PAPER PRESENTATION BY SMT T.RAJYA LAKSHMI, SPL. JUDGE, FOR TRIAL OF POCSO OFFENCES, ANANTHAPURAMU, ON THE TOPICS OF Res gestae, Relevancy of motive, preparation and conduct, Test Identification Parade and Alibi

The Doctrine of Res gestae:

Res gestae is a Latin term that translates to "things done" or "acts accomplished". It is a legal doctrine used in common law systems to describe statements made by individuals that are admissible as evidence because they are considered spontaneous and closely related to the event at hand. These statements can include exclamations or other verbal or non-verbal expressions that are closely tied to the event being discussed.

History of Res Gestae:

The rule of Res Gestae first appeared in the year 1693 in **Thompson v. Trevanion**, where it was held that declarations accompanying an act are receivable in explanation thereof. In the year 1736, in Ambrose v. Clendon declarations were again held to be admissible if concomitant with facts. Then the use of the doctrine of Res Gestae was in a brief discussion over a point of evidence in Home Tooke's trial for high treason.

Nevertheless, the development of this doctrine did not begin until after Aveson v. Lord Kinnaird, in 1805, when the phrase in question had begun to be freely used in connection with it; and only since the middle of the 1800s has it been possible to say that this Exception was firmly established. In the decision of **Cockburn C.J. in R v. Bedingfield**, the principle of Res Gestae and exception to the hearsay rule was discussed. Lord Justice Cockburn held that the statement was not admissible, since it was something stated by her after it was all over. He said that it was not part of the transaction, that it was said after the transaction was all over, the transaction being the cutting of the throat. Although this decision has been effectively overruled, it accurately illustrates the erstwhile principle used to define the Res Gestae exception, which often resulted in unjust consequences.

Res Gestae under Indian Evidence Act:.

Section 6 of the Evidence Act addresses the relevance of facts related to the same transaction. It declares that facts are relevant whether they happened at the same time and place or at a different time and place if they are so

connected to a fact in question or relevant fact that they are a part of the same transaction. Res gestae is not specifically mentioned in the Indian Evidence Act, but it is frequently taken into account within the larger context of Section 6. In India, courts have taken the idea of res gestae into consideration and accepted statements or actions as evidence if they were spontaneous, related to the event in question and part of the same case.

Relevance of Facts:

Facts which are, immediately or otherwise, the occasion, cause or effect of relevant facts or facts in question, or which constitute the state of affairs under which they occurred, or which provided an opportunity for their occurrence or transaction, are relevant. Facts forming part of the same transaction are admissible. Evidence relating to collateral facts is admissible where such facts occur, where reasonable presumption as to the disputed matter has been established, and where such evidence is reasonably conclusive. The section provides for the admission of several classes of facts related to the transaction under inquiry which are-

As being the occasion or cause of a fact,
As giving an opportunity for its occurrence,
As being its effect, and
As constituting the state of things under which it happened.

Res Gestae Is An Exception To Hearsay:

Res Gestae is an exception to the principle that hearsay evidence is no evidence. Res Gestae being admissible as an exception to the hearsay rule can be stated as being a hearsay statement, relating to an extraordinary evidence or condition, that was made while the witness was still under the effect and stress of excitement caused by that event or condition. The reasoning provided behind such statement is that the witness while providing such exceptional hearsay statement lacks reflective capacity due to the event being so startling, and is only able to speak the truth.

Elements of Res Gestae.

The elements of res gestae, also known as the requirements for admissibility under the res gestae principle, can vary slightly depending on the

jurisdiction and legal system. However, the general elements commonly associated with res gestae are -

Spontaneity: The statement or conduct must be spontaneous, made without significant reflection or premeditation.

Temporal proximity: The statement or conduct must be closely related in time to the event or transaction in question.

Relevance: The statement or conduct must be relevant to the fact or the overall transaction.

Trustworthiness: The statement or conduct should be considered trustworthy and reliable, free from fabrication, manipulation, or ulterior motives.

The Positive Aspects:

In legal proceedings, the res gestae theory has a number of benefits. The following are some advantages of res gestae:

1. Context and Completeness: It enables the court to take into account additional information that may be necessary to fully comprehend the situation and reach a just and well-informed decision.

2. Improves Evidence Presentation: The court is able to judge the credibility and dependability of witnesses based on their immediate reactions by allowing the admission of spontaneous statements and behavior, which helps paint a more vivid picture of the events.

3. Fairness and Justice: Res Gestae aims to avoid distortions and present a more accurate depiction of the events, leading to a more just and informed outcome by allowing the admission of evidence closely related to the transaction in question.

Possible Limitations Here are some typical concerns related to the use of Res gestae:

Lack of Clarity: The principle may be interpreted and applied differently by different jurisdictions and courts, leading to inconsistencies and uncertainty.

Subjectivity and Reliability: Deciding which statements or actions constitute res gestae can be arbitrary and dependent on the judge's assessment. Such evidence is frequently based on the subjective perceptions and memories of the parties involved, raising doubts about its authenticity.

Judicial Observations:

Indian Judiciary has interpreted Res Gestae as only those statements made contemporaneously with the event or immediately after it, but not 'at such interval of time' as to allow fabrication.

The Judgment in the case of **Vasa Chandrasekhar Rao Vs. Ponna Satyanarayan and another**, is a landmark Judgment in the legal history of India as it examined rule of hearsay and Section 6 of Indian Evidence Act which forms relevancy of facts forming part of same transaction. In this case according to prosecution, the accused murdered his wife and daughter. The statement by the father of deceased wife is that father of accused told him on telephone that his son has killed the deceased. The question arose before the Hon'ble Apex Court that the telephonic conversation by accused father to the father of deceased stating that accused has killed the deceased would come under Section 6 of Indian Evidence Act. The Hon'ble Supreme Court answering this question observed that the father of accused did not support the prosecution during trial and therefore, the statement of deceased father would be regarded as hearsay, but Section 6 is an exception to such hearsay evidence provided that such facts should be relevant to the fact in issue in such a manner that they form part of the same transaction. Since no inference could be made as to when the father of accused informed the father of deceased about the murder as to immediately after the murder or during the commission of murder therefore, such an evidence is not admissible. This decision of Hon'ble Supreme Court made clear as to when a telephonic conversation could be admissible under Sec.6 of Evidence Act and when the conversation held is so important, it cannot be neglected provided that it forms same part of the transaction of the facts in issue and such evidence is confirmed. If such an

evidence is not confirmed or proved, then it cannot be admissible in regards of hearsay evidence.

In **Bishna alias Bhiswadeb Mahato & Others v. State of West Bengal,** two witnesses came to place of occurrence immediate after incident had taken place. They found dead body of deceased and other injured victim in unconscious state and also found mother of deceased weeping as also injured witness present there. They heard about entire incident from injured witness and other witness including role played by each of accused and others. The evidence of these two witnesses corroborate the evidence of the prosecution witnesses as also the allegations made in the F.I.R. Their evidence is held admissible under section 6.

In **Sukhar Vs. State of U.P.**, the accused/Sukhar was charged for shooting his nephew, Nakkal. There were two witnesses who helped injured Nakkal and Nakkal told one of these witnesses that Sukhar shot him. The point of contention was that these two witnesses did not see Sukhar as they arrived later at the scene and so, whether this statement of Nakkal made to the witness comes under Section 6 of Indian Evidence Act. The Hon'ble Apex Court referring to earlier precedents, treated the entire issue as the issue of admissibility of witness statement as to what Nakkal said to him and treated Nakkal's statement as part of Res gestae and hence held admissible under Sec.6 of Indian Evidence Act.

Conclusion:

In conclusion, the res gestae principle can offer significant insights into the comprehension of a transaction or event by aiming to admit spontaneous and closely related evidence. However, using it might have a few adverse outcomes. There are many factors that need to be carefully taken into account, including the lack of precision, subjectivity, hearsay issues, potential for prejudice, and a heavy reliance on spontaneity. Courts will need to adopt a nuanced approach that carefully considers the unique circumstances of each case.

Test Identification Parade:

Introduction:

The Test Identification Parade is a procedure commonly used in a Criminal Cases to identify the accused in a Court of law. Witnesses plays a crucial role in this process as its their responsibility to recognize the accused among a group of individuals presented in the parade.

Test Identification Parade can be a useful method within an investigation and with due process is often accepted as evidence or as confirmation within a court of law. The primary goal is to verify and reinforce the witness's existing substantial evidence in court. The Test cannot be considered if the witness is unable to name the accused and can only identify him based on his outward appearance. The test identification parade is used to assess the witness's honesty and ability to recognize unknown people. The confirmative or substantive value of the Test Identification Parade is unquestionable, and its use as substantial evidence or key evidence is ruled out. As proof, the test identification is purely corroborative and secondary.

Section 9 of Indian Evidence Act, 1872 and Sec.54-A of the Code of Criminal Procedure, 1973, govern the procedure and legality of the test identification parade. Section 9 of Evidence Act allows for the admissibility of the identification of the correct accused and related properties as relevant facts in a Court of law. However, it does not make it mandatory for the accused to participate in the Test Identification Parade conducted by Investigating Officer. This means that accused cannot be compelled to take part in the identification process. To address this issue, Section 54-A of the Code of Criminal Procedure, 1973 comes into play. This Section sates that if the identification of an accused by a witness is deemed necessary for the investigation of an offence for which the accused has been arrested, the Court with Jurisdiction may, upon the request of the Officer Incharge of the Police Station, direct the arrested accused to undergo for identification by one or more witnesses in a manner deemed appropriate by the Court. In other words, the Court as the authority to require the accused to participate in a test identification parade. It is important to note that when the police conduct the test identification, they are bound by the provisions of Sec.161 and 162 of Criminal Procedure Code. This is because the act of identifying by bodily gestures is considered equivalent to

making statements to police. However, this restriction does not apply when a Magistrate conducts the Test Identification Proceedings.

The Test Identification Parade is necessary in cases where the victim or witness did not know the accused before the occurrence. In such situation conducting a test identification parade helps in the process of identifying the perpetrate.

Test Identification Parade's Purpose:

The main purpose of Test Identification Parade is to assess whether the witness can be accurately identify the accused from a group of people. This helps establish the witness's reliability in identifying an unknown person in relation to the context of the crime. Law enforcement frequently employs this method to verify the witness's credibility, especially in cases where the witness has never encountered the accused except at the crime scene.

In the case of **Ramkishan vs Bombay State [AIR 1955 SC 104],** it was established that, during the investigation of a crime, the police are required to conduct identification parades. These parades serve the purpose of enabling witnesses to identify either the properties that are the focus of the offence or the individuals involved in the crime.

A test identification parade has the following key dimensions:

- It aims to assure the investigating authorities that a specific person, previously unknown to the witnesses, may have been involved in the commission of the crime or that a particular property was linked to the offence.

- It is also designed to provide evidence that supports and corroborates the testimony given by the concerned witness in a court of law.

- Additionally, it serves the interests of the accused by helping to eliminate the possibility of false implication.

Value of Evidentiary Information:

The parade is an important part of the investigation for both the prosecution and the accused, but it cannot be considered as important, substantial or primary evidence, and conviction cannot be based solely on the results of the trial identification parade; in order to convict, the accused must be identified in court. The Honourable Supreme Court held in the matter of **State of Andhra Pradesh v. K. Venkata Reddy**. that a witness's statement in a court of law is substantive testimony, whereas the witness' identification in the TIP is only confirmatory of the testimony presented in the court of law. If a suspect refuses to participate in the Test Identification Parade, the refusal cannot be used to prove his or her guilt, and if it is, it will be of secondary relevance. The Honourable Court stated in the case of **Rajesh and Anr v. State of Haryana**. that "the identification in the course of a Test Identification Parade is intended to offer certainty to the accused's identity". The reluctance of the accused to participate in an identification parade cannot be used solely to establish guilt. In this case, the appellants or accused, Rajesh Sarkari and Ajay Hooda, were convicted of a crime primarily under Section 302 of the Indian Penal Code, together with a co–accused, Pehlad Singh alias Harpal, and were sentenced to life imprisonment. The charge was that the complainant's son, Sandeep, was murdered by shooting rounds at him. The accused, enraged, filed appeals, and additional facts were revealed in this particular appeal. The prosecution's depositions had numerous contradictions, which were clearly visible. The topic of Test Identification Parade was addressed in the second section of the judgments. An adverse inference should be drawn against the appellants for refusing to submit themselves to a Test Identification Parade, the prosecution argued. The appellants stated that refusal to undergo Test Identification Parade stemmed from the fact that the deceased and the accused knew each other prior to the incident. Taking all of the factors into account, the Hon'ble Apex Court concluded that "identifying during a Test Identification Parade is designed to offer assurance to the accused's identity". The reluctance of the accused to participate in an identification parade cannot be used solely to establish guilt. As a result, a refusal to participate in a Test Identification Parade is of minor value, if at all, and cannot stand alone in the absence of being a substantive or key piece of evidence.

In **Malkhan Singh Vs. State of Madhya Pradesh (2003) 5 SCC 746**, it was observed that "As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence". The Court further observed that "The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which belong to the stage of investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court".

In **Munna Vs. State of NCT of Delhi (2003) 10 SCC 599** it had held that "In a case where an accused himself refuses to participate in a test identification parade, it is not open to him to contend that the statement of the eyewitnesses made for the first time in court, wherein they specifically point towards him as a person who had taken part in the commission of the crime, should not be relied upon. This plea is available provided the prosecution is itself responsible for not holding a test identification parade. However, in a case where the accused himself declines to participate in a test identification parade, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in court during the course of the trial of the case."

In **State of Uttar Pradesh Vs. Rajju (AIR 1971 SC 708),** the Court observed that "If the accused felt that the witness would not be able to identify them – they should have requested for an identification parade." Therefore, it approved the right to ask for Test Identification Parade by the accused.

The Hon'ble Supreme Court recently in a judgment passed by it in the case of **Mukesh Singh Vs. State (NCT of Delhi)** has delved into whether Test Identification Parade is violation of fundamental rights bestowed upon an accused under Article 20 (3) of the Constitution. Article 20 (3) of the Constitution provides that "No person accused of any offence shall be compelled to be a witness against himself". The right guaranteed under Article

20 (3) acts as a “protective umbrella against testimonial compulsion in respect of persons accused of an offence to be witness against themselves”.

The question came before the Court in an appeal wherein the accused had declined to participate in the Test Identification Parade on the ground that he was already shown to the witness prior to the conduct of the Test Identification Parade. The Court has observed that the under Article 20 (3) the procuring by compulsion of the positive volitional evidentiary acts of accused is prohibited. The accused may be compelled to attend the parade, but the compulsion does not provide any positive volitional evidentiary act. The compelled attendance at a Test Identification Parade is comparatively remote to the final evidence and cannot be said by itself to furnish any positive volitional evidentiary act.

The Hon’ble Supreme Court has held that introduction of Section 54A of the Cr.P.C makes it obligatory on an accused to stand for identification parade and that the accused cannot resist subjecting himself to the Test Identification Parade on the ground that he cannot be forced or coerced for the same. If the coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the constitutional guarantee under Article 20 (3) of the Constitution will step in to protect him. The Hon’ble Supreme Court further held that if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20 (3) of the Constitution will have no application. The Court has made it amply clear that a person accused in a criminal case is under obligation for a Test Identification Parade during an investigation under the Code of Criminal Procedure and that obligation does not violate the constitutional right of the accused person.

Conclusion:

A test identification parade has been used in India for hundreds of years, and it actually helps speed up the investigation and solve crimes faster, but it is not a significant piece of evidence and is only used as a backup. To sum up, Test Identification aids investigating agencies and is an important element of the inquiry, but it is not primary evidence in court.

The Relevancy of Motive, Preparation and Conduct under the Indian Evidence Act.

Section.8 of the Indian Evidence Act, 1872 lays down the provisions relating to the relevancy of three principal facts, which are very important in connection with every kind of civil or criminal cases. They are as follows :

1) Motive
2) Preparation
3) Conduct

1) Motive:

The word 'motive' means “the reason behind the act or conduct or an act to be achieved in doing an act."

Salmond describes motive as " the ulterior intent". It may be good or bad.

Motive is the moving power, which impels one to do an act. In other words, a motive is that which moves a man to do a particular act. It is an emotion or State of Mind, which leads a man to do an act. Motive by itself is no crime, however heinous it may be. Once a crime has been committed, the evidence of motive becomes important. Therefore, evidence of the existence of a motive for the crime charged is Admissible.

Motive differs from intention. Intention refers to immediate consequences, whereas, motive refers to ultimate purpose with which an act is done. An act may be done with bad intention but good motive.

Example: A thief steals money and helps the poor.

Proof of Motive:

Motive cannot always be shown directly. It has to be inferred from the facts and circumstantial in evidence.

Importance of Evidence of motive:

Motive is a relevant factor in all criminal cases, whether based on the testimony of eye witnesses or circumstantial evidence. Motive alone is not sufficient evidence to establish that the crime in question has been committed by a particular person. Where a crime is to be proved beyond reasonable doubt,

it is not necessary to consider the evidence of motive. Inadequacy of motive does not affect the cogent evidence but is important, whether evidence is doubtful.

