special Magistrate authorised under Section 20(3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA Act" for short) was acting as a criminal Court, they are entitled to record a confession in relation to a case involving an offence under the TADA Act.)

An accused himself can appear before a Judicial Magistrate for recording his confession. Such accused person is free to make a voluntary confession before the Magistrate and he need not be sponsored by the Police unlike in the case of a witness or victim. This is a Judge-made law. The only rider is that before recording the confession the Magistrate should be satisfied that the person who proposes to confess is an **accused** and that investigation against him is in progress. (Vide **Mahabir Singh v. State of Haryana (2001) 7 SCC 148 = AIR 2001 SC 2503** – ; **Jogendra Nahak and Others v . State of Orissa and Others - AIR 1999 S.C. 2565 = 2000 (1) SCC 272 – Ajay Kumar Parmar v. State of Rajasthan (2012) 12 SCC 406 = AIR 2013 SC 633** – **Three Judges Bench).**

The provisions of Section 164 Cr.P.C. must be complied with not only in form but also in essence. Non-compliance of Section 164 Cr.P.C. goes to the root of the Magistrate's Jurisdiction to record the confession and renders the confession unworthy of credence. At the time of recording the statement of the accused no Police or Police official shall be present in the open Court. The Magistrate should ask the accused as to why he wants to make a statement which will surely go against his interest in the trial. Before proceeding to record the confessional statement, a searching enquiry must be

made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution. (Vide **Rabindra Kumar Pal @ Dara Singh v. Republic of India (2011) 2 SCC 490 = AIR 2011 SC 1436 –**)

Section 24 of the Evidence Act lays down the obvious rule that a confession made under inducement, threat or promise becomes irrelevant in a criminal proceeding. The expression **"appears**" in Section 24 connotes that the Court need not go to the extent of holding that the threat etc has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the Court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a Police officer. Further, the confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the Court should eschew the confession from consideration. Recognising the stark reality of the accused being enveloped in a state of fear and panic, anxiety and despair while in Police custody, the Evidence Act has excluded the admissibility of a confession made to the Police officer (vide paras 27 and 29 of **State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600 .**

Recording of confession under **Police influence** should be avoided. (Vide **Dara Singh alias Rabindra Kumar Pal v. Republic of India (2011) 2 SCC 490 = AIR 2011 SC 1436**)

If the confession is recorded while the accused is in **Police custody** and there are Police officersall around him and the recording is by a Police Officer on the dictation given by the Magistrate and it is not read over and explained to the accused, it can hardly be accepted as a voluntary confession. (Vide **Shivarajan v. State 1959 KLT 167**)

Merely because a person is produced from Police custody before the Magistrate for recording his confession, such confession cannot be discredited. Taking into consideration the fact that there was an interval of about a month after the accused was removed from Police custody to judicial custody when his confession was recorded, the Supreme Court accepted the confession as voluntarily made. (Vide paras 19 and 20 of **State of Maharashtra v. Damu (2000) 6 SCC 269 = AIR 2000 SC 1691**)Before recording the confession the Magistrate shall explain to the person making the confession that he is not bound to make a confession and that if he does so, his confession may be used as evidence against him.(vide Section 164(2) Cr.P.C.)

The above provision emphasises the need for warning and caution before recording a confession.

In this connection it is pertinent to note that as per **Section 29 of the Evidence Act,** a confession which is otherwise relevant does not become irrelevant merely because the person was not warned that he was not bound to make a confession or that if he does so, it may be used against him.

Failure to warn does not by itself necessarily render a confession inadmissible if it is otherwise proved to have been made voluntarily. (Vide **Dagdu v. State of Maharashtra AIR 1977 SC 1579 .)**

The Magistrate shall not record the confession unless, after questioning the person making the confession, the Magistrate has reason to believe that it is being made voluntarily. (Vide **Section 164 (2) Cr.P.C.)**

Voluntariness of the confession being the foundation of a Magistrate's jurisdiction to record the confession, it is imperative that the Magistrate should, before recording the confession, ascertain through intelligent questioning whether the statement is spontaneous and voluntary, or some influence or false impression has been at work to induce him to make the statement.

The Magistrate should disclose his identity to the accused so as to assure him that he is no longer in the hands of the Police. The accused should be told that he is before a Magistrate who is independent of the Police and he should be given the assurance of protection against any apprehended inducement, pressure, threat or oppression if he does not confess. (Vide **Sanatan v. State AIR 1953 Orissa 149** – Panigrahi, **ParamhansaJadab v. The State AIR 1964 Orissa 144)**

The Magistrate should ensure the **voluntary** nature of the confession for which compliance of the provisions of sub-sections (2), (3) and (4) of Section 164 Cr.P.C. is mandatory. (Vide **Dara Singh alias Rabindra Kumar Pal v. Republic of India (2011) 2 SCC 490 = AIR 2011 SC 1436 .**But non-compliance of sub-section (2) of Section 164 Cr.P.C. need not necessarily render the confession bad in view of the latter part of Section 29 of the Evidence Act.

If the accused person who offers to make a confession is in Police custody, he should be removed from Police custody and should be sent to judicial custody. After recording the confession he must invariably be sent to judicial custody and should on no account be returned to Police custody.

Generally at least **24 hours' time** should be given to the accused to consider whether he should make a confession. Where there is reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given (Vide **Sarwan Singh Rattan Singh v. State of Punjab AIR 1957 SC 637 = 1957 Cri.L.J. 1014 –** 3 Judges (rendered under the old Code).