Relevant Case Law:

It has been held in **Udaipal Singh vs. State, AIR1972 SC 54**, that Evidence of motive is relevant under section 9 of the Indian Evidence Act.

Hon'ble Supreme Court held in **Kundula Bala vs. State 1993**, that in a case based on circumstantial evidence, motive assumes a great significance as its Evidence in an enlightening factor in a process of presumptive reasoning.

In **State of Haryana v. Sher Singh.AIR 1981 SC 1021**, it is held that if the prosecution proves motive, Court has to consider it and see whether it is adequate. When there is direct evidence, the evidence of motive is not of so much significance.

In **Sakharam v. State AIR 1992 SC 758**, it is held that absence of Motive may not be relevant when Evidence is overwhelming but it is a plus point in case where the Evidence against the accused is only Circumstantial.

2) Preparation:

Section 8, Para I of the Indian Evidence Act, 1872 says, "Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact."

Preparation consists in arranging the means necessary for the commission of a crime. Every crime is necessarily preceded by preparation.

Illustration:

"A is tried for the murder of B, by poison. The fact that, before the death of B, A produced poison similar to that which was administered to B is relevant."

The fact that a day prior to the murder of B, A went to the druggist shop and obtained a particular poison, is relevant to show that he made necessary preparation for committing the crime.

There are four stages in Commission of Crime.

1) Intention
2) Preparation
3) Attempt
4) Accomplishment / complete act.

The first, intention is not punishable. The second stage in commission of a crime is preparation, is punishable in certain cases. The third stage attempt is exempted from criminal liability in rare cases in respect of minor offences. Preparation in devising or arranging means necessary for commission of an offence.

The preparation on the part of the accused may be, to accomplish the crime, to prevent discovery of crime or it may be to aid the escape of the criminal and avert suspicion.

3) Conduct:

The conduct is the expression in outward behavior of the quality or conduct operating to produce those effects.

The second paragraph of Section 8 deals with the relevancy of conduct. It says that , "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 offense 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."

Conduct is differ from the character. Conduct is what a person is in the estimation of others.

Paragraph 2 of Section 8 deals with the relevancy of the conduct of the following persons

1) Parties to the suit and of their agents.
2) Person, an offense against whom is the subject of a proceeding.

Against whom admissible:

The conduct of any person, is relevant under section 8, is admissible only against himself and not against any other person. The conduct of an accused is not, therefore, Admissible, against a co-accused.

The conduct is admissible only if the following conditions are satisfied:

1) It must be in reference to the suit or proceeding or in reference to any fact in issue therein or relevant thereto.

2) It must directly influence or be influenced by any fact in issue or relevant fact. The conduct remains inadmissible if any one of the other two conditions is not satisfied.

In **Nagesha V. State of Bihar, AIR, 1996 SC119**, it was held that if the first information is given by the accused himself, the fact of his giving information is admissible against him as an evidence of his conduct.

In **M. MALKANI V. STATE OF MAHARASHTRA,** it was held that the recorded telephone conversation about the settling of the bribe-money was held to be evidence of conduct. Therefore Absconding of an accused is relevant conduct under the Indian Evidence Act, 1872. However, it must be noted that the act of absconding shows the guilt of the accused only to a certain extent because even innocent persons tend to escape due to the instinct of self-preservation.

CONCLUSION

In conclusion, we can say that “Motive”, “preparation” and “conduct” are essential to prove a mens rea or a guilty mind in a crime. Section 8 of the Indian Evidence Act,1872 is accorded a high amount of importance in case of circumstantial evidence. Hence, it is due to the reason that section 8 is often regarded as one of the most provisions of the Evidence Act.

Alibi :

Introduction:

'Alibi' is a Latin word, which means 'elsewhere' or 'somewhere else'. It is used when the accused takes the plea that when occurrence took place, he was elsewhere. It is the best evidence that can be used by a man to prove his innocence. Whenever a plea of alibi is raised by an accused, it means the accused is trying to convince the Court that he/she was not at the crime spot at the time of commission of crime owing that he/she was somewhere else at that same time. According to Black's Law Dictionary, Alibi is defined as "A term used to express that mode of defence to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time; which is termed setting up an alibi." The term 'Alibi' is not defined either in the Indian Penal Code, 1860, or the Evidence Act, 1872. It is a Rule of evidence that was recognized in Section 11 of the Evidence Act that is elaborated as follows:

Sections dealing with Plea of Alibi:

Section 11 of the Indian Evidence Act, 1872: "When facts not otherwise relevant become relevant: facts not otherwise relevant are relevant (i) if they are inconsistent with any fact in issue or relevant fact, (ii) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

Section 103 of the Indian Evidence Act, 1872: According to this section, "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

Essentials:

Some of the essentials of a plea of Alibi are as follows:

A crime should have been alleged which is punishable by law.

The person should be accused of the offence to make the plea of Alibi.

It is a defence plea where the accused states that he/she was not present at the crime spot at the time of the commission of the crime. The plea must

ensure that it was impossible for the accused to be physically available or present at the crime spot at the time of the commission of the offence. Evidence should be provided supporting the claim of the accused in the plea that he/she was not present at the crime spot.

The exception to the plea of Alibi is that it is not maintainable in all cases such as cases related to defamation, matrimonial, and contributory negligence.

When can the plea of Alibi be taken?

Alibi should be immediate which means at the earliest possible opportunity and not be an afterthought. The plea of Alibi should be taken at the initial stages of the preliminary hearing or framing of the charge; therefore, it will have more weightage.

Delay of raising Alibi: If the accused delays in filing a plea of Alibi then the credibility of the Alibi decreases because as time goes the possibility of forgetting the details, what happened a week or month or year ago, are high. Proving Alibi beyond reasonable doubt helps in getting a person out of the case. However, the Alibi could not be weakened due to a merely delayed disclosure. The accused should file a plea of Alibi before the trial so that sufficient time is available for investigation. If there is no evidence to support the Alibi or the plea of Alibi found to be false or fabricated then this may go against the accused.

Admissibility of Alibi: The plea of Alibi is supported with evidence and witnesses which means witnesses who testify and evidence such as photos, GPS, videos, etc. will strengthen or weaken the Alibi. The credibility of the evidence and witnesses is decided by the judges after hearing the testimonies. Friends and families of the defendant could also testify. However, it weakens the evidence but that could not be wholly discarded. A failed attempt to prove the Alibi does not ensure that the person was present at the crime spot during the commission of crime.

Who can raise the plea of Alibi?

A plea of Alibi can be raised by the accused of an alleged offence. In order to make this plea, the accused should be at a place that is far away from the place of commission of the crime and can not be physically available at the crime spot at that time. The credibility of the plea of alibi increases, if the

accused takes the plea at an earlier stage of judicial proceedings. This stage could be at the stage of framing of charge or preliminary hearing. Moreover, if the plea is not supported by appropriate evidence then there is a rare chance that it would be accepted.

Who carries the Burden of Proof?

When the prosecution has proved the charges against the accused and has discharged the burden then the accused can raise a plea of Alibi to prove his/her innocence. After taking the plea of Alibi, according to the Evidence Act, the burden of proof is on the accused. The accused has to prove his/her presence at a place that is far away from the crime site. The time when the plea of alibi is raised ensures its reliability whereas an unreasonable delay in raising the plea creates doubts and suspicion. If the Court feels that at some point the Alibi was thought of and planned then the Court can reject the plea as per the facts and circumstances of the Court. A plea of Alibi is always accepted but if the accused is not able to make the judge believe that his alibi is true then the plea is rejected and Court becomes cautious throughout the proceedings.

Failure of plea:

Even if the evidence provided were not true or the accused is not able to establish the plea of alibi or there is no evidence to prove the Alibi then it cannot be confirmed whether the accused was present at the crime spot or not. If the plea of Alibi is raised by the accused, the prosecution must prove it by positive evidence. Through this, it can be determined that the accused's failure to prove Alibi does not conclude that the person was present at the crime spot.

False plea:

It has been observed that sometimes the accused raises a false plea of Alibi as a defence to protect him/ her against criminal proceedings. However, the Courts will not consider the accused guilty of the crime if he/she raises a false plea of Alibi but it negatively impacts the accused. A false alibi plea and giving false evidence to prove it leads to suspicion and the Court becomes more cautious throughout the proceedings. This will further change the entire investigation process.

Case Laws:

In **Darshan Singh vs. State of Punjab (2016),** the accused herein was convicted by the High Court and sentenced to imprisonment of life with a fine of 5000 rupees for committing murder. After carefully going through the statements of defence witnesses and other evidence, it was determined that the accused took a false plea of alibi. Also, it was determined that the plea of alibi of the accused was vacillating. The Supreme Court said, "The plea of alibi is not one of the General exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, the plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused." It added that after scrutinizing all the evidence, no illegality was found in the appreciation of evidence, and the appeal was dismissed.

In **Pappu Tiwary vs. State of Jharkhand (2022),** the Hon'ble Supreme Court held that "The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives."

In **Lakhan Singh @ Pappu Vs. State of NCT of Delhi,** it was held that the plea of Alibi cannot be equated with a plea of self defence and ought to be taken at the first instance and not belatedly at the stage of defence evidence.

Conclusion:

To conclude, it has been determined that the plea of alibi is raised by the defendant or accused to convey or convince that he was somewhere far from the crime spot at the time when the crime was initiated. It is to be notified that the accused claimed the plea of alibi and the chance of committing the murder is not reduced but the accused is burdened to prove his innocence against the obligations imposed by the prosecution. It is worth mentioning that the prosecution has to independently prove that the accused has committed the crime because according to Indian law, "presumed innocent until proved guilty". The plea of alibi must be established beyond reasonable doubt that it was not possible for the accused to be physically present at the crime site during the commission of crime.

WORK SHOP - 2

PAPER PRESENTATION

1.ADMISSIONS AND CONFESSIONS RELEVANCY IN CRIMINAL CASES

2. CONFESSIONS OF CO-ACCUSED

3.EXTRA JUDICIAL CONFESSIONS

4.RETRACTED CONFESSIONS

BY

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PENUKONDA

ADMISSIONS AND CONFESSIONS - RELEVANCY IN CRIMINAL CASES:

Admission and confession are two very important concepts used in law of evidence by lawyers to strengthen their cases in the eyes of the jury. Both admissions and confessions are used as sources of evidence. Section 17 to Section 31 of the Indian Evidence Act, 1872 deal with admissions and confessions. Though they appear to be similar, there is a narrow line of difference between admissions and confessions. In simple words, admission is when a person acknowledges or admits the facts in a statement. On the other hand when an admission is made by an accused person that he has committed a crime, it is called confession. Confession is the of acknowledging one's involvement in a crime or wrong doing. However, the definition of the term confession does not find place in the Indian Evidence Act, 1872. So far, the definition given under section 17 of the Act 1 for admission becomes applicable to confession also. On close analysis of Sections 17 to 31, it can be said that statement is the genus admission is the species and confession is the sub-species. This observation regarding admissions and confessions was made in the famous case of **Sahoo v. State of U.P AIR 1966 SC 40.**

The Indian Evidence Act, 1872 Section 17-31 deal with the provisions related to admission and confessions and their relevancy.

Section 17. Admission defined

An admission is a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Section 18. Admission- by party to proceeding or his agent

Statements made by party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

By suitor in representative character — Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they are made while the party making them held that character.

Statements made by—

(1) By party interested in subject-matter—persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) By person from whom interest derived- Persons from whom the parties to the suit have derived their interest

in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

Section 19. Admissions by persons whose position must be proved as against party to suit
Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Section 20. Admissions by persons expressly referred to by party to suit
Statements made by persons to whom party to the suit has expressly referred for information in reference to a matter in dispute are admissions.
Thus, by taking the collecting conclusion from section 17 to 20 admission can be define as a statement oral or documentary or in electronic form which suggest any inference as to any fact in issue or relevant fact and made by

1. A party to proceeding,
2. An authorized agent to any party to proceeding,
3. Parties to representative suit holding capacity as representative while making the statement,
4. Persons who have proprietary or peculiar interest in the subject matter of proceeding,
5. Person from whom parties to the suit have derived their interest in the subject matter of the suit.
6. Persons whose position and liability it is necessary to prove against any party to the suit.
7. Persons to whom a party to the suit has expressly referred for information in reference to matter in dispute.

Uses of Admission:-
Section 21. Proof of admissions against persons making them, and by or on their behalf
Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:-

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

Dying Declaration Admissibility

A deathbed pronouncement that is actually based on the concept of "Nemo moriturns proesumitur mentiri" is allowed as proof which means that man will not meet his god with a lie in his mouth. A dying declaration does not need to be corroborated as long as it inspires faith in the Court and is free of any sort of coaching. In the matter of **Uka Ram v. Rajasthan State AIR 2001 SC 1814**, the court concluded that a deathbed confession is admissible if it is made under extreme circumstances; when the maker of the statement is at his bedside, every hope of this life is gone; and every motivation of untruth is quiet and the soul is driven to express the truth. According to Indian law, "a dying man seldom lies." Thus, it is an form of admission of deeds which is not corroborated.

Article:

A declaration in the manner of an admissions on a mixed matter of fact and law cannot be construed as an admission under Section 17, since only an admittance of fact compels the speaker, not an admission of law. According to the case of **Ram Bharose Sharma v Mahant Ram Swaroop, 2001 Civil 1616 of 1994**.

A person's admissions, whether it amounts to confession or otherwise, cannot be divided and turned against him in part. An admittance must be utilized in its whole or not at all. It was determined in the 2014 case of **Prakash v State of Karnataka Crl A.No.1682 of 2005**.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind of body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Section 22. When oral admissions as to contents of documents are relevant

Oral admissions as to the contents of a documents are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules herein after contained, or unless the geniuses of a document produced is in question.

Section 22A. When oral admission as to contents of electronic records are relevant

Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.]

Section 23. Admission in civil cases relevant

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation – Nothing in this section shall be taken to exempt any barrister, pleader attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Some important points as to admission:-

1. Admission is a formal positive act of acknowledgment, It is a conscious and deliberate act and not something which would be inferred.
2. In India admission of fact is proved against the party making the admission but admission on a pure question of law is not binding on the maker. (Jagwant Singh Vs. Sitam Singh ILR 21 ALL)
3. Admission by pleaders, Attorneys and counsels in civil cases if made with full authority and knowledge without some serious mistake is conclusively binding upon the client and cannot afterwards be withdrawn, but

no admission by counsel in criminal cases can relieve the prosecution of the duty to prove the case.
4. Admission must be taken as a whole and cannot be split up and use part of if against person making it.

Section 31. Admission not conclusive proof, but may estop
Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.
Admissions are broadly classified in two categories judicial admissions and extra judicial admissions.

Admissions dealt with in the Indian Evidence Act (in Sections 17 to 23 and 31) are different from the judicial admissions. Admissions in the Evidence Act is nothing but a piece of evidence.
According to Section 31 admissions as dealt with in Sections 17 to 23 are only a piece of evidence. They are not conclusive proof of the facts admitted like the judicial admissions, but they may operate as estoppels under Sections 115 to 117 of the Act.

An admission is the best evidence that an opposite party can rely upon and though not conclusive is the decisive of the matter unless successfully withdrawn or proved erroneous.

The principle underlying the evidentiary value of an admission may be summarized thus:
(1) An admission constitutes a substantive piece of evidence in the case and for that reason can be relied upon for proving the truth of the facts incorporated therein.
(2) An admission has the effect of shifting the onus of proving to the contrary on the party against whom it is produced with the result that it casts an imperative duty on such party to explain it. In the absence of satisfactory explanation it is presumed to be true.
(3) An admission, in order to be competent and to have the value and effect referred to above should be clear, certain and definite and not ambiguous, or confused.

As per section 58 of India Evidence Act fact admittedly need not to be proved:- No fact need be proved in any proceeding which parties their to or their agents agree to admit at the hearing or before hearing, they agree to admit by any writing under their hands or by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.
Provided that the court may in its discretion, require the facts admitted to be proved otherwise by such admissions.
Section 17 to 31 deals with admission generally and include Section 24 to 30 which deal with confession hence confession is a species of admission.
Section 24. Confession caused by inducement, threat or promise when irrelevant in criminal proceedings
A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

The word “confession” appears for the first time in Section 24 of the Indian Evidence Act. This section comes

under the heading of Admission so it is clear that the confessions are merely one species of admission. Confession is not defined in the Act. Mr. Justice Stephenin his Digest of the law of Evidence defines confession as "confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime."

Admission and confession-Difference

Confession	**Admission**
1. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.	1. Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20.
2. Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed.	2. Admissions are not conclusive as to the matters admitted it may operate as an estoppel.
3. Confessions always go against the person making it	3. Admissions may be used on behalf of the person making it under the exception of section 21 of evidence act.
4.Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)	4. Admission by one of the several defendants in suit is no evidence against other defendants.
5. confession is statement written or oral which is direct admission of fact.	5. admission is statement oral or written which gives inference about the liability of person making admission.