Under Section 164 Cr.P.C. the first precaution that a judicial Magistrate is required to take is to prevent forcible extraction of a confession by the prosecuting agency. The Magistrate in particular should ask the accused as to why he wants to make a statement which surely will go against his interest in the trial. He should be granted sufficient time for reflection. He should also be assured of protection from any sort of apprehended torture or pressure from the Police in case he declined to make a confessional statement. Vvide **Bhagwan Singh v. State of M.P. AIR 2003 SC 1088 -**3 Judges bench.

The confession must be recorded with great care and circumspection. The Magistrate must record the questions put the accused in order to –

- *ascertain whether the confession was of a voluntary nature .*
- *assure the accused that he will not have to go back to Police custody after his statement is recorded.*
- *warn him of the consequences which would ensue if the confession turns out to be false.*
- *ascertain whether it was in the hope of release that he is implicating himself.*
- *ask the accused whether the Police or any other person had subjected him to ill-treatment.* (Vide-**Kartar Singh v. State of Punjab (1994) 3 SCC 569 = 1994 Cri.L.J. 3139 - 5 Judges Bench.**
- The requirement of obtaining the signature of the person making the confession is mandatory and non-compliance renders the entire confessional statement inadmissible. But, such non-compliance may not be very material if the making of the confessional statement is not disputed by the person concerned. (Vide **Dhanajaya Reddy v. State of Karnataka (2001) 4 SCC 9 .**

Oath by Accused ::

While the procedure for recording of evidence or administration of oath to the accused, can be resorted to while recording a "statement' under Section 164 (5) Cr.P.C., such a procedure should not be resorted to while recording a "confession". (Vide **Section 164(5) Cr.P.C.)**

Administering oath to the accused while recording a confession is prohibited. (Videpara 10 of **Babu Bhai Udesinh Parmar v. State of Gujrath (2006) 12 SCC 268 [DB].**

Evidentiary value of the confession:

A Confession is ordinarily admissible in evidence. It is a relevant fact. It can be acted upon. Under certain circumstances it can form the basis for a conviction. (Vide **Aloke**

Nath Dutta v. State of W.B. (2007) 12 SCC 230 A confession, judicial or extra-judicial if found to have been voluntarily made, can form the basis of conviction of the accused. (Vide **State of Rajasthan v. Rajaram AIR 2003 SC 3601).**

The presumption under Section 80 of the Evidence Act is available in respect of a "confession" recorded under Section 164 Cr.P.C. Hence, in the case of a "confession", Section 80 of the Evidence Act makes examination of the Magistrate who recorded the confession, unnecessary. (Vide **Madi Ganga v. State of Orissa (1981) 2 SCC 224 = AIR 1981 SC 1165).**

A non-confessional statement of an accused person can be recorded by the Magistrate under Section 164 (5) Cr.P.C. Section 164 Cr.P.C. only says that a Judicial Magistrate may record a **confession** or a **statement**. In other words, the Section does not say that in the case of an accused person the Magistrate can only record his confession. The Section empowers the Magistrate to record the **confession** of an accused person and also to record the **statement** of any person (which can include an accused person as well). Thus, a non-confessional statement made by an accused can also be recorded by the Magistrate under Section 164 Cr.P.C. (Vide **Rao Shiv Bahadur Singh and Another v. State of Vindhya Pradesh AIR 1954 SC 322 - Three Judges bench** ;

Confession Reliability test:

In **Shankaria Vs State –AIR 1978 SC 1248 : has held as follows::**
"It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 Cr. P.C., the Court must apply a double test :
(1) Whether the confession was perfectly voluntary ?

(2) If so, whether it is true and trustworthy ?

Satisfaction of the first test is a sine quo non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24 Evidence Act, it must be excluded and rejected. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession, may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test".

The extraordinary aspect of confession is that a dialogue with himself often contributes to a confession :

In **Sahoo v. the State of U.P.**, this aspect was illuminated. Where the defendant murdered the newly married wife of his son as he usually has intense disputes with her, and

when the defendant killed daughter-in-law, many people living there saw and listened that he was mumbling words while stating that "I finished her and now I'm free of any regular quarrels."

In this case, the court noted that the assertion or self-discussion made by the accused must be treated as a confession to prove his guilt. Such a confession should be accepted as valid evidence in the administration of justice, and it does not dissolve the relevance of the confession if the claims are not conveyed to any other person other than him.

Therefore, **self-confession is also quality testimony, which in a court of law would be regarded as valid evidence.**

:EXTRA JUDICIAL CONFESSION::

Extra-judicial confessions- These are those rendered anywhere by the accused than before a judge or in custody. It is not necessary for the statements to be addressed to any particular person. It could have arisen in the form of a plea. It could be a confidential person's confession.An extra-judicial confession has been described as "a free and willing confession of guilt by a person charged with a crime in the course of a communication with persons other than the judge or magistrate seized of the charge against himself."A man may write a letter to his father or acquaintance after the commission of a crime expressing his sorrow about the matter. This could be a confession. Extra-judicial confession can be recognised and if it passes the legitimacy test, it may be the foundation of a prosecution.