Difference between judicial and extra-judicial confession-

Judicial confession	**Extra-judicial confession**
1. Judicial confessions are those which are made to a judicial magistrate under section 164 of Cr.P.C. or before the court during committal proceeding or during trial.	1. Extra-judicial confession are those which are made to any person other than those authorized by law to take confession. It may be made to any person or to police during investigation of an offence.
2. To prove judicial confession the person to whom judicial confession is made need not be called as witness.	2. Extra-judicial confession are proved by calling the person as witness before whom the extra-judicial confession is made.
3. Judicial confession can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.	3. Extra-judicial confession alone cannot be relied it needs support of other supporting evidence.
4. A conviction may be based on judicial confession.	4. It is unsafe to base conviction on extrajudicial confession.

Ingredients of Section 24

To attract the prohibition enacted in Section 24 the following facts must be established:-

•That the statement in question is a confession,

•That such confession has been made by the accused,

•That it has been made to a person in authority, (Police, Magistrate, Patel, Master of the accused, Zimidar of the accused, Mukhia of a village or a Ziledar serving in a grate estate are the persons in authority within the meaning of section 24)

•That the confession has been obtained by reason of any inducement, threat or promise, proceeding from a person in authority,

•Such inducement, threat or promise must have reference to the charge against the accused, and

•The inducement, threat or promise must in the opinion of the court be sufficient to give the accused ground, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Extra-judicial Confession can be of three types:-

1.Confession made to a police officer – not admissible under Section 25.

2.Confession made in police custody – not admissible under Section 26.

3.Made to any third person neither to police officer, nor in custody and not to magistrate. If such a confession is not hit by Section 24 it will be relevant and if proved admissible. So it has evidentiary value depending upon the corroboration of it. Per se an extra judicial confession cannot be a ground of conviction unless it is corroborated by other circumstances.

In **State of MP Vs. Paltan Mallah (2005) 3 SSC 169**,it has been held that extra judicial confession is a good piece of evidence but it has to be pass through a stringent test of corroboration and proof. It cannot be sole basis of conviction. Extra-judicial confession against a co-accused can be used under Section 30.

Regarding confession statement starting from **Balmukund Case** and passing through Palwinder Kaur, Deoman Upadhyay, Agnoo Nagesia and uptil Nishikant Jha, three basic issues have been raised:-

1.In a confessional FIR or generally in any other confessional statement, normally there are two components –

(a) The sentences which amount to a direct confession of the guilt and

(2) Other sentences in the confession which are not a direct admission of the guilt but which are admissions of surrounding incriminating circumstances if the confession was made to a police officer then what is the effect of Section 25? Will it hit the entire statement or will it hit only the purely confessional statements and, therefore can the other incriminating statements of an admissional nature be still used against the accused.

2.If in a confessional statement there is some exculpatory statement as well then can it be separated and used in support of the accused by the defence.

3.If a statement is made by the accused in such a manner that actually it does not amount to a confessional statement. However, there are some admissions of incriminatory circumstances in that statement coupled with some exculpatory circumstances. Then can be exculpatory part be removed and the inculpatory be used as an admission.

In **Agnoo Nagesia case 1966 AIR 119** it has been held that a confessional statement as to be read in totality and

whole FIR will be hit by Sections 25 and 26 unless some portion of it is exculpatory (but Section 27 will apply and the discovery statement will be admissible).

The question whether a confessional statement containing exculpatory and in culpatory statements, will be exculded in totality or can be bifurcated was raised in P**akala Narayan Swami Case AIR (1939 PC) 47** and later on in the **Allahabad HC Case of Emperor Vs. Balmukund (1952 Allahabad)** and subsequently in **Palwinder Kaur Vs. State of Punjab (1953 SCR 94)**. Also in **Agnoo Nagesia Case** and was finally settled in **Nishikant Jha Vs.State of Bihar (1968 S.C)= 1969 AIR 422** by a five judges bench of SC headed by Mitter J. The final ruling can be summarized as follows - "If the confessional part will be negated if the exculpatory part is proved then the court has to examine whether the exculpatory part is proved or not. If the exculpatory part is proved then the whole confessional statement becomes inadmissible. However, if the court finds that the exculpatory part is either disproved or is untrustworthy on the basis of the other proved evidences, then the exculpatory part can be rejected and the incriminatory part will be admitted".

Evidentiary value of confession

A confessional statement made by the accused before a magistrate if it is made voluntarily is a good evidence and accused can be convicted on the basis of it. It is substantive piece of evidence and a conviction can be bases solely on such confession provided it is voluntary and proved. Now the settled law is that a conviction can be based on confession only if it is proved to be voluntary and true. If corroboration is needed it is enough that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is enough.

Value of extra-judicial confession- extra-judicial confessions are not usually considered
with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in the circumstances which support his statement should not be believed. The evidence of extra-judicial confession is a weak piece of evidence. The extra-judicial confession must be received with great care and caution. It can be relied upon only when it is clear, consistent and convincing.
In **(2023)7 SCC 727 between Pritinder Singh @ Lovely Vs. State of Punjab para** 22. The law with regard to extra-judicial confession has been succinctly discussed in Unna Kumar Upadhyay Vs. State of A.P wherein this court has also referred to its earlier judgments, which read thus; (SCC pp.195-97, paras 56-63)

:56. This court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions. In Balwinder Singh V. State of Punjab this court stated the principle that: (SCC p.265, para 10)

'10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.'

57. In Pakkioriswamy V. State of T.N. the court held that: (SCC p.162, para 8)

'8. ..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.'

58.Again in Kavita V State of T.N. the court stated the dictum that: (SCC p.109 para 4)

4.There is no doubt that convictions can be based n extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made."

59.While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this court in State of Rajasthan Vs. Rajaram stated the principal that: (SCC p.192, para 19)

'19. An extra-judicial confession if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like an other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.

The court further expressed the view that '(Rajaram case, SCC p.192, para 19)

'19....Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appeared to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....

60. In Aloke Nath Dutta Vs. State of W.B., the court, which holding that reliance on extra- confession by the loer court in absence of other corroborating material, was, unjustified, observed: (SCC pp.265-66, paras 87 & 89)

87.Confession ordinarily is admissible in evidence. It is relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the Superior judiciary from time to time from the basis for conviction. It is, however, trite, that for the said purpose the court has to satisfy itself in regard to ; (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.'

61. Accepting the admissibility of the extra-judicial confession the court in Sansar Chand V. State of Rajasthan held that: (SCC p.611, paras 29-30)

29. There is no absolute rule that an extra-judicial confession can never be the basis of conviction, although ordinarily an extra-judicial confession should be corroborated by some of other material. (Vide Thimma & Thimmaraju Vs. State of Mysore, Mulkraj Vs. State of U.P., Shivakumar Vs. State, SCC paras 40 and 412, Shiva Karam Payaswamy Tewari Vs. State of Maharastra and Mohd.Azad V. State of W.B.)

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.'

62. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the court in **Rameshbhai Chandubai Rathod Vs. State of Gujarat** held as under; (SCC pp.772-73 para 53)

53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.'

63. Extra-judicial confession must be established t0 be true and made voluntarily and in a fit state of mind. The words of the witness must be clear, unambiguous and should clearly convey that the accuse is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passed the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support i. (Ref. Sk.Yusuf V. State of W.B., SCC pp.762-63, para 28 and Pancho V. State of Haryana.

Retracted confession meaning:- a retracted confession is a statement made by an accused person before the trial begins before the magistrate by which he admits to have committed the offence, but which he repudiate at the trial.

Value of retracted confession-In 1957 in **Pyare Lal Vs. State of Assam 1957 Crl.L.J 481** it was held that a retracted confession may still be used as a basis for conviction. Its corroboration would be a matter of prudence and not of law. In **Bharat Vs. State of Uttar Pradesh** (1974 SC)it was held that a confession is a substantive piece of evidence provided that it was made voluntarily. However, when a confession is retracted the Court has to act cautiously and require a greater corroboration of the confession. In **Parmanand Teghu Vs. State of Assam** (2004 SC)the same points were reiterated. In **NCT of Delhi Vs. Navjot Sandhu Alias Afsal Guruit AIR 2005 SC W 4148** was held that once the earlier confession has been proved to be voluntary then retraction will not play any role as such however in the Parliament Attack Case, the confession of Afzal and Saukat, the two co-accused was given up not because of retraction but because the earlier confession was improperly recorded i.e. it was proved not to be made voluntarily. It is unsafe to base the conviction to the retracted confession unless it is corroborated by trustworthy evidence. The court may take into account the retracted confession after examining the reason of making it and also the reasons for the retraction to determine that whether retraction affects the voluntary nature of confession or not.

Proof of judicial confession-Under section 80 of Evidence Act a confession recorded by the magistrate according to law shall be presumed to be genuine. It is enough if the recorded judicial confession is filed before the court. It is not necessary to examine the magistrate who recorded it to prove the confession. But the identity of the accused has to be proved.

Proof of extra-judicial confession-extra-judicial confession may be in writing or oral. In the case of a written confession the writing itself will be the best evidence but if it is not available or is lost the person before whom the confession was made be produced to depose that the accused made the statement before him. When the confession has not been recorded, person or persons before whom the accused made the statement should be produced before the court and they should prove the statement made by the accused.

Confession to police (at any time before or after the investigation begins)
Section 25 – confession to police officer not to be proved.
No confession made to a police officer shall be proved as against a person accused of
any offence.

Reasons for exclusion of confession to police-another variety of confessions that are under the evidence act regarded as involuntary are those made to a police officer. Section 25 expressly declares that such confessions shall not be proved. If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have a committed. A confession so obtained would naturally be unreliable. It would not be voluntary. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from conduct. The reasons for which this policy was adopted when the act was passed in 1872 are probably still valid.

In **Dagdu v. State of Maharashtra**, A.I.R. 1977 S.C. 1579, Supreme Court noted: The archaic attempt to secure

confessions by hook or by crook seems to be the be-all and end-all of the police investigation.
Statement Not Amounting To Confession is not hit by Section 25.

Use of Confessional Statement By Accused

Though the statements to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defence. The statement of the accused in FIR that he killed his wife giving her a fatal blow when some tangible proof of her indiscretion was available was not usable against him to establish his guilt. But once his guilt was established through other evidence, he was permitted to rely upon his statement so as to show that he was acting under grave and sudden provocation. There is nothing in Evidence Act which precludes an accused person from relying upon his own confessional statements for his own purposes.

Special Legislation

A special legislation may change the system of excluding police confessions. For example, under the Territorists and Disruptive Activities(prevention) Act, 1987, (S15) confessional statements were not excluded from evidence on grounds that the persons making them were in police custody. The court said in another case that section 15 was an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision was that a confession recorded under S.15 of TADA was a substantive piece of evidence and could be used against a co-accused also.

Section 26- Confession By Accused While In Custody Of Police Not To Be Proved Against Him.

No confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.
Object-The object of section 26 of the Evidence Act is to prevent the abuse of their powers by the police, and hence confessions made by accused persons while in custody of police cannot be proved against them unless made in presence of a magistrate. The custody of a police officer provides easy opportunity of coercion for extorting confession obtained from accused persons through any undue influence being received in evidence against him.

Police Custody

The word custody is used here in wide sense. A policeman may lay his hand on a person, hand-cuff him or tie his waist with a rope and may take him with him. Again a police officer may not even touch a person but may keep such a control over him that the person so controlled cannot go any way he likes. His movement is in the control of the police officer. A police officer comes to A and asks him to follow to the police station as he is wanted in connection with a dacoity case. A follows him. He is in custody of the police officer.

Thus it is settled that “the custody of a police officer for the purpose of section 26, Evidence Act, is no mere physical custody.” A person may be in custody of a police officer though the other may not be physically in possession of the person of the accused making the confession. There must be two things in order to constitute custody. Firstly, there must be some control imposed upon the movement of the confessioner, he may not be at liberty to go any way he likes, secondly, such control must be imposed by some police officer indirectly. The crucial test is whether at the time when a person makes a confession he is a free man or hid movements are controlled by the police by themselves or through some other agency employed by them for the purpose of securing such confession. The word ‘custody’ in this the following section does not mean formal cutody but

includes such state of affairs in which the accused can be said to have come into the hands of a police officer, or can be said to have been some sort of surveillance or restriction.

In **R. v. Lester,** the accused was being taken in a tonga by a police constable. In the absence of constable, the accused confessed to the tanga-driver that he committed the crime. The confession was held to be in police custody as the accused was in the custody of constable and it made no difference of his temporary absence. Where a woman, charged with the murder of her husband, was taken into the custody of the police, a friend of the woman also accompanied her. The policeman left the woman with her friend and went away to procure a fresh horse. The woman confessed her guilt to her friend while the policeman was away. The confession would not be admissible against the accused as the prisoner should be regarded in custody of the police in spite of the fact that he was absent for a short time. But where the accused is not arrested nor is he under supervision and is merely invited to explain certain circumstances, it would be going further that the section warrants to exclude the statement that he makes on the grounds that he is deemed to be in police custody.

Section 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.

Principle-this section of the act is founded on the principle that if the confession of the accused is supported by the discovery of a fact then it may be presumed to be true and not to have been extracted. It comes into operation only-

•If and when certain facts are deposed to as discovered in consequence of information received from an accused person in police custody, and

•If the information relates distinctly to the fact discovered.

This section is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

In **Pandu Rang Kallu Patil v. State of Maharashtra (2002)2 SCC 490**, it was held by Supreme Court that section 27 of evidence act was enacted as proviso to Section 24 to 26. The provisions of sections of Section 25 and 26, which imposed a complete ban on admissibility of any confession made by accused either to police or to any one while in police custody. Nonetheless the ban would be lifted if the statement is distinctly related to discovery of facts. The object of making provision in section 27 was to permit a certain portion of statement made by an accused to Police Officer admissible in evidence whether or not such statement is confessional or non confessional.

Requirements Under The Section- the conditions necessary for the application of Section 27 are:-

1. The fact must have been discovered in the consequence of the information received from the accused.
2. The person giving the information must be accused of an offence.
3. He must be in custody of a police officer.
4. That portion only of the information which relates distinctly to the fact discovered can be proved. The rest is

inadmissible.

5. Before the statement is proved, somebody must depose that articles were discovered in consequence of the information received from the accused. In the example given above, before the statement of the accused could be proved, somebody, such a sub-inspector, must depose that in consequence of the given information given by the accused, some facts were discovered.

6. The fact discovered must be a relevant fact, that is, to say it must relate to the commission of the crime in question.

In **State of Bombay Vs. Kathi Kalu Oghad AIR 1961 SC 1808** it was held that Section 25 is not per se violative of Article 20 (3). The SC in this case approved the earlier decision of itself in **Mohd. Dastagir Vs. State of Madras (1960) 3 SCR 116.**

Section 28provides that if there is inducement, threat or promise given to the accused in order to obtain confession of guilt from him but the confession is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court been fully removed, the confession will be relevant becomes free and voluntary.

Impression produced by promise or threat may be removed

•By lapse of time, or

•By an intervening caution given by some person of superior authority to the person holding out the inducement, where a prisoner confessed some months after the promise and after the warning his confession was received.

Section 29-confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to question which he need not have answered, whatever may have been the form of those questions, because he was not warned that he was not bound to make such confession, and that evidence if it might be given against him.

Section 30- Consideration of Proved Confession Affecting Person Making It And Others Jointly Under Trial For The Same Offence-

When more persons than one are being tried jointly for the same offence and a confession made by one such persons affecting himself and some other such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. It appears to be very strange that the confession of one person is to be taken into consideration against another. Where the confession of one accused is proved at the trial, the other accused persons have no other opportunity to cross examine him. It is opposed to the principle of jurisprudence to use a statement against a person without giving him the opportunity to cross examine the person making the statement. This section is an exception to the rule that the confession of one person is entirely admissible against the other.

Hence before the confession of one accused may be taken into consideration against others, it has to be shown that:

1) The person confessing and the others are being tried jointly.

2) They are being tried for the same offence.

3) The confession is affecting the confessioner and the others.

Evidentiary value of Confession in Section 30:-

The confession of a co-accused under Section 30 is admissible in evidence but the evidentiary value is not as much as against the person making the confession. It has only an indicative value. The PC in **Bhaboni Sahu Vs. The Kind** has held the same. This was also reiterated by the SC in **Harib Kurni Vs. State of Bihar (1964 SC)** and also in **Kashmira Singh Vs. State of M.P. AIR (1952 SC) 159**.