:Relevant case law:

Vilas Pandurang Vs State [2004]6SCC 158 &Kojji Vs Srinu Vs State – [2003]12SCC 783: Has held that " Whenever the prosecution wants to rely on extra judicial confession, it is to be considered at the first place whether, under the facts and circumstances of a given case and having regard to the relation between the accused and the person to whom confession was said to have been made, the accused could repose confidence in him, If there appears nothing unnatural, the extra judicial confession may be acted upon if it is clear, cogent and appeared to have been made in the normal course without any pressure and on facts it has been held in this case that the accused did not have any special reason to make confession to the witness and as such, it was rejected .

S.ArulRaja Vs State of TN -2010[3]SCC[Cri] 801 : Has held that the concept of extra judicial confession is primarily a judicial creation, and must be used with restraint in limited circumstances, and should also be corroborated by way of abundant caution.Moreover, when there is a hanging onsuch confession, corroborated only by circumstantial evidence then courts

must treat the same with utmost caution.Evidentiary value of extra judicial confession, must be judged in the facts and circumstances of each case individually. If the confession is found as voluntary with out inducement, threat or coercion and fully consistent circumstantial evidence can be relied upon by court along with other evidence in convicting the accused. Before convicting the accused on the basis of such confession, circumstances, and manner in which such confession is made, persons to whom it is made must be considered. However, the extra judicial confession cannot ipso facto be termed to be tainted .But, conviction based solely on non corroborated extra judicial confession does not sustain.

Sahadevan and Another v. State of Tamil Nadu[(2012) 6 SCC 403] It is observed thus: "16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extrajudicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused.

These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
(ii) It should be made voluntarily and should be truthful.
(iii) It should inspire confidence.
(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

Reiterated **in 2023 LiveLaw (SC) 171 Nikhil Chandra Mondal Vs State Of West Bengal** further, held *that It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that 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 .*

And, in the case of **Pawan Kumar Chourasia v. State of Bihar 2023 SCC OnLine SC 259** ***In paragraph 5*** *it is held thus : "5. As far as extra-Judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extrajudicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary*

value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility." **Reiterated the same in recent case law reported in 2023 LiveLaw (SC) 679- Murthy Vs State of Tamilnadu** and held that *when the Village Administrative officer is completely stranger to him making extra judicial confessional statement to a stranger would be suspicious.*

Extra Judicial Confession by Co –Accused :

[a] Jaswant Gir Vs State -2005[12]SCC 438: It has held that whether the extra judicial confession is not in conformity with the prosecution case, the same has held not reliable.

[b] State Vs Paltan –AIR 2005 SC 733 " Extra Judicial confession of coaccused can be admitted in evidence only as a corroborative piece of evidence .In the absence of any substantive evidence against the accused, extra judicial confession made by a co-accused loses its significance and there cannot be any conviction based on it .

[c] Dara Singh Vs Republic of India-2011[1]SCC [Cri]706: Has held that if an accused in his confessional statement implicates not only himself, but also a co-accused, the confession so far it relates to the co-accused is a weak type of evidence against the said co-accused and the court would require some corroboration.So far as the accused making the confession, there is no bar to convict him on such confession, but usually the court will seek for some corroboration, more so when the confession relates to a grave offence .

[d] Chandrapal vs State of Chhattisgarh | 2022 LiveLaw (SC) 529: Extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession - The extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

***Conclusion* :**

An Extra Judicial Confession ,if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The values of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. Though the court requires the witness to give the actual words used by the accused as nearly as possibility but it is not an invariable rule that the court should not accept the evidence , if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence [or] not .When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary , conviction can be founded on such evidence .

: RETRACTED CONFESSION :

Retracted confession connotes either denial of making any confession altogether [or] not being voluntary .:

In Shankaria Vs State-AIR 1978 SC 1248:;

Has held that:: The confession was retracted only at the time of examination of the accused under section 313 crpc and the confession was accepted after comparing the retracted confession with the rest of the evidence and in the light of the surrounding circumstances .There is nothing in the Evidence Act to come to the conclusion that a retracted confession cannot be acted upon against the confessing accused [or] co accused but as a matter of prudence and practice a court would not ordinarily act upon it to convict a co-accused without the strongest and fullest corroboration on material particulars .

In Subramania's case AIR 1958 SC 66: Has held that:Whenever the accused retracts his confession at the time during trial or at an earlier stage, the court should consider the following three aspects ::

1. If he is specifically protected by any statute[or]
2. If his evidence was obtained by improper inducement etc.,
3. If he was unjustly compelled to anwer incriminating questions .

The presence of any above three aspects would make the confession inadmissible.

Merely because the confession was retracted later, it does not mean that the confession was not voluntary in nature. The issue as to whether the accused was willing to give confession voluntarily or not is to be determined from his mental state at the time when he gave the confession. (vide paras 13 and 18 of **Abdulvahab Abdulmajid Shaikh v. State of Gujrath (2007) 4 SCC 257-DB**)

If confessional statement has been amply corroborated by circumstantial evidence, its subsequent retraction by the maker would not make it unreliable. (Vide **Henry Westmuller Roberts V. State of Assam (1985) 3 SCC 291-Three Judges Bench**)

It is not the law that once a confession is retracted the Court should presume that the confession is tainted. To retract from a confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the confession by looking at all aspects. (Vide para 13 of **State of T.N. v. Kutty AIR 2001 SC 2778**.)