CONFESSIONAL STATEMENT AGAINST CO-ACCUSED

A confessional statement can be used even against co-accused if the person making the confessions besides Implicating himself also implicates others who are being jointly tried with him. In **Nathu v. State of Uttar Pradesh - AIR 1965 SC 56** Nathu, Bhola and Ram Singh were charged with the murder of Sumer Singh aged about ten or eleven years. The prosecution story was that on the day previous to the occurrence the appellant Nathu told them to bring the deceased, Sumer Singh, and promised to pay Rs. 5 to cash of them (Shola and Ram Singh). Accordingly, on 17th May 1952 Ram Singh and Bhola enticed the boy away to an outlying garden stating that they might eat mangoes there. While they were in the garden, the appellant Nathu came there, tied a mangdechhu round the neck of Sumer Singh and strangled him, while Bhola and Ram Singh were holding the deceased by the hand and feet. After killing the boy they threw him in the well Bhola and Ram Singh made confessional statements before a special Magistrate. These confessions, though subsequently retracted have been found by both the Courts below to have been true and voluntary, and it was on the strength of these confessions which received corroboration in the material particular from the evidence in the case that accused Bhola and Ram Singh were convicted. The confessions of Bhola and Ram Singh were relied on in support of the conviction of the appellant. One of the contentions urged on his behalf in the Supreme Court was that the confessions of Bhola and Ram Singh were inadmissible in evidence against him and the conviction based thereon was illegal. Held-Such statements were not evidenced as defined in Section 3 of Evidence Act, and no conviction could be founded thereon but they could be referred to as lending assurance to that conclusion and fortifying it. Overwhelming evidence against co-accused and confession of accused in a criminal conspiracy- Where in a criminal conspiracy, there is overwhelming evidence against co-accused independent of confession of accused, the confession can be fully applied against co-accused.

In **Pancho Vs. State of Haryana (2011 10 SCC 165)** held that confessions of a co-accused aren't the substantive piece of evidence and they can only be used to confirm the conclusion drawn from other pieces of evidence in criminal trial. The court further stated that the trial court cannot begin on the basis of the confession of the co-accused to form its opinion in a case. Rather, the courts must analyze all the evidence which are being adduced and on being satisfied with the guilt of the accused, might turn to the confession in order to receive assurances to the conclusion of guilt which the court has reached on the said evidence. The court said it is not obligatory to take the confession into account and that it is the discretion of the court.

In **Parveen Vs. State of Haryana 2011 SCC online 1184** their Lordships held that the confessional statements of Co-accused in absence of other acceptable corroborative evidence are not enough to connect an accused for conspiracy.

CONCLUSION:

It can be said that Admission has a wider scope than confession as every confession is important because it shall give explanation to the statements which are admissible in the Court of Law under the Act of 1872 as if a statement is found to be Admissions it shall be admissible under Section 21 and if it's vice versa it shall be admissible under Section 24 to 30. Hence, an admission is valid evidence under the court of law. It has concept of confession and dying declaration under it. Several requirements relied on the dying declaration plus confession that it must be performed in an appropriate way since they served as powerful proof. Although admission and confession is synonymously used they are distinct from each other and confession is mere part of admission. Also, the validity of a dying declaration was recognized in our Indian court since the law tends to suggest that a man will never lie in his final living statements, as no one will face his marker with an untruth on his lips. Where as if dying declaration is proved to be intentionally made, the court has authority to rejected it.

Evidence is important and critical part in both Civil and Criminal trials. It is the most important necessary component any action. If the facts are significant and credible, that testimony should always be admitted in court. The proof must full fill all the codes particular provisions. In my opinion admissions should take into account both in rational and particular relevances. As result the courts should admit those facts that have a significant level of evidentiary valve and will aid the courts.

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WORK SHOP – 2

Session – 3

PAPER PRESENTATION ON THE TOPIC

"*RELEVANCY AND ADMISSIBILITY*

OF

(i) DYING DECLARATION

(ii) EXPERT OPINION"

BY

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RELEVANCY AND ADMISSIBILITY OF

(i) DYING DECLARATION

Introduction:

Evidence plays the most important role in Court proceedings and delivery of justice to the aggrieved parties. The Law of Evidence is the procedural law that contains the rules of evidence. The Law of Evidence prevents the valuable time of the court and helps in determining which evidence is relevant and which one is irrelevant. The process of the administration of criminal justice involves various steps. From registration of FIR, investigation, and arrest of accused persons to the actual trial/hearing including submissions from both the parties (prosecution and defence). The process also includes submission and admissibility of the evidence. Evidence is any document, object, or statement that confirms and proves a certain fact. When a person dies due to some offences like murder, manslaughter etc., then the words said by him before the death become significant and acceptable as evidence. These words narrate the cause of his death or any circumstances of the transaction that caused his death. This is also recognized as a dying declaration. A dying declaration is considered as judicial evidence. The meaning of judicial evidence is any documents, objects, or facts that can be accepted by a court of law as evidence of facts in any case.

What is Relevancy and Admissibility? :

Relevancy merely **implies the relevant facts and signifies what facts are necessary to prove or disprove a fact in an issue**. Relevancy has been stated in Sections 5 to 55 of the Indian Evidence Act, 1872. The concept of relevancy is based on logic and human experience. Relevancy merely implies the relevant facts and signifies what facts are necessary to prove or disprove a fact in an issue. Admissibility is the concept in the law of evidence that determines whether or not the evidence can be received by the court. Under the Indian Evidence Act, 1872, when any fact has been declared to be legally relevant then they become admissible. All admissible facts are relevant but, all relevant facts are not

admissible. Admissibility is a decisive factor between relevance and proof and only legally relevant facts are admissible.

Strictly speaking relevancy is not the test of admissibility because relevancy and admissibility are not the same thing. Relevant means what is logically probative. Admissibility is not based on logic but strictly on law. In relevancy, the court has discretion but in admissibility the court has no discretion. In both the cases, the opposite party has every right to raise the objection.

The Supreme Court in ***Ram Bihari Yadav v. State of Bihar, 1998 Crl.L.J 2515, 2517 (SC)*** observed that *the terms 'Relevancy' and 'Admissibility' are not interchangeable though sometimes they may be taken as synonymous. However, all relevant evidence may not be admissible but all admissible evidence is relevant. The legal implications of the relevancy and admissibility are distinct. It is determined by the ruler of the Act that the relevancy is the test of admissibility.*

What is Dying Declaration?:

A dying declaration is a statement made by a dying person as to the cause of his death or as to any circumstances of the transaction that resulted in his death. The dying declaration forms the sole basis of conviction if it is free from any kind of doubt and if it has been recorded in the manner as provided under the law. It should inspire full confidence in its truthfulness and correctness. Not recording of dying declaration will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence. It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross-examination.

The term 'dying declaration' has not been defined in Evidence Act, but as per section 32 (1) of Evidence Act "*a dying declaration is a statement made by a person who is dead, as to cause of his death or any circumstances of the transaction which resulted in his death, and his death comes into question, then such statement is relevant under section 32 of Evidence Act, 1872 whether the person who made there was or not, at the time when they were made, under an expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question*."

Justice **Eyere** in the case of ***R. v. Woodcack*** says *"Dying declarations are statements made in extremity when the person is at the point of death; when every motive for falsehood is silenced and when every hope of this world is gone and when his mind is induced by the most powerful spiritual considerations to speak the truth*."

Section 32 of the Indian Evidence Act, 1872, is against the rule of hearsay evidence. It makes the statement of a dead person admissible where the death is homicidal or suicidal. Before admitting such a statement under this section, it is compulsory to prove that the maker of this statement is either dead or, for any other reasons, is not available as a witness. A dying declaration should not be the result of compulsion, or pressure, or even imagination. The court has to examine the dying declaration considering the circumstances of a particular case. The dying declarations are used in civil as well as criminal cases. The only material point is that the cause of a person's death (whose statement is to be proved) comes into question irrespective of the nature of the proceeding and that statement will be admissible.

***Object of Dying Declaration*:**

The main object behind Dying Declaration in nut shell is:- It is a presumption that, ''*A person who is about to die would not lie*''. It is also said that ''*Truth sits on the lips of a person who is about to die*''. The victim is exclusive eye witness and hence such evidence should not be excluded. The said principle laid down in ***P.V. Radhakrishna v. State of Karnataka, Criminal Appeal No. 1018/2002 Decided By Hon'ble Apex Court On 25.07.2003***.

Its major purpose is **to render admissible any evidence from a person who dies before the case is heard in court**. Under Section 157 of the Indian Evidence Act, such a Dying Declaration must have corroborative evidence to support it before it can be accepted. But here, we are concerned only with dying declaration which deals with the cases related to cause of death as mentioned in sub-section (1) of section 32 of Indian Evidence Act. The object of taking the dying declaration from a dying person is to ascertain the cause of his/her impending death or the circumstances of the transaction which may result in his / her death.

Essentials of dying declaration :

The below mentioned are quintessential are to be met:

- Firstly, The declarant has to be aware or conscious that death is impending.
- Secondly, The declarant shall only make a statement in respect of his/her belief for the reason or circumstances of his/her death.
- Thirdly, The statement shall only be recorded by the individual whose circumstances of death are concerned.
- Fourthly, The statement made by the declarant should be honest and credible.

It is also pertinent to note that in the case of ***Mallela Shyamsunder vs. State of Andhra Pradesh***, the Hon'ble Apex Court made two additions to the essentials of a dying declaration which are as follows:

(v) The declarant shouldn't make the statement on tutoring or prompting.

(vi) The court has full authority to check the authenticity of the statement made by the declarant for checking whether it was tutored or was there any motive of revenge.

Form of Dying Declaration:

There is no prescribed form for dying declaration. It may be recorded (a) in letters; (b) in words spoken; (c) in gestures and signs which are considered as verbal statements. A dying declaration is "*a statement, written or verbal made by a person as to the cause of his or her death or as to the circumstances of the transaction resulting in his or her death*". It is based on the principle that dying declarations are made in the extremity when the party is at the point of death, and every hope of this world has gone, when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. A situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. Though, law as it stood earlier was that the declaration be recorded in the for of question and answer, but in the case of ***SATISHCHANDRA .v. STATE OF MADHYA PRADESH ([2014]***

6 SCC p.723), it is observed by the Apex Court that *the declaration cannot be rejected on that ground alone if the declaration is otherwise acceptable and meets the requirement of Section 32(1) of the Evidence Act.*

In ***Satish Mahadeo Kale v. State of Maharashtra, 2022 SCC OnLine Bom 1004***, (decided on 6-5-2022), the Hon'ble Bombay High court held that *"A dying declaration is by itself sufficient to convict an accused for the accusation levelled against him provided the dying declaration is found to be voluntary, truthful and hence, could inspire the confidence of the court. It is not necessary that a dying declaration shall necessarily be recorded in question and answer form or in any particular format."*

In ***Ram Bihari Yadav v. State of Bihar, 1998 Crl.L.J 2515, 2517 (SC)***, the Hon'ble Supreme Court has made these observations regarding the form and acceptance of a dying declaration:

> *"Generally, the dying declaration is recorded in question and answer form, but some times it consists of only a few sentences and is in actual words of the maker. The mere fact that it is not in question and answer form cannot be ground against its acceptability or reliability."*

Who can record dying declaration?

The dying declaration can be recorded by any person i.e., police officer, Magistrate both Execute and Judicial, Doctor or any other person. The police officer recording dying declaration must explain as to why a Doctor or Magistrate did not record it. The Hon'ble Apex Court has discarded the practice of recording dying declaration by investigating officer, without exploring the possibilities of recording the same by a Magistrate or a Doctor.

In ***Khokan Sarkar v. State of Tripura, 2019 SCC OnLine Tri 197,*** the Hon'ble Tripura High Court held that "*important aspect to be borne in mind is that in our country, Executive Magistrates and doctors not well trained in technical aspects of recording dying declaration*".

It is best that it is recorded by the magistrate. If there is no time to call the magistrate, keeping in view the deteriorating condition of the declaring, it can be recorded by anybody e.g. public

servant like doctor or any other person. It cannot be said that a dying declaration recorded by a police officer is always invalid. If any dying declaration is not recorded by the competent Magistrate, it is better that signatures of the witnesses are taken who are present at the time of recording it.

***How to record Dying Declaration*:**

As per Rule 33 of Criminal Rules of Practice deals with procedure to be followed by the Magistrate while recording dying declaration.

(a) It must be recorded at the earliest possible opportunity;

(b) Ask doctor if available.

(c) The name and other particulars of the victim must be recorded at the top of the sheet. The venue, date and time of recording must also be noted down.

(d) It must be recorded after ascertaining the mental alertness and power of observation of the victim. The opinion of the doctor about mental fitness of the victim can be obtained.

(e) A few questions and answers thereto may be recorded to ascertain mental alertness where doctor is not available.

(f) It must be recorded in the language of the victim and preferably in the form of question and answer.

(g) No leading question should be put to the victim.
(h) The contents of the statement must be read over and explained to the victim who will put signature or thumb impression on the statement.

(i) If possible signature of victim must be obtained.
(j) Record the name of assailant if necessary.
(k) The person recording the statement will certify about recording the true accounts of the statement of the victim and about the manner of ascertaining the mental fitness of the victim.

(l) It must be dispatched immediately by sealed cover to the Magistrate having jurisdiction.

The Magistrate recording the statement should obtain the signature/thumb impression of the declarant on the declaration. If

it is not possible, there must be an explanation to that effect in the declaration itself. If all the fingers of the declarant are seriously burnt, it will not be possible to obtain thumb impression/signature, the Magistrate may obtain the signature of the Doctor or nurse who is present at the time of recording of dying declaration. The Magistrate should neither cross-examine the declarant nor put any leading questions to the declarant. As far as possible, the declaration should be in the form of question and answer and preferably the words used by the declarant should be written. The recorded declaration should be sent to the concerned Court through a special messenger in a cover and the same should not be handed over to the police. A copy of the declaration may be given to the police for further investigation. As far as possible, the Magistrate may obtain a certificate from the doctor about the fitness of the declarant to give a statement.

In ***Murugasamy vs. The State and Others***, Crl. O.P. No. 12148 of 2017 Decided on 15 September 2017, Hon'ble High Court of Judicature at Madras gave the following guidelines with regard to dying declaration:

(i) After recording the dying declaration, the Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies.

(ii) The dying declaration in original shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgment due.

(iii) One such certified photocopy of the dying declaration shall be furnished by the Magistrate to the Investigating Officer of the case free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed.

(iv) The other certified photocopy of the dying declaration shall be kept in a sealed cover in the safe custody of the Magistrate.

Constitution Bench of the Hon'ble Supreme Court in the decision reported as ***(2002) 6 SCC 710 Laxman v. State of Maharashtra*** held as under:

"3. ..... What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

Proof of Dying Declaration:

Dying declaration may be proved by the following procedure;

(a) Person who recorded the statement.

(b) If it is oral, who heard it.

(c) The person in whose presence the statement was made.

Conditions for the admissibility of dying declaration:

The following are the necessary conditions for the admissibility of the dying declarations:

i) The person must die after making the declaration.

ii) The statement should be related to the cause of death or circumstances causing death.

iii) The cause of death must be in question.

iv) The statement must be complete.

v) The maker of the statement must be mentally fit. If the Court has any confusion regarding the mental condition of the maker, then the statement would be inadmissible.

Reasons for admitting the dying declaration as evidence:

Dying declarations are accepted as an exception to traditional hearsay evidence. Generally, hearsay evidence, not being direct evidence, is not admissible in the court of law. In a dying declaration, a dying person states about the cause of his sudden unnatural death. The last words uttered by the dying person about his death have been admitted to be relevant evidence, though the same cannot be cross-examined. This exception to the hearsay rule is to respect the urge of the dying person to get justice by being witness in his own trial even after his death.

Dying declarations are admissible mainly for two reasons. Firstly, the necessity; the victim being the sole eyewitness of the crime that has been perpetrated upon him, excluding his evidence would defeat the ends of justice. Secondly, they are the declarations made by a person under expectation of death and presumed to be true. These are the two reasons on account of which a dying declaration is made admissible.

The admissibility of dying declaration is based on the maxim '***Nemo Moriturus Praesumntur Mentire***' which means "man will not meet his maker with a lie in his mouth". The principle is based on the theory that a dying man may not speak untruth. This principle was laid down by the Hon'ble Supreme Court in ***Shakuntala v. State of Haryana, AIR 2007 SC 2709***. The presumption is that when a person is conscious of his impending death, when he is confident of his fast dissolution or when he has resigned from the hope of survival, then in such cases he would not lie because he has to face his Maker, the Almighty in the other world. This is the presumption why a dying declaration made by a person shortly before his death is made admissible. In case of ***Uka Ram vs State of Rajasthan, AIR 2001 SC 1814,*** the Hon'ble Supreme Court held that "*a person would not die with the lie on his lips because he had to meet the supreme power of this world, that is, God. The court further observed that the sense of imminent death produces in men's minds the same feeling as that of a righteous man under oath; therefore, the chances of falsehood are totally nullified*. This is exactly the reason as to why courts have held that an accused can be convicted solely on the basis of 'Dying Declaration.' In fact, no corroboration is required since corroboration is only a rule of prudence and not a rule of evidence.

***When dying declarations are relevant and admissible*:**

(i) A dying declaration is relevant whether the person who made it was or was not, at the time when it was made under expectation of death that is, it is immaterial whether there existed any expectation of death at the time of the declaration. It is common sense that there is no need to record dying declaration until that stage is reached or it is apprehended that a person will not survive.

(ii) The admissibility of dying declaration is not confined to the case of homicide only, but it would be admissible, whatever the charge may be, provided the cause of death comes under enquiry.

(iii) A dying declaration is admissible in this country in civil suits, under the terms, *whatever may be the nature of the proceeding in which the cause of death comes into question*. Thus, in a suit for damages for death caused by a railway accident due to the negligence of the company, the declaration of the passenger killed, as to the cause of his death is admissible, so it is receivable in civil as well as in criminal case.

(iv) When dying declarations are received, their weight must depend greatly on the circumstances under which they are made. Their credibility and value will also vary with the circumstances of each particular case and the nature of the record made.

(v) The general rule is that hearsay evidence is inadmissible. Dying declaration is an exception to the general rule. In ***Bhagwan Ramdas Tupe vs. State of Maharashtra, 2023 SCC Online Bom 1554 decided on 28.07.2023***, the Bombay High Court held that "*Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is no evidence. Section 32(1) of the Evidence Act makes a statement of the deceased admissible*."

It is well settled that dying declaration is admissible in evidence and if found reliable and can form the basis of conviction. The Hon'ble Apex Court while dealing admissibility of dying declaration in the case of ***Bhajju vs. State of M.P. [2012 4 SCC 327]*** in para no.24 has held that –

> *"The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A court of facts is not excludes from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding governing the weighing of evidence. It in a given case a particular dying*

> *declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the court, the same may be refused to be accepted as formic basis of the conviction."*

The dying declaration would not lose its worth on the ground that the deceased who made the statement died after a long time. In ***Satpal vs. State of Haryana***, the Hon'ble Supreme Court has clarified that *a court cannot disregard a dying declaration merely because parents and other relatives of the deceased were there in the hospital during recording the statement*. ***Chako vs. State of Kerala, (2003) 1 SCC 112*** is the landmark judgment in which the Hon'ble Supreme Court has pointed out the factors which create doubt over the authenticity of the dying declarations. In ***Jayamma vs State of Karnataka, AIR 2021 SC 2399***, the Hon'ble Supreme Court clarified that dying declarations are the solitary piece of evidence.

In ***Narender Kumar v. State of NCT of Delhi, (2015) 17 SCC 451***, the Hon'ble Supreme Court held that *the dying declarations have no signature or thumb impression of the deceased, the court cannot disregard those declarations. It is nothing but a trivial defect. Moreover, if such declarations are proved by adequate evidence, then the court cannot reject them*.

In ***K.Ramachand Reddy v. Public Prosecutor, (1976) 3 SCC 618***, the Hon'ble Supreme Court made an observation that *"During the recording of the statement of a person, he should not be compelled to take an oath. But the court can check the sanctity of the statement made by the person with the help of cross-examination."*

In ***Purshottam Chopra vs State (Govt. Of Nct Of Delhi), (2020) 11 SCC 489, the Hon'ble Supreme Court*** summed up some of the principles relating to recording of dying declaration and its admissibility and reliability. Recently, in **Irfan v. State of U.P., 2023 SCC OnLine SC 1060, (decided on 23-08-2023 by Sri Justice JB Pardiwala),** the Hon'ble Supreme Court held that there

is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. The Court reproduced certain factors to determine the same, however, clarified that these factors will only affect the weight of the dying declaration and not its admissibility. They are:

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether the dying declarant had opportunity to clearly observe the incident?

(vii) Whether the dying declaration has been consistent throughout?

(viii) Whether the dying declaration is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

Whether FIR can be treated as Dying Declaration? :

As per Section 32(1) of the Evidence Act, the FIR should be treated as a Dying declaration. Where the report of occurrence was dictated by the deceased himself and the same was read over to him after which he had put his thumb impression on the same, this report is admissible under section 32 of the Evidence Act as a dying declaration. This principle was laid down by the Hon'ble Supreme Court in ***Dharam Pal v. State of UP, 2008 CrlLJ 1016:AIR 2008 SC 920.*** The dying declaration which was recorded by the Sub-Inspector of police after obtaining certificate of fitness from the doctor and registered as FIR, cannot be rejected when there were no circumstances on record to infer that the FIR was given on account of some deliberation or prompting and there was no

material on record to show that the contents of the dying declaration were false or incorrect. This principle was laid down by the Hon'ble Patna High Court in ***Lakhan Lal v. State, 1995 CrLJ 2699, 2703 (Pat).***

Recently, in ***Harendra Rai vs. State of Bihar, LiveLaw 2023 dt.18.08.2023,*** the Hon'ble Supreme Court held that *"First Information Report (FIR) is a public document defined under Section 74 of the Evidence Act. The statement by an injured person recorded as FIR can be treated as Dying Declaration".*

Thus, the First Information Report should be treated as Dying Declaration.

Whether oral dying declaration is reliable?

Oral dying declarations are proven by examining the person in the presence of whose statements were made. In other words, the verbal dying declarations are proven by examining the person who has heard them. Oral dying declaration is a weak kind of evidence, where exact words uttered by the deceased are not available particularly because of failure of memory of witnesses who are said to have heard it. Thus, where the exact words used by the deceased differed from witness to witness and the doctor as not cross-examined about the medical condition of the deceased as to his fitness to make a statement, the dying declaration as held not reliable. In ***Vijay Kumar Arora v. State (NCT of Delhi), (2010) 2 SCC 353,*** the Hon'ble Supreme Court held that "*Oral declaration made by the deceased before father, mother, sister and three neighbours as found reliable and acted upon".*

In ***ATBIR .v. GOVT. (NCT OF DELHI)*** *reported in* ***[2010] 9 SCC 1,*** the Hon'ble Supreme Court also gave following guidelines in this regard.

- Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any

further corroboration.

- It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
- Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
- Even if it is a brief statement, it is not to be discarded.
- When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
- If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

***Multiple Dying Declarations*:**

In case of plural dying declarations, the court is expected to see whether all the plural declarations differ in material particulars. If the declaration materially differs from the other, the same will not be relied upon unless the corroborative evidence is adduced. If there are two Dying Declarations, one made before the doctor and another made before the witnesses, normally the declaration made before the doctor will be treated as more reliable. Similar is the case in regard to a statement made before a magistrate. If one part of the declaration is found to be untrue, the same can be rejected by separating the same from the rest of the declaration. If separation is not possible, it is not wise to accept such a declaration.

In the case of ***Kamla v. State of Punjab (1993) 1 SCC 1***, the Hon'ble Supreme Court emphasized that *when inconsistencies arise between different dying declarations, the nature of these*

inconsistencies, whether material or not, must be examined. In the case of ***Amol Singh v. State of M.P. (2008) 5 SCC 468***, the Hon'ble Supreme Court held that *inconsistencies between multiple dying declarations must be assessed in the context of surrounding facts and circumstances. This scrutiny enables the Court to determine which declaration holds more value in specific scenarios*.

Recently, the Hon'ble Supreme Court in ***Makhan Singh v. State of Haryana, 2022 Live Law (SC) 677*** held that *when several dying declarations are presented, and inconsistencies are apparent, the declaration recorded by a higher-ranking officer, such as a Magistrate, is generally considered more reliable, provided that no circumstances raise suspicion about its truthfulness*. The Hon'ble Supreme Court in ***Uttam v. State of Maharashtra (2022) 8 SCC 576*** held that *when handling cases with multiple dying declarations, the court should scrutinize the evidence to determine which declaration aligns with other material evidence, such as medial reports and the physical and mental state of the deceased*.

The Hon'ble Supreme Court recently laid down the principles to be followed in cases where there are multiple dying declarations in ***Abhishek Sharma v. State (Govt.of NCT of Delhi) 2023 LiveLaw (SC) 907,*** as follows:

- **Voluntary and Reliable Statements**: All dying declarations must be voluntary and reliable, with the person making the statement in a fit state of mind.
- **Consistency :** Dying declarations should be consistent, and any inconsistencies should be "material" to impact their credibility.
- **Corroboration:** In cases with inconsistencies, other available evidence may be used to corroborate the contents of the dying declarations.
- **Contextual Interpretation:** Dying declarations must be interpreted in light of the surrounding facts and circumstances.
- **Independent Evaluation:** Each declaration must be independently evaluated, and the court should determine which statement is most reliable to proceed with the case.
- **Magistrate's Statement:** When inconsistencies exist, the statement recorded by a Magistrate or a higher-ranking officer can

be relied upon if it demonstrates truthfulness and freedom from suspicion.

- **Medical Fitness:** The physical condition of the person making the declaration, especially in cases of burn injuries, is crucial. The extent of burn injuries and their impact on the person's mental faculties, along with other factors, must be considered.

In case of **Rajaram vs. State of Madhya Pradesh, 2022 SCC online SC 1733,** the Hon'ble Supreme Court held that "where *more than one dying declaration have indicated that test of credibility having regard to the overall facts on record, has to be adopted.*

In a case of ***Lakhan vs. State of Madhya Pradesh****, (2010) 8 SCC 514* the Hon'ble Supreme Court reiterated that *"in case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."*

In case of ***Jagbir Singh v State of NCT Delhi, (2019) 8 SCC 779,*** the Hon'ble Supreme Court held that *"in view of complete inconsistency, the second or the third dying declaration which is relied on by the prosecution is demolished by the earlier dying declaration or dying declarations or is it the duty of the court to carefully attend to not only the dying declarations but examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon."*

In case of ***Prabhakar v. State of Maharashtra Through Police Station and Another 2023 SCC OnLine Bom 1892,*** the Hon'ble High Court of Bombay held that "*each and every dying declaration will have to be tested on its own merits. The parameters have been laid down as to what are the criteria or principles those are to be considered while assessing the dying declarations".*

The Court further referred to ***Uttam v. State of Maharashtra (2022) 8 SCC 576,*** where it was emphasized that when handling cases with multiple dying declarations, the Court should scrutinize the evidence to determine which declaration aligns with other material evidence, such as medical reports and the physical and mental state of the deceased.

Evidence given by interested witnesses should be corroborated by independent witness:

Generally, evidence provided by an interested witness should be corroborated by independent evidence.

In ***Hari Obula Reddy and others v. The State of Andhra Pradesh (1981) 3 SCC 675*** the Hon'ble Supreme Court held that *the evidence provided by interested witnesses is not inherently unreliable. It was clarified that interested evidence should be carefully scrutinized and accepted with caution*. In ***Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC 444*** the Hon'ble Supreme Court held that *the mere fact that a witness is related to the deceased should not be the sole reason for rejecting their testimony. Instead, the evidence should be assessed for its trustworthiness and credibility. If found reliable and probable, it can be considered, but if it raises suspicion, it should be rejected*.

In ***Abhishek Sharma v. State (Govt.of NCT of Delhi) 2023 LiveLaw (SC) 907***, the Hon'ble Supreme Court observed *"particularly when the person making the statement is the mother of the deceased, the court cannot rule out, to a positive degree, the role played by a sense of loss and possibly even anger, to rely on such statement. Had there been some sort of corroboration with other persons being present, the same could have been relied on."* The prosecution's case relied heavily on the deceased's alleged dying declarations but the Court raised doubts about the credibility and reliability of these statements. The Court pointed out that none of the dying declarations conclusively incriminated the accused.

Value of Dying Declaration when victim survives:

Where a statement is recorded by the Magistrate as a dying declaration and the maker thereof survives, the statement so recorded can be treated as a statement recorded under Section 164

Cr.P.C. Where the declarant survives, the declaration cannot be admitted as a dying declaration. But it can be used for corroborating the testimony of the person in Court under section 157 or for contradiction under section 145. This principle was laid down by the Supreme Court in ***Ramprasad v. State of Maharastra, AIR 1999 SC 1969***. In ***Maqsoodan vs State of Uttar Pradesh (1983) 1 SCC 218***, the Hon'ble Apex Court also held that *if the declarant of any statement survives, then his statement cannot be used as a dying declaration under section 32 (1) of the Indian Evidence Act. However, it can be used for the purpose of corroboration under section 157 of the Evidence Act and for contradiction under section 145 of the Evidence Act.*

Exceptions to Dying Declaration:

The exceptions of 'Dying declaration' stipulate, where the statements made by dying persons are not admissible:

a) **If the cause of death of the deceased is not in question**: If the deceased made statement before his death anything except the cause of his death, that declaration is not admissible in evidence.

b) **If the declarer is not a competent witness**: Declarer must be competent witness. A dying declaration of a child is inadmissible. In ***Amar singh v. State of Madhya Pradesh,1996 Cr LJ (MP) 1582,*** it is held that without proof of mental or physical fitness, the dying declaration is not reliable.

c) **Inconsistent declaration**: Inconsistent dying declaration has no evidential value.

d) **Doubtful features**: In ***Ramilaben v. State of Gujarat (AIR 2002 SC 2996)***: Injured died 7-8 hours after incident, four dying declarations recorded but none carried medical certificate. There were other doubtful features too, so it is not acted upon.

e) **Influenced declaration**: It must be noted that dying declaration should not be under influence of anyone.

f) **Untrue declaration**: It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated.

g) **Incomplete declaration**: Incomplete declarations are not admissible.

h) **If statement relates to death of another person**: If statement made by deceased does not relate to his death, but to the death of

another person, it is not relevant.

i) **Contradictory statements**: If a declarant made more than one dying declarations and all are contradictory, then those all declarations lose their value.

j) **Unsound person**: The statement of unsound mind can not be relied upon.

k) **If dying declaration is not according to prosecution**: If dying declaration is inconsistent with the case of prosecution it is not admissible.

In ***K. Rajkumar v. State of Andhra Pradesh, 2022 SCC OnLine TS 3085***, decided on 11-11-2022, the Hon'ble Telangana High Court held that *"the Trial Court had taken all the precautions while recording the statements but as there were improvements in the dying declarations, the Trial Court considered that the dying declarations were given by the victim on tutoring. Therefore, the Trial Court observed that in view of the vital discrepancies in the dying declarations, the same could not be accepted"*.

***Evidentiary value of Dying Declaration*:**

Section 32(1) of Evidence Act makes a statement of the deceased admissible. Those statements made by a person as to the cause of his death or to any of the circumstances of the transaction which resulted in his death, are admissible when the person's death comes into question. The essential requirement of such statement to be accepted as evidence would be that the person who makes such statement is under the expectation of death. The special sanctity has been given to such statements as it is believed that a person on the death-bed will not speak lie.

The principles of evidence universally accepted the relevancy of dying declaration as admissible. Dying declaration will be admissible in evidence only when the person making the statement dies and the cause of the person's death comes into question. If the person who has made a dying declaration survives, such a statement will not come within the purview of Section 32(1) of the Evidence Act.

Dying declaration may be relied, if the following conditions are satisfied:

(a) Recorded by a competent authority;

(b) Recorded in the exact words in which it was made;

(c) Must have made soon after the alleged incident;

(d) Incident must have occurred in a lighted place;

(e) When successive declarations are made, all must be identical.

In ***K. R. Reddy v. Public Prosecutor [1976 (3) SCC 618]*** evidentiary value of dying declaration was observed as under:-

a) The dying declaration is undoubtedly admissible under section 32 and not being statement on oath so that its truth could be tested by cross-examination.

b) The court has to apply the scrutiny and the closest circumspection of the statement before acting upon it.

c) Great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to connect a case as to implicate an innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination.

d) The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancor.

e) Once the court is satisfied that the dying declaration is true and voluntary, it can be sufficient to record the conviction even without further corroboration

The dying declaration is admitted in evidence on the principle of necessity. The dying declaration stands on the same footing as any other piece of evidence which is to be judged in the light of surrounding circumstances. It is relevant and admissible under section 32 of the Evidence Act. It is an exception to the rule that hearsay evidence is not admissible. The reasons for treating the dying declaration as substantive piece of evidence is the assumption

that a dying person will not implicate innocent. Dying declaration is an exception to the general rule of excluding the hearsay evidence. The dying declaration may be the sole basis for conviction without any further corroboration if they are found to be accurate and voluntary and its truthfulness cannot be doubted. ***Surinder Kumar v. The State of Haryana, (2011) 10 SCC 173***, is the land mark judgment in which the Hon'ble Supreme Court has pointed out some conditions which must be fulfilled for the dying declaration to be the basis of conviction without any corroboration. The conditions are (i) it should be coherent and consistent, (ii) it should be trustworthy and voluntary (iii) it should be free from any attempt to provoke the declarer to give wrong statements and (iv) it should be free from the effect of tutoring, prompting or imagination.

The police officer can also record the dying declarations. Such declarations cannot be rejected when they are clear and corroborated. But, the condition is that if the doctors or the police officers record the dying declarations, then the appearance of one or two persons as a witness is mandatory at the place of recording the statement. In ***Ongole Ravikanth vs. State of A.P. (2009) 13 SCC 647 : AIR 2009 SC 2129***, the Hon'ble Supreme Court held that *"Dying declaration of the deceased recorded by doctor on duty, who also certified that the deceased was in a fit state of mind to make her statement was found reliable and believed"*. When there is not sufficient time to call any of the aforesaid persons, then a normal person can also record the dying declarations. The court cannot reject such declarations if the person clearly shows that the declarer was mentally fit and aware in the course of making the statement. In this regard, the examination of Doctor in whose presence dying declaration was recorded is not necessary. In ***Shanmugam v. State of Tamilnadu, AIR 2003 SC 209***, the Hon'ble Supreme Court held that *"mere non-examination of Doctor in whose presence dying declaration was recorded, does not affect its evidentiary value.*

In ***Andugula Shankaraiah v. State of A.P., 2012 Crl.L.J, 189***, the Hon'ble Supreme Court held that *the Court can act upon the dying declaration on the basis of the facts and circumstances of each and every case. There is no straight-jacket formula to be*

adopted when the dying declaration inspires the confidence of the Court and does not suffer with any infirmities or which creates any doubt, the manner in which it is recorded and also the declarant person not tutored by any one.