Though conviction based on uncorroborated confession of an accused person is not illegal but as a rule of prudence which has become a rule of law, Courts look for corroboration before accepting a retracted confession. (Vide **Shankar v. State of T.N. (1994) 4 SCC 478).**

A Court may take into account the retracted confession but it must look for the reasons for the making of the confession as well as for its retraction and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the Court is satisfied that it was retracted on account of an afterthought or advise , the retraction may not weigh with the Court. (Vide paras 32 to 35 and 37 of **State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600).**

A conviction based on retracted confession without corroboration is not illegal (Vide **Ram Chandra Prasad Sharma v. State of Bihar AIR 1967 SC 349).**

Section 25 : This section in an unqualified language says that a confession made to a police officer under any circumstances is inadmissible .Exception to this rule is provided in section 27 which virtually proviso to this section.This section provides an absolute ban against admissibility of a confessional statement made to a police officer , no matter whether the accused while making such confessional statement was in custody [or] not .

Confessional Statement in FIR : In A. Nagesia VS State [AIR 1966 SC 119] It has held that " If the confessional part is distinct and seperable , the remaining other part cannot be, tendered in evidence as it is also hit by this section except under section 27 and held that where the frst information as to the offence is given by the accused himself the fact of giving this information is admissible under section 8. If the information is a non confessional statement it is admissible under section 21 and is relevant .

It is most refreshing to note that while setting aside the concurrent conviction in a murder case, none other than the Supreme Court itself has in an extremely laudable, learned, landmark and latest judgment titled

Munikrishna @ Krishna vs State By Ulsoor PS cited in 2022 LiveLaw (SC) 812 observed that videography containing confession made before police is inadmissible in

evidence and also held that statement given by the accused under section 161 crpc is also in admissible.

In the recent case **Marripally Ramesh vs The State Of Telangana [decided on 3 October, 2023]; CRIMINAL APPEAL Nos.3104, 3105 and 3112 of 2018; has held that** " The statement recorded under Section 164 Cr.P.C is a weak piece of evidence and solelyrelying on the 164 Cr.P.C. statement, the Court cannot convict the accused and if at all theCourt feels that the witnesses, who have given statements under Section 164 Cr.P.C.,resiled from their statements, the utmost remedy available to the trial Court is to punish thewitnesses for the offences of perjury".

RECOVERY IN PURSUANT OF DISCLOSURE STATEMENT OF ACCUSED SECTION 27 OF THE ACT :

Any discussion on Section 27 of the Indian Evidence Act, 1872 will be incomplete without reference to Sections 25 and 26 of the Evidence Act. Section 25 prohibits proof of "confession" **made directly to a "police officer"** by an accused person. Section 26 interdicts proof of a "confession" made by an accused person **while he is in the custody of a "police officer"**. Section 27 is an unusual Section which is couched in the form of a "proviso".

A "**confession**" made to a "**police officer**", by a person (presently or subsequently) accused of an offence cannot be proved against him and is, therefore, inadmissible in evidence before a Court of law in view of Section 25 of the Indian Evidence Act, 1872 ("Evidence Act" for short). Similarly, a confession by a person (presently or subsequently) accused of an offence and made while he is in the **custody** of a **police officer**, is also excluded from being proved against him by virtue of Section 26 of the Evidence Act. The distinction between Sections 25 and 26 is that while in the case of Section 25 what is inadmissible is a confession directly made to a "police officer", in the case of Section 26 what is inadmissible is a confession made, while in the custody of a police officer, to a third person other than the police officer, unless it is made in the immediate presence of a Magistrate. But, an exception was sought to be carved out from the aforesaid sections since it was felt that if a **fact** was actually discovered in consequence of the information given by such an accused person, such **fact** should be made admissible in evidence, the reason being that it affords some guarantee to the truth of the information relating to the **fact.** That is how, Section 27 of the Evidence Act came to the enacted as a **"proviso"** to the preceding two Sections. Section 27 of the Evidence Act reads as follows:-

"**27.How much of information received from accused may be proved–**Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such

information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

The ingredients of the Section are the following :-

a) The accused is in the **custody** of a police officer.

b) While so, he provides an **information**.

c)A fact is **deposed to** as discovered in consequence of such **information**.

d)So much of such **information** as relates distinctly to the fact thereby discovered, may be proved; and

e) This is irrespective of whether such **information** amounts to a confession or not.

Section 27 is an exception to the preceding provisions particularly Sections 25 and 26. (Vide para 14 of **Anter Singh v. State of Rajasthan (2004) 10 SCC 657 = AIR 2004 SC 2865** ; Para 7 of **Delhi Admn. V. Bal Krishan AIR 1972 SC 3 = (1972) 4 SCC 659 –** ; Para 17 of **Mohd. Inayatullah v. State of Maharashtra (1976) 1 SCC 828 –** Para 17 of **Sanjay v. State (NCT of Delhi) AIR 2001 SC 979 = (2001) 3 SCC 190 –** Para 7 of **State of U. P. v. Deoman Upadhyaya AIR 1960 SC 1125** – (In para 65 observes that Section 27 is not merely an exception to Section 26 but is an exception to Sections 24 to 26 of the Evidence Act-This view has been reiterated in **Jafarudheen v. State of Kerala AIR 2022 SC 3627 = (2022) 8 SCC 440 – DB. (Vide para 433 of Mukesh v. State (NCT of Delhi) (2017) 6 SCC 1 -Nirbaya case-Three Judges Bench)** This section is founded on the "doctrine of confirmation by subsequent events" (Vide**–Bodhraj v. State of Jammu and Kashmir** – **AIR 2002 SC 3164 -**But, in para 10 of **Pulukuri Kotayya v. Emperor AIR 1947 PC 67** – , it has been observed that Section 27 is a proviso to the preceding section, intending thereby Section 26 only.

Let us now try to understand the sweep and amplitude of Section 27 of the Evidence Act by means of two illustrations.

Illustration A:: The accused, while in the custody of a police officer says –"**I have hidden the dagger beneath the tiles of the cowshed of my neighbour Antony. I can show you the dagger which is so hidden."**

Thereafter, the police officer, on the strength of the above information given by the accused goes to the cowshed of Antony, the neighbour of the accused and takes out the dagger hidden beneath the tiles of the cowshed.

Illustration B::The accused, while in the custody of a police officer says –"**I have hidden the dagger in a secret place. If I am taken there, I shall show you the place and the dagger hidden there."**

Thereafter, the accused leads the police party to the cowshed of his neighbour Antony and takes out the dagger hidden beneath the tiles of the cowshed.

The distinction between Illustration A and Illustration B is this:

In Illustration A the accused person, in his disclosure statement given while in the custody of the police officer, has revealed the place of concealment of the weapon. The police officer who was in the dark about the place of concealment of the weapon until the accused revealed the same was able to find out the weapon from the information supplied by the accused and the officer could himself recover the weapon without any further help, co-operation or assistance by the accused. In other words, in Illustration A , the "information" given by the accused while in the custody of the police officer, revealed a "fact discovered" within the meaning of Section 27.

In Illustration B, the accused in his statement given while in the custody of the police officer, has not revealed the place of concealment of the weapon. Until the accused led the police party to the place of concealment of the weapon and took out the weapon, that place continued to be a secret for the police officer. In other words, in Illustration B , the accused did not, while he was in the custody of the police officer, give any information regarding the "fact discovered" within the meaning of Section 27.

What is "fact discovered" in Section 27 ?

fact discovered" means the physical objects produced, the Privy Council in **Pulukuri Kottayya's case -relied supra** observed as follows:-

"In their Lordships' view, **it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.**

Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

Meaning of the words "whether it amounts to a confession or not"With regard to the words **"whether it amounts to a confession or not**" occurring in Section 27 of the Evidence Act the Privy Council explained the same in **paragraph 11** as follows:-

"*Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case*."

CONDITIONS NECESSARY FOR THE APPLICABILITY OF SECTION 27

From the legal position as elucidated in **Pulukuri Kottaya** and the subsequent rulings of the Supreme Court of India, the ingredients of Section 27 of the Evidence Act to be satisfied before applying the Section are—

- There should be an "**information**" from a person "accused of an offence" given by him while in the "custody of a Police Officer". (Here it is not necessary that at the time of giving the above "information" he is formally made an accused. It is enough that he is subsequently made an accused.)
- That "**information**" should be regarding a "**fact discovered**" (which is not the "weapon or object" discovered but the "place" where the "weapon or object" is concealed and the "knowledge" of the accused regarding that "place".) (The word "fact" should answer the definition of "fact" in Section 3 of the Evidence Act as to mean the "state of things" or "relation of things" capable of being perceived by the senses **and** "any mental condition of which any person is conscious."
- If the "information" given by the accused while in custody does not reveal the "place" of concealment of the "weapon or object", then there is no "fact discovered" so as to bring the "information" within the purview of Section 27 of the Evidence Act.)
- Such "fact discovered" must have been deposed to i.e. testified before Court. (This act of deposing before Court takes place during the trial of the case when the "weapon or object" can be described as the "weapon or object produced". In other words the "production" or "recovery" of the "weapon or object" pursuant to the "information" by the accused, is a must to make the fact "discovered" admissible in evidence. In other words, if pursuant to the "information" furnished by the accused person there is no "weapon" or "object" produced or recovered, then there is no "fact thereby discovered" within the meaning of Section 27, to be proved before Court. to put it differently, it is only if the "weapon or object" is recovered from the place of concealment disclosed by the accused in his "information", can it be said that there is confirmation by subsequent event.)
- When once pursuant to the "information" about the "fact discovered", a recovery of the "weapon or object" has been effected, then what is admissible before Court is only so much of the said information which relates distinctly to the "fact discovered" and not any confession by the accused regarding the prior user by him of the "weapon or object" at the time of committing the offence, unless his act of

"possession" or "concealment" of the "weapon or object" by itself amounts to an offence.

- The classic interpretation of Sec 27 of the Evidence Act by Sir John Beaumont speaking for the Privy Council in the celebrated **Pulukuri Kottaya V. Emperor AIR 1947 P.C 67** is to the effect that -"Fact discovered" is not the object produced but it embraces the "**place**" from where the object is produced and the "**knowledge**" of the accused regarding the said place. "Section 27 says that the "fact discovered" should be there in the "information" received from an accused person while in the custody of the police officer. It is this "information" (already given by the accused to the police officer while in custody) which gets confirmed by the subsequent recovery.
- **It is not a requirement of law that the accused should himself lead the police party to the place of concealment of the "weapon or object" and take it out of the hidden place.** (Vide para 24 of **Raveendran v. State 1989 (2) KLJ 534** (Kerala – DB) – ; Para 142 of **State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600** (Parliament attack case) .