The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. When the case of prosecution is solely based on dying declaration, it must be tested with utmost care and caution. The burden of proving the dying declaration is always on the prosecution. Since an accused can be convicted solely on the basis of dying declaration, the court is expected to carefully scrutinize the same. Three essential ingredients will have to be proved to the satisfaction of the court and they are:- (i) the declarant should have been in actual danger of death at the time when he made the statement (ii) he should have had full apprehension of his danger and (iii) death should have ensued.

In the leading case of ***PAKALA NARAYANA SWAMI .v. EMPEROR (AIR 1939 PRIVY COUNCIL p.47)***, the expression '*circumstances of the transaction which resulted in his death*' has been eloquently explained. As per the facts of the said case, the deceased had left his house to go to Behrampur. While leaving his house, he had told his wife that he was going to Pakala Narayana Swamy's house in Behrampur to demand him to pay back the amount given by him. Later on his dead body was found in a trunk and his body had been cut into pieces. The question before the Privy Council was as to whether such a statement made by the deceased to his wife would really come within the purview of Section 32(1) of the Evidence Act. In fact, it was held by the Privy Council that the statement made by the deceased to his wife just prior to leaving his house to go to Behrampur was a statement and one of the circumstances of the transaction which resulted in the death of the man. Therefore, the expression '*any of the circumstances of the transaction which resulted in his death*' is necessarily wider in its interpretation than the expression *'the cause of his death.*'

Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But, this cannot be an inelastic rule. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted. Merely stating that patient was fit will not serve the purpose. This can be best certified by the doctor who knows best about the condition of the patient. But even in conditions where it was not possible to take fitness from the doctor, dying declarations have retained their full sanctity if there are other witnesses to testify that victim was in such a condition of the mind which did not prevent him from making statement. Medical opinion cannot wipe out the direct testimony of the eyewitness stating that the deceased was in fit and conscious state to make the dying declaration. Second most important point to be considered is that it should not be under the influence of anybody or prepared by prompting, tutoring or imagination. Even if any one of these points is proved then dying declaration is not considered valid. If it becomes suspicious then it will need corroboration. If a person has made more than one dying declarations and if these are not at variance with each other in essence they retain their full value. If these declarations are contradictory than these lose value. Best form of dying declaration is in the form of questions and answers. If it is in the form of narrations it is still good because nothing is being prompted and everything is coming as such from the mind of the person making it. If a person is not capable of speaking or writing he can make a gesture in the form of yes or no by nodding and even such type of declaration is valid. Whenever this is being recorded in the form of questions and answers precaution should be taken that exactly what questions are asked and what answers are given by the patient those should be written. It is preferred that it should be written in the vernacular which the patient understands and speaks. It is best that it is recorded by the Magistrate but if there is no time to call the magistrate due to the deteriorating condition of the victim it can be recorded by anybody e.g. public servant like doctor or any other person. Courts discourage the recording of dying declaration by the police officers but if there is nobody else to record it dying declarations written by the police officers are also

considered by the courts. If these are not recorded by the magistrate it is better that signatures of the witnesses are taken who are present at the time of recording it.

In the Constitution Bench judgment of the Hon'ble Apex court in the case of ***LAXMAN .v. STATE OF MAHARASHTRA*** *reported in* ***AIR 2002 SC 2973***, it is succinctly explained that medical certification is not a *sine qua non* for accepting the Dying Declaration. *The Apex Court further laid down that, the evidentiary value which is to be attached to a dying declaration solely depends upon the facts and circumstances of each case. The only quintessential is that the person recording the dying declaration must be satisfied that the maker was in a fit sate of mind to make a dying declaration. When a Magistrate is satisfied that the maker is in a fit state of mind then even without a doctor's medical certificate, such dying declaration can be acted upon, provided that such dying declaration has been truthfully as well as voluntarily made and such a dying declaration is not a result of tutoring or prompting.*

In land mark judgments like ***Madan vs. State of Maharasthra (2019) 13 SCC 464 (2 Judge Bench), Ram Bihari Yadav v. State of Bihar (1998) 4 SCC 517, Panneerselvam v. State of T.N. (2008) 17 SCC 190 (3 Judge Bench)*** highlighted in ***Manjunath v. State of Karnataka, dated 6.11.2023, 2023 LiveLaw (SC) 961*** that *"a dying declaration, if found to be trustworthy and inspiring confidence, can serve as the primary basis for conviction, even in the absence of corroborative evidence".*

In ***Samadhan Dhudaka Koli v. State of Maharashtra, [(2008) 16 SCC 705]***, the Hon'ble Apex Court held in para 12 that *"A dying declaration made before a Judicial Magistrate has a higher evidentiary value. The Judicial Magistrate is presumed to know how to record a dying declaration. He is a neutral person."*

In ***Laxmi v. Om Prakash (2001) 6 SCC 118 : AIR 2001 SC 2383*** the Supreme Court again held that *"a dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence, it has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference*

to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration, is not a statement on oath and the maker thereof be subjected to cross-examination."

The Law does not compel the presence of a Judicial or Executive Magistrate for recording a dying declaration. Such a requirement is considered a matter of prudence. In ***Jayamma vs State of Karnataka, AIR 2021 SC 2399***, *the* Supreme Court held that *"a dying declaration is not admissible as the sole basis for conviction unless corroborated with witness statements, facts, and circumstances of the case."*

In ***State of U.P. v. Veerpal & Anr, 2022 LiveLaw (SC) 111***, *the Hon'ble Supreme Court held that conviction can be solely based upon Dying Declaration without Corroboration.*

In ***Rachana Ravindra Jain v. State of Gujarat and others*** *(2019), Gujarat HC stated that a dying declaration is a statement made by a dying person in his last moments on situations & facts that led to his demise. A suicide note can be a dying declaration in which the deceased states the accused name.* In the case ***State v. Maregowda, 2002 (1) RCR (Criminal) 376 (Karnataka) (DB)*** *it was held that ''A suicide note written found in the clothes of the deceased it is in the nature of dying declaration and is admissible in evidence under section 32 of Indian Evidence Act''.*

Examination of the person who reduced dying declaration into writing essential. In ***Govind Narain v. State of Rajasthan 1993 Supp(3) SCC 343 (2 Judge Bench) and Kans Raj v. State of Punjab (2000) 5 SCC 207 (3 Judge Bench),*** *which emphasize the legal obligation to prove the making of a statement, whether written or verbal, by producing the scribe or the person who heard the deceased making the statement in Court.* In ***Sudhakar v. State of Maharashtra (2000) 6 SCC 671 (3 Judge Bench)*** where it acknowledged that *"in cases where the original recorded dying declaration is lost or unavailable, the prosecution is entitled to provide secondary evidence".*

In ***Ram Nath v. State of Madhya Pradesh, AIR 1976 2199 (SC)*** the Supreme Court has held that: *It is settled law that it is not*

safe to convict an accused person merely on the evidence of a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally or physically in a state of compassion and might be drawing upon his imagination while he was making the declaration. Thus, the Supreme Court has laid a stress, as a safeguard, on corroboration of the dying declaration before it is acted upon. But the same court later, in ***Kushal Rao v. State of Bombay, A.I.R. 1985 S. C. 416*** has held this observation to be in the nature of obiter dicta and observed that "*it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of the conviction unless it is corroborated*." In ***Harbans Singh V. State of Punjab, AIR 1976 2199 (SC)*** the Supreme Court has held that "*it is neither a rule of law nor of prudence that a dying declaration requires being corroborated by other evidence before a conviction can be based thereon*."

In ***Shambhubhai Kalabhai Raval v. State of Gujarath, in Crl.Appeal No.6/2011 dt.02.11.2023***, ***2023 INSC 977,*** the Hon'ble Supreme Court held that *the dying declaration is not of that sterling quality on which the conviction can be based in absence of any other evidence.*

In ***Manjunath v. State of Karnataka, dated 6.11.2023, 2023 LiveLaw (SC) 961,*** the Hon'ble Supreme Court held that *"Examination of person who recorded dying declaration essential and also held that questions regarding the identity of the person who recorded the dying declaration, its accuracy, identity of individuals when the declaration was recorded, all of it was not certain which raised doubts about its authenticity and further held that the dying declaration is substantive piece of evidence".*

The dying declaration is a substantive evidence only for the reason that a person in acute agony is not expected to tell a lie in all probability it is expected from such person to disclose the truth and it is also a settled principle of law now that the dying declaration is a substantive evidence and an order of conviction can be safely recorded even on the basis of dying declaration if the court is fully satisfied that the dying declaration made by the deceased was voluntary and reliable and the author recorded the dying

declaration as stated by the deceased. The Dying Declaration should inspire the confidence of the court about the truthfulness of such a declaration. If the court, after careful evaluation of the entire evidence, feels that the same was the result of either tutoring, prompting or product of imagination, the Declaration will not be accepted. If the contents of the very Dying Declaration contradicts the core of the prosecution case, the declaration will not be the basis for conviction. Normally, a Dying Declaration should be recorded in the words of the declarant, but the same cannot be rejected merely because the exact words used by the declarant are not reproduced. This declaration is valid both in civil and criminal cases whenever the cause of death comes into question. Though a Dying Declaration is entitled to great weight, one cannot forget that the accused has no power to cross-examine the declarant to elicit the truth. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. During making the statement, the person must be of sound mind. Otherwise, the Court cannot rely on his statement. Moreover, there can be multiple dying declarations by one person, in such cases the court has to separately evaluate each declaration and find out which one reveals the truth. Dying Declaration should not be discarded merely because it did not give precise description of all the weapons used to commit the offence and about the manner in which injuries were caused. Dying declaration cannot be rejected merely because the declarant did not die instantly or immediately and he lingered on for some days. The declarant need not necessarily be in the imminent danger of death. Hence, the court should be satisfied about the truthfulness of such a declaration and the same being not tutored in any manner. Section 32(1) of the Evidence Act does not prescribe any statutory guideline in the matter of recording dying declaration, and considering the same while appreciating the evidence.

Conclusion:

Dying declarations are the exceptions to the law of hearsay evidence. Such declarations are communicated by a person orally or in a written form or even through some signs or gestures. Some times, it can be partly oral and partly writing. The dying declarations recorded by Judicial Magistrates are more reliable

than those recorded by any other person in authority. Corroboration of the dying declaration is merely a rule of caution. If the dying declarations are true and voluntary, then there is no need to corroborate them. No doubt dying declaration is an important piece of evidence to guide the courts in the onerous task of finding the truth. Though the opportunity of cross-examination is not given, still carries much weight. Courts have never been allergic to allow conviction solely on the basis of testimony of a witness who cannot be available before the court to testify the substance of the statement which forms the basis of its judgment. It is suggested that whenever dying declaration is to be recorded it should be recorded very carefully keeping in view the sanctity which the courts attach to this piece of evidence. It retains its full value if it can justify that victim could identify the assailant, version narrated by victim is intrinsically sound and accords with probabilities. It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated. Conviction can be based on it without corroboration if it is true and voluntary. Dying declaration becomes unreliable if it is not as per prosecution version.

I conclude my paper presentation on dying declaration with the following famous quotations:

"A person, who is about to die, would not lie",

"Truth sits on the lips of a person who is about to die".

(ii) EXPERT OPINION

Abstract:

The law of evidence is very crucial branch of law on which justice rests. The main object of evidence is to pave way for court to come to a conclusion regarding the present case. In certain cases where evidence is beyond the knowledge and skill of court, evidence create problem for court to come to any conclusion. In such situation court takes the help of expert evidence. Expert is a person who has high knowledge and skill in particular field. Evidence is information given by a person that proves the allegation to be true or false. So expert evidence is information or statement made by a person who is specialized in that particular field of work or which he has given that information. Expert evidence is required to assist the court when the case before it involves matters on which court does not have the requisite technical or specialist knowledge. Expert evidence is corroborative and advisory in nature. It is not binding in all the cases. Opinion on evidence given by witness is not compulsorily binding to court. It wholly depends on the situational circumstances whether the expert evidence and opinion given by expert witness is relevant or not and what is its evidentiary value. Expert witnesses are appointed by Court in only those cases where court lacks in knowledge about the case and if court feels it necessary for the interest of justice. There are requisite rules to be followed by experts in giving their expert report to the court and the court may call upon the expert for testimony. Court does not rely on this corroborative evidence but on primary evidences-documents itself produced for the inspection of the court. Expert evidence is given in both civil cases as well as in criminal cases. The present case tries to analyze the evidentiary value of expert evidence, what is relevant and not relevant evidence, cases to consider or discard of expert evidence, binding nature of expert evidence and possible changes which can be brought in the field of expert evidence for the betterment of the ends of justices.

***Introduction*:**

People often say that this person is an expert in a particular field or work. People say this person is an expert speaker or that person is an expert in particular field. In law, there may occur a case concerning issues related to science or any other faculties other than law. In such a case judge's knowledge or skill may not amount sufficient to give any opinion of his own or judge any related evidence and give his judgment. An expert is called in such cases who deliver his opinion, facts or evidence related to such field in which he has extra-ordinary knowledge and skill. Sections 45 – 55 of Indian Evidence Act, 1872 talk about expert, expert evidence and expert opinion.

Who is an Expert?

An expert is a person with high knowledge and skill in a particular field of study, a person who has earned specialized knowledge and skill in that particular field of study. Evidence is information or opinion given by any person that proves the allegation to be true or not to be true. So, expert evidence is information or opinion given by an expert in any field that person is specialized in, which comes out to be evidence in any matter. In field of law, expert witness is a person whose opinion is accepted by Judge relating to any fact or evidence. An expert witness giving an opinion should be only on those matters in which that witness has specialized skills. This opinion given by expert witness is called expert opinion and if any evidence delivered by expert is called expert evidence. Expert evidence is applied to both civil cases and criminal cases. According to Section 45 of The Indian Evidence Act, 1872 "*When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identification of handwriting], [or finger print analysis] are relevant facts. Such persons are called experts*".

What a person thinks in respect of the existence or non-existence of fact is an 'opinion'. As a general rule the opinion or belief of third person is not relevant and admissible as the witnesses are allowed to state facts alone of what themselves saw

or heard. But, an Expert is the person who specifically or specially skilled or practiced on any subject. It was held in ***Bhavanam Siva Reddy and others Vs. Bhavanam Hanumantha Reddy and another, 2017 (4) ALT 682.***

An expert starts studying a legal court case only after an expert has been appointed by the court if it feels any necessity of expert evidence. An expert witness when gives the expert evidence has to be a written report. The report must further be given according to the rules provided in provisions of the Act. Unless the interest of justice requires an expert to be present in court, the court will not ask expert to attend the trial. In ***Srichand v. S, A 1974 SC 639*** held that *an Excise Inspector who had put in 21 years of service as such and had tested lakhs of samples of liquor could be treated as an expert.*

The expert has the duty to give an opinion on the issue and also communicate the same with the Judge so the Judge may form his judgment in the subject matter. In ***Sri Sundari v. Ganghram, (1979) All 38*** it was held that it is the duty of an expert to furnish the judges with the necessary criteria for testing the accuracy of his conclusions, so as to enable the judge to form his own independent judgment by application of the criteria to the facts provided in evidence.

In the case titled as ***Ramesh Chandra Agarwal v/s Regency Hospital Ltd[2] Civil Appeal No. 5991 of 2002,*** the Hon'ble Supreme Court has broadly dealt and interpreted the scenario and held that an expert is a person who devotes his time and study to a special branch of learning. However, he might have acquired such knowledge by practice, observation, or careful study. In ***Punjab Singh vs. State (1974) J & K LR 607,*** the Hon'ble Court held that *an expert is one who is skilled in any particular art, trade or profession being possessed of peculiar knowledge concerning the same.*

It is the discretion of the court to take the expert advice on any matter and is thus also its duty to check the veracity of the person claiming to be an expert. As discussed earlier there is no formal qualification or touchstone which has to be considered in order to determine the expertise of an expert. The case of ***Abdul Rahman v. State of Mysore***, the Mysore High Court was of the

opinion that the opinion of the goldsmith as to the purity of the gold was relevant as being that of an expert, even though he did not have any qualification apart from his experience as the goldsmith. There is no requirement as to strict educational qualification in order to determine the expertise of a person. A person who may be an expert in one case may not be so for some other matter, and hence it would vary from case to case.

In another case, the traffic policemen having the requisite experience was held to be an expert when it came to determine the fatality of an accident between two motor vehicles. In ***Kishan Singh v. N. Singh AIR 1953 P. & H. 373,*** the Hon'ble High Court had to determine and certify the disability of a person, the principle of one of the schools for the deaf and dumb was invited to give his expert opinion on the matter as an expert.

The court cannot form a correct judgment without the help of a person with special skills or experience in a particular subject. When the court needs an opinion in a subject which requires special assistance, the court calls an expert, a specially skilled person. The opinion given by a third person is considered as relevant facts if the person testifying is an expert.

Sec.293 Cr.P.C. provides a list of some Govt. Scientific Experts as following:

- Any Chemical Examiner/Asstt.Chemical examiner to the Govt.
- The Chief Controller of explosives
- The Director of the Fingerprint Bureau
- The Director of Haffkein Institute, Bombay
- The Director, Dy. Director or Asstt. Director of the Central and State Forensic Science Laboratory.
- The Serologist to the Govt.
- Any other Govt. Scientific Experts specified by notification of the Central Govt.

***What can Experts opine upon*:**

By virtue of section 45 and section 5 wherein the former terms the expert opinion to be relevant fact and the latter declaring that evidence may only be given of either facts in issue or that or relevant facts, the expert opinion is an admissible evidence under

the Indian evidence act. The spheres and realm in which the expert testimony may be taken, as mentioned by the section is foreign law, science, art, the identity of handwriting or finger – impressions. Although the language of the section makes the list exhaustive the Law related to expert advice has developed and broadened with the development and advancements of science in every area. Thus, in so far as science and art as categories of expert opinion is concerned, they are to be broadly interpreted so as to include all areas on which an opinion of an expert is necessarily needed by the court.

Generally, a witness is considered as an expert witness if he is skilled in any particular art, trade or profession and possessed of peculiar knowledge concerning the same. He must have made a special study of the subject or acquired special experience therein. The question of competency of fitness of a witness as an expert is to be decided by the court.

Opinion of experts namely doctors on medical evidence, cause of death, blood group test, age, etc., report of chemical examiner, forensic science laboratory, nautical assessors, hand writing experts, etc. are relevant. Tape-recorded voice, opinion on finger prints, thumb impression, palm impressions, foot-prints, identification of hair, ballistic expert, typescript, photographs, technical work, trade made and copy right, foreign law, opinion regarding value of land, report of public analyst, etc are held to be relevant.

Expert Opinion: Its Importance and Relevance:

There are many matters which require professional or specialized knowledge which the court may not possess and may, therefore, rely on that person who possess it called experts. Matters commonly made the subject of evidence include causes of death, insanity, effects of poison, genuineness of works of art, value of articles, genuineness of handwriting, proper navigation of vessels, meaning of trade terms and foreign law. A witness who is qualified to speak on these matters is called an expert. Section 45 of the Evidence Act recognizes the relevancy and utility of expert evidence.

Admissibility of expert evidence:

Expert opinion is admissible only when an expert is examined as a witness in a court. Unless the expert gives an appropriate reason for his opinion and being tested during the cross-examination of opponent party, an expert opinion cannot be admissible. Law has stated various provisions for the examination of experts. According to section 293 of CrPC the report of Government scientific experts provided under this section will be held admissible as evidence in inquiry, trial or other proceedings of the court, if the court can summon or examine the experts. If court feels any need to call upon the expert to examine as to subject matter of his report, the court can summon such expert. Further this section states that when court summons such expert and that expert is not able to attend personally, such expert can send his responsible working officer on his behalf who is well versed with the examination done by such expert.

***Evidentiary value, consideration, binding force*:**

The value of the testimony of a witness depends on the rightful inferences he himself makes out of the matter assigned, by using his special skill, knowledge, and experience. The opinion of an expert is nevertheless an evidence and one needs to be cautious about its veracity as it may sometimes not be conclusive one. In order to take expert evidence as a substantial one, one needs to corroborate it with other facts. The opinion of the expert is not binding upon the court and its veracity and gravity has to be tested and done by the judge who has to be cautious in doing so.

The opinion of the expert shall not be a valid piece of evidence unless like other witnesses the expert is also subjected to cross examination, in order to establish his statements as truthful. In the landmark case of ***State of Maharashtra v. Damu Gopinath Shinde, AIR 2000 SC 1691***, it has been held by the Supreme Court that no reliance may be made upon the expert’s opinion unless the expert is examined in the court. The evidence of the expert like any other witness has to be seen so as to extract the grain from the chaff, i.e. to take the relevant part and discard the opinion which is without any basis.

Whenever there is any discrepancy or inconsistency between the opinion of the medical expert's opinion and the eye witness's account of the event, there can be two modes of ascertaining the truth. One is, if the ocular evidence seems to be more reliable and conclusive then to take it as the basis and to rebut the expert testimony. Secondly if the expert medical opinion fits better in the frame of circumstances, then to rely on the medical opinion and to view the ocular testimony in the light of the medical opinion. Thus in case of variance in the medical opinion and the ocular evidence, ocular evidence gets primacy. In ***Aminul Islam v. State of West Bengal, 2022 SCC OnLine Cal 1272*, decided on 06-05-2022,** the Calcutta High Court held that *in case of discrepancy between ocular and medical evidence, ocular testimony shall prevail because the medical evidence is in the nature of an expert's opinion*. Yet, if the ocular evidence is found to be totally inconsistent, then the evidence has to be appreciated in a different perspective under which the medical opinion may supersede the ocular evidence.

- **Opinion of medical experts**

Medical evidence is only an evidence of opinion. It is only to settle the matter and not so important. In case of ***Nilabati Behra v. State, AIR 1993 SC 1960: (1993) 2 SCC 746: 1993 Cr LJ 2899,*** the Hon'ble Supreme Court held that *the opinion of a doctor is reliable if he held the post-mortem examination and of Forensic Science Laboratory. If any other expert doctor gave any contrary opinion who gave cryptic report and based on its conjectures should not be relied upon*. In the case of ***Madan Gopal v. Naval Dubey (1992) 3 SCC 204***, it was held that *the medical opinion is just an opinion and is not binding to the court. Opinion on technical aspects and material data given by the medical experts is only considered by court as advice and the court has to form its own opinion.*

In case of ***Kishan Chand v. State of Himachal Pradesh, 2018 Cri.L.J.2451 at p.2458 (H.P)***, it was held that *the medical evidence could not be said to be the sole basis for convicting the accused.*

In case of ***Rohit Yadav v. State of Bihar, 2007 CrLJ (NOC) 202***, the Hon'ble Patna High Court held that *in case of discrepancy between postmortem report and inquest report, the former would*

prevail as objective finding of an expert carries more weight than findings and opinion of layman.

- **Conflicting opinion of two doctors**

In case of ***T.P. Divetia v. State, AIR 1997 SC 2193: 1997 Cr LJ 2535*** it was held that *if there is any confliction between the opinion of two doctors then the expert opinion by the doctor who actually examined the injury and held the post-mortem must be considered and not of that doctor who gave an opinion only on the basis of X-Ray report, injury report or post-mortem report etc.*

- **Conflicting opinion between medical evidence and direct evidence**

In case of ***Prem v. Daula, AIR 1997 SC 719: (1997) 9 SCC 754: 1997 SCC (Cri) 754: 1997 CrLJ 838,*** the Hon'ble Supre Court held that *if there is confliction between medical evidence and direct evidence given by eyewitnesses then direct evidence given by eye witnesses must be preferred if its testimony is undoubted and not the opinion evidence of the m*edical expert.

- **Corroboration of dying declaration by medical evidence**

In the case of ***State of U.P. v. Ram Sewak (2003) 2 SCC 161***, the Hon'ble Supreme Court held that *it is rare that description of incident and injury described in the dying declaration gets full corroboration from the medical evidence contained in the injury report or the post-mortem report.*

- **Certificate of doctor on plain piece of paper if to be rejected**

In case of ***Ammini v. State, AIR 1998 SC 260: 1998 Cr LJ 481,*** the Hon'ble Supreme Court held that *if the certificate of doctor is given on a plain piece of paper and not on prescribed form regarding the injury caused to accused person, it cannot be rejected merely because it is on plain piece of paper and not on prescribed form.*

- **Medical evidence as to age**

In case of ***S.K. Belal v. State, 1994 Cr LJ 467 (Ori),*** the Hon'ble Orissa High Court held that *if medical evidence shows her age between 17 to 18 years but on the other side documentary evidence shows her age about 18 years, a victim girl cannot be proved minor*. But in case of ***Jagtar Singh v. State, AIR 1993 SC 2448: 1993 Cr LJ 2886*** the Hon'ble Supreme Court held that *if*

birth certificate is not reliable, the opinion of doctor should be relied upon regarding the age of victim.

- **Evidence of DNA expert**

DNA tests in the arena of Criminal jurisprudence are considered as a boon for the criminal investigation. Alternatively, in civil cases DNA tests can be used to determine the paternity of a person and to disprove allegations of paternity Fraud. In comparison of other methods of determining parenthood, DNA tests provide positive and conclusive determination. Unlike blood typing which provides for statistical likelihood and exclusion, the DNA test can provide certainty of practical level in paternity cases. DNA can be extracted from a wide range of sources, including samples of hair, cigarette butts, blood, razor clippings or saliva. Thus, it is relatively easy to obtain samples, which can then be tested in a laboratory to determine any genetic relationships that may be present. In its recent judgments, the Supreme Court has been critical of admitting DNA report as clinching evidence in criminal cases. In ***Rahul v. the State of Delhi,Ministry of Home Affairs, CRIMINAL APPEAL NO. 611 OF 2022 dt.7.11.2022***, the Hon'ble Apex Court said "*the collection and sealing of the samples sent for examination were not free from suspicion*." It objected to the fact that the Delhi High Court and the trial court did not examine the underlying basis of the findings in the DNA reports and also did not examine whether the expert reliably applied the techniques. Based on this reason, despite the 'match' result of the DNA analysis, and other findings, the Court acquitted all the three persons who were accused of rape and murder. In ***Manoj v. State of Madhya Pradesh, CRIMINAL APPEAL NOS. 248-250 OF 2015, dt.20.05.2022***, where the expert explained the technique of DNA analysis, but did not mention the 'random occurrence ratio,' the Hon'ble Apex Court held that *there was the likelihood of contamination as one of the reference samples was collected from an open area*. In case of ***Pantangi Balarama Venkata Ganesh v. State of A.P., 2003 Cr LJ 4508 (AP),*** the Hon'ble Apex Court held that "the evidence of DNA Expert is admissible in evidence as it is a perfect science".

In case of DNA test, the opinion of person who has specialized skill in that field is taken to determine the legitimacy of a child in family law cases. In the case of ***Krishan Chand v. Sita Ram, AIR***

P & H 156 it was held that where there is conflict in expert opinion the court has the power to make its own opinion with regard to signature on a document.

Case Study :

NIRBHAYA vs. STATE OF UTTAR PRADESH, 2012 –"rarest of rare case"

To understand the importance of expert testimony in criminal investigation. Let us look at the rape case which was solved after 7 years with the help of DNA, bite marks and fingerprints impression recovered from the victim body and from the place where incident happened. In 2012, a 23-year old girl was found badly injured and sexually assaulted in a bus in Munirka, South Delhi. Police collected all the physical evidence and interviewed her family, friends and possible suspects, and at last all the 6 men were caught, out of which one was juvenile and one person died during trial and the investigation continued for 7 years. The semen found on the cloth help in extracting the DNA and from the bus handle fingerprints was collected which shows the presence of driver in that brutal crime. All the evidence was tested and expert provide their testimony on the basis of which judged punished 4 of them with death penalty and the juvenile was sentenced to 3 yrs jail according to the Juvenile Justice Act. This and many other cases showed that how biological evidence play pivotal role in strengthening the importance and credibility of expert testimony in the absence of eyewitness specially.

- **Opinion of ballistic expert**

The ballistics expert is one who studies the firearms the bullets and its trajectories. Ballistics experts play an important role in today's criminal law. The opinion of the ballistics expert is not to be sought every now and then, and is to be sought only when there is a need to corroborate with the medical and ocular evidence. If a more reliable or direct evidence is available then an expert might not be consulted. It is possible for experts in the science of Ballistics to trace of bullet or cartridge to the particular weapon from which it was discharged, by the application of certain tests and the use of a "comparison microscope". In the case of ***S.S. Ajmer Singh v. State of Punjab, 1993 SCC (Cri) 1113: (1993) 3 (Supp) SCC 738*** it

was held that *if there is no ground not to believe the opinion of ballistic expert, then the opinion of ballistic expert is reliable. Only because there was delay in sending the pistol for obtaining expert opinion as to whether it was in working condition, does not make it unreliable when there is clear evidence of the seizure of the weapon and there was no suggestion that the pistol has been substitute*. In case of ***S.G. Gundegowda v. State Karnataka, Crl.L.J.1996 page 852,*** it was held that *ballistic expert report was admissible without calling ballistic expert as witness.* In case of ***Rchhpal Singh v. State of Punjab, 2018 CrLJ 1373 at page 1377 (P&H)*** it was held that *the opinion of ballistic expert is very importance in cases where injury is caused by fire arms. In case of failure to produce such opinion report effects the credit worthiness. It is well settled that where there is a conflict between ocular version and medical version, the ocular version should be given preference.*

- **Police officer when can be treated as ballistic expert**

In case of ***Brij Pal v. State (1996) 2 SCC 676: 1996 SCC (Cri) 392: 1996 Cr LJ 1677*** it was held that *police personnel must be treated as ballistic expert if he is having certificate of technical competency and armour technical course and also having long experience of inspection, examination, and testing of fire arms and ammunition.*

- **Narco Analysis and Brain Electrical Activation Profile** - these test if conducted without the permission of the subject shall be inadmissible, but if the subject consents to the test then the results are admissible under the Evidence Act. Thus there arises a need to need the opinion of the expert when it comes to the said tests. The Bombay High Court in ***Ramachandra Reddy and Ors. v. State of Maharashtra Cr. W. P. (c) No. 1924 (2003)*** upheld the legality of the use of narco-analysis, P300 brain-mapping, polygraph test on the grounds that in these tests, no statement is made involuntarily towards testimony, in oral or written form. The presumptions defining the admissibility of such scientific evidence was eventually overturned in ***Selvi v. State of Karnataka, AIR 2010 SC 1974*** where the Supreme Court held *that the above-mentioned scientific processes were unconstitutional as they*

violated rights against self-incrimination, and cannot be conducted without the consent of the accused.

- **Finger-print expert**

The finger print of a man is unique in its own sense that no two people have ever had the same finger prints. The science as to finger prints has developed enormously so as to make it highly reliable and admissible in the court of law. It has been made more reliable than the opinion of the writing expert in some cases. In case of ***Keshavlal v. State of M.P., AIR 2002 SC 1221: (2002) 3 SCC 254: 2002 SCC (Cri) 641*** it was held that *before the seizure of the weapon of offence, if many people have handled it then there will be no effect of non-examination of the finger-print expert in any way*. In **Ayyappan vs. State of Kerala, 2005 CrLJ 57 (Ker)**, the Hon'ble Kerala High Court held that *expert and his report could not be made foundation of conviction.*

- **Handwriting expert**

In case of ***Alamgir v. State (N.C.T. Delhi) AIR 2003 SC 282: 2003 Cr LJ 456*** it was held that *opinion of handwriting expert do not amount to conviction but admittedly it can be relied upon when supported by other items of internal and external evidence*. In ***Ram Chandra v. State of U.P. AIR 1957 SC 381***, the Hon'ble Supreme Court held that *it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence*. The Hon'ble Supreme Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in ***Fakhruddin v. State of M.P. AIR 1967 SC 1326*** and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

In ***S. Gopal Reddy vs. State of Andhra Pradesh, AIR 1996 SC 2184*** the Supreme Court has held that *expert evidence is a weak type of evidence, therefore, Courts do not consider it as conclusive and, therefore, such evidence is not safe to rely upon it without seeking independent and reliable corroboration*. In an extremely recent case i.e. ***S.P.S.Rathore vs. CBI and another,***

AIR 2016 SC 4486 the Supreme Court has reiterated its view that *the conviction cannot rest on the sole opinion of the handwriting expert without availability of substantive corroboration*.

In ***Dnyaneshwar Eknath Gulhane vs. Vinod Ramachandra Lokhande***, in Criminal Petition **No.542/2023 dt.6.11.2023**, the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur held that "*there is no scientific concrete test available for determination of the age of the ink*" by relying on the Judgment of Rajasthan High Court in ***Manish Singh vs. Jeetendra Meera (Misc.Petition No.3093/2018)*** in which the High Court referred to the Judgment of the Hon'ble Supreme Court in the case of ***Union of India vs. Jyoti Prakash Mitter reported in AIR 1971 SC 1093*** to hold that *there is no mechanism to determine the age of the ink. The expert opinion to check age of the ink cannot help to determine the date of writing of the document because the ink used in the writing of the document may have been manufactured years earlier.*

- **Scientific expert**

The scientific evidence given in court must be either based on scientific theory or the hypothesis and such evidence is expected to be empirical and properly documented in accordance with scientific method such as is applicable to the particular field of inquiry. It is a fact that scientific evidence is demonstrative evidence unlike oral testimony, which depends on the deposition of a witness. Scientific methods are used to obtain scientific evidence. Evidence should be relevant and at the same time worthy enough to become admissible in the courts. An expert witness is called to testify about the reliability of the scientific evidence sought to be introduced at trial. In the case of ***Pritam Singh v. State of Punjab, AIR 1956 SC 415 : 1956 CriLJ 805,*** the footprint in blood near the dead body were compared with the footprint of accused dipped in color ink. 9 and 10 similarities were found by the experts in right and left foot respectively of the accused with that blood footprint. Whereas 3 dissimilarities were also found that were explained due to difference in density of blood and ink. It was held that *comparison test stood well and footprints in blood were of accused*.