Hence, Illustration A clearly falls under Section 27 of the Evidence Act.But, in Illustration B, the "information" given by the accused does not reveal the "place" where the incriminating object is concealed by him. Hence, there is no "information" given about the "fact discovered". On the contrary, the accused is reserving to himself the "fact discovered" till he leads the police party to the "place" of concealment of the weapon and then takes out the weapon from its hiding place.Hence, Illustration B does not fall under Section 27 of the Evidence Act. At best, the action of the accused in Illustration B may amount to a "conduct" provable under Section 8 of the Evidence Act.

Panch Witnesses not required during recovery in pursuant of disclosure statement::

1. It is not necessary that witnesses should be present when the accused is interrogated by the investigating officer (Vide **State of H.P v. Jeet Singh (1999) 4 SCC 370 .**

2. S.C. Bahri v. State of Bihar – AIR 1994 SC 2420 – Dr. A. S. Anand, **Faizan Uddin** - JJ. Paras 70 and 72**; Failure to record** the information is not fatal to the prosecution. What is really important is the credibility of the evidence of the investigating officer. Para 69 of **Mohd. Arif @ Ashfaq v. State of NCT of Delhi - 2011 (8) SCALE 328 = (2011) 12 SCC 621.**

3. Even when the panch witnesses turned hostile, the evidence of the investigating officer can be relied upon to prove the recovery. (Vide **Mallikarjun v. State of Karnataka (2019) 8 SCC 359 .**

4. It is enough if the investigating officer deposes before Court the exact information obtained by him from the accused **ipsissima verba** i.e. in the exact words of the accused himself."**motbir witness"** presumably a Persian wordwhich means **"independent disinterested witness".** (Vide **Sidhan @ Sidharthan v. State of Kerala - 2014 (2) KLT 893 -** Hariprasad - J.)

5. Sec. 27 does not lay down that the statement made to a police officer should always be in the presence of independent witnesses (Vide **Praveen Kumar v. State of Karnataka - (2003) 12 SCC 199 - N. Santosh Hegde**, B. P. Singh - JJ.)

6. Disclosure statement need not be made in the presence of witnesses who need not also overhear the same**.** (Vide **State of H.P. v. Jeet Singh- (1999) 4 SCC 370).**

7. Even when the general public refuses to join as witnesses, the discovery evidence cannot be faulted (Vide **Mohd. Arif v. State (NCT of Delhi) (2011) 13 SCC 621).**

8. Even in a case where, after committing a brutal murder, if the person voluntarily goes to the police and offers to furnish information against himself, he is said to submit himself to police custody without any formal accusation against him. It is enough, for the applicability of Section 27 of the Evidence Act, that he is subsequently made an accused. (Vide paras 12 and 18 of **State of U.P. v. Deoman Upadhyaya AIR 1960 SC 1125 – Five Judges bench.**

9. The Hon'ble Supreme Court has clarified that Section 100 (4) Cr.P.C. has no application to a recovery falling under Section 27 of the Evidence Act. (Vide para 19 of **State (NCT of Delhi) v. Sunil (2001) 1 SCC 652**) The law does not require any Panchanama to be prepared or any independent witness to be called in connection with a recovery falling under Section 27 of the Evidence Act. What the investigating officer is expected to do is to make prompt entries in the "case diary" about the various steps of investigation taken. It may be after months or years later that the Police Officer will be giving evidence before Court. At that time, he is entitled to refresh his memory by perusing the "case diary". This is permissible under 159 of the Evidence Act. The interdict under Section 162 (1) Cr.P.C. against the user of case diary statements, is lifted by sub-section (2) of Section 162 Cr.P.C. in the case of a statement falling under Section 27 of the Evidence Act. This right available to the investigating officer under Section 159 of the Evidence Act, has been highlighted in para 22 of **State of Karnataka v. Yarappa Reddy AIR 2000 SC 185 – [DB]** ; Paras 22 and 23 of **Standard Chartered Bank v. Andhra Bank Financial Services Ltd. AIR 2015 SC 3530 –** [DB]].

<u>Contrary Views as to requirement of panch witnesses</u> :

On 13-10- 2022 two separate verdicts by the Supreme Courts of India were passed, one by a three-Judge Bench in **Ramanand @ Nandlal Bharti v. State of U. P. 2022 SCC OnLine SC 1396 = 2022 KHC 7083 Three Judges Bench** and the other, by a **Two -Judge Bench** in **Subramanya v. State of Karnataka 2022 SCC OnLine SC 1400 [DB]** , to the effect that while recording the confessional statement of an accused person falling under Section 27 of the Evidence Act, a Panchanama should be prepared initially at the Police Station and two independent witnesses also should be called to the Police Station to witness the confessional statement by the accused and thereafter to witness the accused proceeding to the place of concealment of the "weapon or object" and taking out the same and this also should be incorporated in the Panchanama.

Towing the line of the second verdict above, another two-Judge Bench of the Supreme Court in **Boby v. State of Kerala 2023 LiveLaw (SC) 50 – [DB]** , has acquitted the appellant therein (A3) for the reason that no Panchanama was prepared while recording the confessional statement of the appellant/accused. A perusal of paragraph 2.3 of that verdict shows that Exhibit P23 was the disclosure statement of the appellant in that case. In spite of that, the Apex Court held that the confessional statement could not be looked into for want of a Panchanama.

Other settled legal propositions regarding Section 27::

The following propositions of law are well settled: -

It is not necessary that witnesses should be present when the accused is interrogated by the investigation officer. Disclosure statement of the accused need not be made in the presence of witnesses who need not also overhear the same. (vide para 25 of **State of Himachal Pradesh v. Jeet Singh (1999) 4 SCC 370 = AIR 1999 SC 1293 .**

In para 438 of **Mukesh v. State of NCT of Delhi AIR 2017 SC 2161** –**Nirbaya case** (**Three Judges Bench**) it was observed as follows:-"need of examining independent witnesses, while making recoveries pursuant to the disclosure statement of the accused is a rule of caution evolved by the Judiciary, which aims at protecting the right of the accused by ensuring transparency and credibility in the investigation of a criminal case". Even failure to record the information given by the accused and failure to examine public witnesses, are not fatal to the prosecution. (vide paras 71 and 72 of **Suresh Chandra Bahri v. State of Bihar AIR 1994 SC 2420** (DB).

What is really important is the credibility of the evidence of the investigating officer. (Vide para 69 of **Mohd. Arif @ Ashfaq v. State**

(NCT of Delhi) (2011) 13 SCC 621 (**DB**)**;** para 9 of **Himachal Pradesh Administration v. Om Prakash – AIR 1972 SC 975 (DB)**

It is not a requirement of law that the accused should himself lead the police party to the spot and take out the weapon. It is enough if the accused discloses to the investigating officer such information which leads to the discovery of the thing sold or hidden or kept with him which the police did not know until then. (vide –**Raveendran and Others v. State – 1989 (2) KLJ 534 (DB)**

It has been held that the person who recovered the incriminating object need not be the identical person to whom the disclosure statement was made. (vide**Sekharan v. State of Kerala - 1979 KLT 337 = 1979 (1) ILR (Kerala) 156-DB**)and Para 57 of **Rijo v. State of Kerala - 2009 (2) KLD 803 (DB).**

In Karan Singh v. State of U.P (1973) 3 SCC 662 = AIR 1973 SC 1385 (**Three Judges Bench**) where the accused merely says that he will show the place where the knife is hidden and then take the police party to that place. At Para 11 in **Lachhman Singh v. State AIR 1952 SC 167 = 1952 Cri.L.J. 863** (**DB**), after 3 of the accused persons made a confession to the police to the effect that the dead bodies of the two brothers could be recovered from Sakhinala, a stream running through several miles, one of them had **led the police party** to the spot from where bloodstained earth and the trunk of one of the dead persons were recovered, it was held that it would fall under Section 27.

Even in a case where the accused made a confessional statement about the place of concealment of the object, either antecedent or contemporaneous to the recovery of the object admissible under Section 27, his conduct in taking the police to place of concealment and pointing out the weapon will fall under Section 8 of the Evidence Act as a conduct. (vide **Prakash Chand v. State - (Delhi Administration) - AIR 1979 SC 400 and in Zwinglee Ariel v. State of M.P AIR 1954 SC 15** – Three Judges bench and in **Rao Shiv Bahadur Singh v. State of Vindya Pradesh AIR 1954 SC 322** - 3 Judges bench.

Even if the authorship of concealment may not be a condition precedent to bring the disclosure statement of the accused within the ambit of Section 27 of the Evidence Act, the fact that it was the accused himself who had hidden the object thereby becoming the author of concealment, is definitely an important circumstance to connect him with the offence.

Reference ::Pohalya Motya Valvi v. State of Maharashtra - 1980 (1) SCC 530 and Jaffer Husain Dastagir v. The State of Maharashtra - 1970 SC 1934 (Three Judges Bench) reiterated in recent case of Paras 67 and 68 of **Ramanand @ Nandlal Bharti 2022 LiveLaw (SC) 843[Three judges bench]**

State of Malachi Pradesh v. Jeet Singh (1999) 4 SCC 370:::

It was observed as under::: "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 on 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 were 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.*

Recovery Evidence _ Whether Substantively Proves the guilt on Accused ::

In Pulukuri Kottaya. Towards the end of paragraph 11 this is what the Privy Council observed:-

"Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in a manner allowed by law."Again towards the end of paragraph 10 of Pulukuri Kottaya, the Privy Council has observed as follows:-"Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife. Knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant."

Supposing the accused is having in his possession or is concealing

in his room an "unlicensed firearm" or some "narcotic substance", that by itself is an offence under the relevant penal statutes. Hence, a recovery of any such object or substance on the basis of the disclosure statement of the accused from a place where he has hidden them, would itself establish his complicity. Nothing further need be proved to corroborate the said recovery.

But, that is not the position in the majority of cases where the accused merely reveals the place of concealment of the incriminating object. Supposing what he has concealed is only a "dagger", then the recovery evidence only proves that the accused had hidden the dagger at a secret place. From that alone, it cannot be straightaway concluded that he is the murderer or the culprit.

The prosecution will have to further prove that the dagger recovered on the basis of the disclosure statement of the accused, was **used** by the accused for the commission of the offence. This proof can either be by direct evidence or by circumstantial evidence.

This is the reason why the Supreme Court of India has also made the following pertinent observations:-

Mere recovery of dead body either pointed out by the accused or recovered as a result of the disclosure statement made by him, would not necessarily lead to the conclusion that he committed murder. There should be other substantive evidence or corroborative circumstances from which the Court can raise a presumption that the accused was the offender. (Vide para 9 of **Kanbi Karsan Jadav v. State of Gujarat AIR 1966 SC 821 = 1966 Cri.L.J. 605 –** .

The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. (Vide para 21 of **Mani v. State of Tamil Nadu AIR 2008 SC 1021 –DB**).

In paragraph 22 of a recent verdict rendered by the Supreme Court on 11-08-2023 in **Manoj Kumar Soni v. The State of Madhya Pradesh (Criminal Appeal No: 1030/2023)** by S. Ravindra Bhat, **Dipankar Datta –** JJ, the aforementioned passage in **Pulukuri Kottaya** has been quoted. In paragraph 21 it is observed as follows:-**"A doubt looms:** Can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We

find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt."

Contrary view :

In paragraph 16 of ***Bijinder @ Mandar v. State of Haryana AIR 2022 SC 466 = (2022) 1 SCC 92 – 3 Judges bench as follows***:-

"It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material".

That was a case of robbery and murder in which a few packets of "currency notes" allegedly extorted by the accused, a "red-cloth" on which the name "Kamala" was embroidered and used for wrapping the currency notes, a "pass book" etc. were recovered on the strength of the disclosure statements of some of the accused. Besides such recovery, there was further evidence adduced giving corroboration to the effect that the materials recovered belonged to the first informant. In the backdrop of such a factual scenario, an observation as aforesaid by a three Judge Bench of the Supreme Court without explaining as to how "recovery evidence" can form the sole basis for a conviction, was unwarranted besides misleading. In fact, the law journals have highlighted the above passage which is likely to be misunderstood and can even result in an unmerited conviction based on mere recovery evidence without any corroborative evidence. As mentioned earlier, it is only in those cases where the mere "possession" or "concealment" of the subject-matter of the offence by itself is an offence and such possession or concealment is proved by the recovery evidence, can there be a conviction without any further corroborative evidence.

::Relevancy and Admissibility of Confession by Co-Accused ::

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

Conditions to be satisified for attracting the said section:

1. The person making the confession and the person[or] persons against whom it is to be used must be tried jointly .

2. the trial must be for the same offence .

3. the confession must implicate the confessing person himself to the same extent as it implicates the person against whom it is to be used and

4. the confession must be legally proved .

::Relevant case law::

Bhuboni Sahu v. The King reported in AIR 1949 PC 257: has held that The Privy Council quoted Section 30 of the Evidence Act and held in paragraph 9 of the judgment (as reported) that Section 30 was introduced for the first time in the Indian Evidence Act of 1872 and it was the departure from the common law of England. It was observed that this Section 30 applied to confessions and not to statements which do not admit the guilt of the confessing party. It was held that statement of Trinath was a confession.

Their lordships further observed that Section 30 seemed to be based on the view that an admission of an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a coaccused, their lordships continued to observe, was obviously evidence of a weaker type. It did not indeed come within the definition of 'evidence' contained in Section 3 of the Evidence Act. Such statement was not required to be given on oath nor in the presence of the accused and it could not be tested by cross-examination. It was a much weaker type of evidence than the evidence of an approver which was not subject to any of those infirmities. Section 30, however, provided that the Court might take into consideration the confession and thereby no doubt made it evidence on which the Court could act, but the section did not say that the confession was to amount to proof. Clearly, there must be other evidence and confession was only one element in the consideration of all the facts proved in the case, which can be put into the scale and weighed with other evidence. Their lordships confirmed the view that the confession of a coaccused could be used only in support of the evidence and could not be made a foundation of a conviction.

Conclusion::

Criminal Trial to have a rational, realistic and genuine approach: in the case of State of H.P. v. Lekh Raj, (2000) (1) SCC 247, a criminal trial cannot be equated with a mock scene from a stunt film. Such trial is conducted to ascertain the guilt or innocence of the accused arraigned and in arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial.

Ashwani Kumar Singh Vs UP Public Service Commission (2003(4) Supreme 573):: The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."xxx xxx xxx xxx "Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

In the light of said precedential guidance I conclude the session by making a remarks that appreciation of evidence is a matter of experience and knowledge of Human Affairs and it is a delicate task to be carried out by us for weighing evidence and drawing inferences under fact and law basing on each case facts and circumstances, commonsense and dexterity as a tools for arriving just conclusion in the case and to maintain scales of justice and equity.

********** *Submitted with due respect* **********

K.Madhavi

Senior Civil Judge,
Pithapuram

Senior Civil Judge's Court,
Pithapuram, Dt.29.11.2023.

From :

Smt.K.Madhavi,
Senior Civil Judge,
Pithapuram.

To :

The Hon'ble Prl. District Judge,
East Godavari District,
Rajamahendraravam.

Honoured Madam,

Sub:-	ANDHRA PRADESH STATE JUDICIAL SERVICE – District Level Workshops – Nomination of two Judicial Officers to prepare papers on the subjects in the ensuing 2nd workshop to be held on 02.12.2023 – Regarding.
Ref:-	1. Hon'ble High Court's ROC.No.60/RC/2023-RC dated 02.08.2023. 2. Proceedings of the Hon'ble Principal District Judge, Rajamahendravaram communicated in Dis No.8431, Dt.09.11.2023.

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In obedience to the subject and reference cited above I am herewith submitting the material with respect to Sessions I & II of the Workshop proposed to be conduct on 02.12.2023 for your Honour's kind consideration and perusal.

Yours Faithfully,

Sd/-.K.Madhavi
Senior Civil Judge,
Pithapuram.

Encl:

Workshop Material for Session I & II – Two copies submitted.