- **Opinion of Examiner of Electronic Evidence**

When either electronic or digitalized document which constitutes part of any information transmitted or stored in any computer resource, is the subject matter for a court to form an opinion, then the opinion given by examiner of electronic evidence shall be admissible as a relevant fact.

In ***Anvar PV vs. PK Basheer, AIR 2015 SC 180***, the Hon'ble Supreme Court held that *the opinion of the examiner of electronic evidence becomes relevant. But the electronic record has to be produced in terms of Section 65B of the Act.*

- **Evidence of Tracking Dog**

Trained dogs are used for the detection of crime. The trainer of tracking dogs can give evidence about the behaviour of the dog. The evidence of the tracker dog is also relevant u/s 45. In ***Lalith Kumar Yadav v. State of U.P., 2014 Cr.L.J.2712 at p.2713 (SC)***, the Hon'ble Supreme Court held that *identification of accused by sniffier dog along with other evidence can be relied upon to prove guilt of accused*.

- **Second Expert opinion**

In ***Prem Singh v Sohan Singh, AIR 2007 (DOC) 23***, the Pubjan & Haryana High Court held that *a second expert by the same Court on the same subject matter cannot be appointed.*

Opinion when relevant/when not relevant:

- **Facts bearing upon opinion of expert**

Section 46 of Indian Evidence Act, 1872 states that when an expert makes any opinion about the evidence which is relevant then the facts given by expert are relevant which they supports or are inconsistent with the opinion of expert.

Illustration: If we need to know whether 'A' is intoxicated by a certain poison, the fact that 'A' exhibits any symptoms which experts affirm or deny being the symptoms of that poison, is relevant.

In Ishwari Prasad Misra v. Mohammad Isa MANU/SC/0040/1962 : (1963) 3 SCR 722, Gajendragadkar, J. observed that "*Evidence given by expert can never be conclusive, because after all it is opinion evidence*", *a statement which carries as nowhere on the question now under consideration. Nor, can the statement be disputed because if is not so provided by the Evidence*

Act and, on the contrary, Section 46 expressly makes opinion evidence challengeable by facts, otherwise irrelevant.

- **Opinion as to handwriting, when relevant**

Section 47 of Indian Evidence Act, 1872 states that "When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact".

- **Opinion as to electronic signature, where relevant**

Section 47A of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to the [electronic signature] of any person, the opinion of the Certifying Authority which has issued the [Electronic Signature Certificate] is a relevant fact."

- **Opinion as to existence of right or custom, when relevant**

Section 48 of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant".

- **Opinion as to usages, tenets, etc., when relevant**

Section 49 of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to— the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge can be relevant facts".

- **Opinion on relationship, when relevant**

Section 50 of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: given that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)".

- **Grounds of opinion, when relevant**

Section 51 of Indian Evidence Act, 1872 states that:

"Whenever the opinion of any living body or living person is relevant, the grounds on which such opinion is based are also relevant. Illustration : An expert may give an account of experiments performed by him for the purpose of forming his opinion". Section 51 of the Indian Evidence Act confirms that expert opinion is an exception to the rule against opinion evidence, but clarifies that such opinions do not go into evidence automatically without assessing reliability of the reasons on which such opinion is based, or examination of the expert.

There may be cases where both sides call experts and conflicting voices are heard on the same point. Again, there may be cases where neither side calls an expert being unable to afford one. In all such cases, it becomes a plain duty of the court to compare the writings and give its own conclusions. The duty cannot be avoided by taking recourse to the reasoning that the Court is not an expert. Where there is opinion of expert, that will aid the Court, where there is none, the Court will have to seek guidance from the authorities, texts books and the Court's own experience and knowledge. But the Court should discharge its duty.

The weight that ought to be attached to the opinion of the expert is a different matter from its relevancy. The act only provides the relevancy of exert opinion, but gives no guidance as to its value. The value of expert opinion has to be viewed in the light of many adverse factors.

Firstly, there is the danger of error deliberate falsehood, "these privileged persons might be half-blind, incompetent or even corrupt".

Secondly, his evidence is after all opinion and "human judgment is fallible human knowledge is limited and imperfect". No man ever mastered all the knowledge in any of the sciences.

Thirdly, it must be borne in mind that an expert witness, however, impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him.

The above factors seriously reduce the probative value of expert evidence. The reliability of such evidence, has, therefore to be tested the same way in which any other piece of evidence is

tested. The court should, therefore, call upon the expert to explain the reasons for his opinion and then form its own opinion whether or not the expert opinion is satisfactory.

Challenges and Limitations:

The challenges to improve overall judicial competencies in use of scientific evidence in courtrooms cannot be resolved simply by legislative reforms. It must be informed by an understanding of existing challenges and anticipated limitations of the legal system.

A. Lack of Awareness of Current Forensics Developments

The Supreme Court in ***Dharam Deo Yadav v. State of U.P., (2014) 5 SCC 509***, has also raised the concern that, '…With emergence of new types of crimes and their level of sophistication, the traditional methods and tools have become outdated; hence there is necessity to strengthen forensic science….whereas forensic evidence is free from those infirmities [of power, observation, external influence, forgetfulness etc]. Judiciary should also be equipped to understand and deal with such scientific materials.' thus, it is not surprising that concerns and critiques of forensics in praxis has not yet warranted much attention in India. Meanwhile, their continued admissibility in courts creates precedents that are being followed without adequate scrutiny, thus consolidating their use in courtrooms.

B. Competency of the Trier of Facts to Assess Scientific Evidence

Judges, in general, do not officially require any minimum standard of scientific qualification that is a sine qua non for evaluating scientific testimony. They differ amongst themselves in their respective level of scientific understanding, which is usually directly related to their professional experience. Judge's comprehension of a scientific matter essentially different from another's somewhat uniformized the interpretation of admissibility statutes.

C. Shortcomings of the Adversarial System

In the adversarial system, the obligation to contest dubious science lies solely with the defense. Lawyers often fail to ask the right questions and uncritically accept scientific assertions, allowing bad science to perpetuate in court and defense counsels do not cross-examine experts adequately, and rarely are they able to

obtain qualified experts for themselves to counter opinions presented by the prosecution. In the Indian criminal justice system, many defendants do not have the adequate backing, resources or funds to hire scientifically literate defense counsels or procure expert opinions to counter the prosecution's. Forensic evidence are challenged primarily on procedural grounds and less often on technical matters, allowing for bad science or poor analysis to persist in the courtroom. Another problem with the adversarial process is that it leads parties to 'produce evidence favourable to their respective sides, regardless of the quality of that science'. A second opinion was sought from a different expert a year after the first expert had already issued an opinion of mismatch, the second opinion formed the basis of arrest and prosecution. The faults with the first testimony was only brought forth in the Appellate court by the defense, wherein it was withdrawn by the expert before being contested. This highlights a possibility of confirmation bias, where investigator and prosecution actively ignore evidence/opinion that does not align with their assumption of culpability. Also, in a majority of cases where an invalid evidence has been challenged in courts, judges hardly provide relief.

D. Legislations Inadequate for Changing Science

In some cases where problematic science has been used to determine an essential element of the case leading to incarceration, new scientific knowledge may later render the former verdict inaccurate. As such, the conventional forum to reverse conviction is to file an appeal based on 'new science' or 'false evidence' claim. This is not adequately provided for within the Indian legislative recourses. In cases where the Court may have to arbitrate between two or more dueling experts, they may be faced with a myriad of tricky questions regarding assessing scientific rigour which they have historically struggled with.

E. Systemic Resistance to Change

Despite anecdotal evidence from lawyers and judges that suggests that they are aware of the poor quality of science they receive in trials, they also admit that they are often too dependent on the superiority of scientific evidence to prove their case to acknowledge that the legal system is ill-equipped to correctly evaluate its deficiencies. In some cases, the specific scientific

research needed to answer the question in issue may not even be available, or the findings of such research may not have been adequately replicated or reviewed in order to be considered acceptable by the scientific community. Even with funding and resources available, the time that the scientific community would need to conduct such validation and reliability studies for the lacunas observed in some forensic disciplines would have to come at the cost of ongoing and future trials.

G. Lack of Equality of Experts

The implication that forensic analysts and practitioners, as with any other professional, will get better at their expertise with experience means that there is always scope for their opinions to change retrospectively. A younger novice may opine one way regarding a match for a particular evidence, and later in their career, opine differently for a similar evidence. This shift in opinion is more prevalent when assessments are subjective, where the reliance is more on the expert's knowledge and experience in analysing or interpreting the evidence. This may be resulting from new knowledge becoming available to the expert in the course of their profession or from them improving in their capability to find nuanced differences where they could not earlier. It has also been noted that there is often an unequal disparity between the kinds of expertise that litigants have the capacity to produce. It is usually dependent on their resources and expenses, leaving the economically weakest party with limited access to a credible second opinion to support their case.

H. Cognitive Biases

Despite the fact that the scientific experts are supposed to opine objectively, the party-oriented approach of experts may make their testimony prejudiced. Forensic analysts are not immune to partisan bias or motivational bias. Experts that work closely with police and prosecution may be more susceptible to the likelihood of bias; sensitive information such as confessions, identification by eye-witnesses etc., may be revealed to the experts by the police or the legal team, leading to presupposition of guilt and sacrificing the objective independence of the expert's opinion. As experts enjoy broad discretion in forming their opinions, they may depose in favour of the party hiring them and be able to rationalize their

views in the courtroom without damaging their intellectually objective self-image.

Some other important legal principles:

1. In landmark Judgment of ***Ram Chandra v. State of U.P. AIR 1957 SC 381***, the Hon'ble Supreme Court held that *it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence.*

2. In ***Dhula v. State of Rajasthan, 1997 Cr.L.J. 609 Raj***, the Rajasthan High Court held that e*xpert opinion cannot be used against accused, unless it was put to him in his statement under section 313 of Cr.P.C. and asked to explain it.*

3. In **Machindra Vs. Sajjan Galpha Rankhamb and others, 2018(1) ALT (CRI) (SC) 173 (D.B.),** the Hon'ble Supreme Court held that *Experts opinion should be demonstrative and should be supported by convincing reasons Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution. It was further held in this case that In criminal cases pertaining to offences against human body, medical evidence has decisive role to play.*

4. In ***Magan Bihari Lal v. State of Punjab (1977) 2 SCC 210***, the Hon'ble Supreme Court held that *"expert opinion must always be received with great caution……..it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law."*

5. In ***Padin Kumar Vs. State of Uttar Pradesh, Criminal Appeal No. 87 of 2020*** reiterated that *without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction.*

6. In ***State of Karnataka v. J.Jayalalitha (2017) 6 SCC 263***, the Supreme Court had held that *an expert is not a witness of fact and that his evidence is only of advisory nature. It was further held that the expert only has the duty to furnish the Court with scientific test criteria for testing the accuracy of conclusions. It was finally held that the Court should not rely solely on the opinion of the expert*.

The same was also held in the case of *Jalapathi Reddy v. Baddam Pratap Reddy (2019) 14 SCC 220.*

7. The Bombay High Court in ***PARWAT Vs SUKDEY (AIR 1956 Bom 617)*** said that "*unless the expert stepped into the witness box, the opinion expressed by him in a communication to one of the parties could not be treated as evidence under the Evidence Act*.

8. It has been held by Supreme Court in ***MALLIKARJUNA RAO (by LRS) & others Vs NALABOTHU PUNNAIAH (2013) 4 SCC 546*** held that "*The handwriting experts opinion u/sec. 45 & 73 of the Evidence Act is a week evidence and court should slow to base their findings solely on such opinion, but should apply their own mind and take a decision*.

9. In ***ALAMGIR Vs STATE OF NCT, DELHI, ISCC 21 32 (J)***:- It is said *hand writing experts opinion to be relied on when supported by other evidence. Though there is no rule of law without corroboration the opinion cannot accepted but due caution and care should be exercised and it should be accepted after prove and examination*.

10. In ***LALIT POPLI Vs CANARA BANK (AIR 2003 SC 1796)*** the apex court has said "*where there were some adverse remarks against the handwriting expert in some of past proceedings, but nothing could be shown as to how experts report suffered from any infirmity, then his evidence cannot be treated as totally irrelevant and no evidence on the basis of said adverse remarks.*

11. There in ***STATE OF HIMACHAL PRADESH Vs. JAILAL AIR 1999 SC 3318*** the Supreme Court established the Specific proposition that *scientific experts opinion not supported by any reasons will not be relied upon. And it further stated that "An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to from his independent judgment by the application of these criteria to the facts provided by the evidence of the case*."

A witness providing expert evidence must be competent to provide evidence in the court case. Any person who is prevented from understanding the nature of question asked by court is competent to give opinion in evidence and facts. As mentioned

above that mainly opinion in evidence is taken in field of medicine that is related to death of a person, time of death, age of person dead, kind and nature of weapon used to cause injury, reason of injury and mental state of parties, etc. It completely depends upon the facts and circumstances and opinion of court. There is no provision mention in Indian Evidence Act, 1872 that expert evidence is corroborative in nature. Usually unless expert evidence is supported by other evidence court does not rely on such expert evidence. Because of this reason Court of India has observed that it is highly unsafe to convict a person only on the basis of sole testimony of expert.

The Courts have full powers to derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes. The opinion could be admitted or denied. Whether such evidence could be admitted or how much weightage should be given thereto, lies within the domain and discretion of the Court. The evidence of an expert should, however, be interpreted like any other evidence. Thus, it can be concluded that the expert opinion in numerous matters relating to identification of thumb impression, handwriting, footprints, fixing paternity, time of death, age of the parties, cause of death, possibility of the weapons used, disease, injury, sanity and insanity of the parties and other question of science or trade has become the need of hour and the person having required skill on that subject (called experts), are allowed to give their opinions in evidence as well as testify to facts/details leading to their opinion. The opinion of an expert having special skill in that particular field is relevant for the point of admissibility before the Court of law. There may be exceptions to this rule, in spite of it when there direct evidence is lacking, then to corroborate the existing evidence, expert opinion is sought.

Conclusion:

From the above analysis it may be submitted that evidence of an expert is not a substantive piece of evidence. The courts do not consider it conclusive. Without independent and reliable corroboration it may have no value in the eye of law. Once the court

accepts an opinion of an expert, it ceases to be the opinion of the expert and becomes the opinion of the court. So, the expert evidence is always considered as corroborative evidence and not substantive evidence. It is the duty of the judge to form an opinion and to come to a conclusion. **The opinion of an expert is only relevant, but not conclusive.**

I conclude my paper presentation on Expert Opinion with the quote of *COLIN POWELL "**Experts often possess more data than judgment**.*

Compiled by:

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Relevancy of admissibility of Civil court judgments in criminal cases and Vice versa

Workshop-2
Session-4

Paper Presentation by
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Topic:- Relevancy of admissibility of Civil court judgments in criminal cases and Vice versa

Introduction:

Judgment is an adjudication of a matter in dispute by the court. Judgments may be either Judgments in rem or Judgments in Personum.

The law relating to the admissibility of a judgment in a criminal proceedings vis-a-vis the civil proceedings and vice versa is strictly governed by the provisions of Indian Evidence Act. The findings of a previous Civil case can be found in the form of judgment, decree or order. The admissibility of such judgment, decree or order in the subsequent civil or criminal proceeding is strictly governed by section 40 to 44 of Indian Evidence Act. Sections 40 to 44 of Indian Evidence Act deals with "Judgment of court of justice, when relevant." These judgments are admissible either as:

- Res judicata (Section 40)
- Judgments being in rem (Section 41)
- Judgments as related to matters of Public nature (Section 42)
- Judgments other than those mentioned in section 40 to 42 are irrelevant unless the existence of judgment, order or decree is a fact in issue or is relevant under some other provisions of the act (Section 43)
- Judgments obtained by fraud or collusion or where the same is delivered by the court not competent to deliver it (Section 44)

Section 40: Previous Judgments relevant to bar a second suit or trial:-

The existence of any judgment, order or decree which by law prevents any courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial.

- Section 40 deals with " previous judgments relevant to bar second suit or trial".
- It incorporates the principle of res judicata which is contemplated under section 11 of Code of Civil Procedure and also Doctrine of autre fois acquit or autre fois convict under Section 300 of Cr.P.C..
- Res judicata means subject matter is already decided
- The basic object of incorporating this provision is to prevent multiplicity of suits and interminable disputes between the litigants.
- Once there has been judgment, order or decree about facts no subsequent proceedings would be started.

- These doctrines rests upon the maxim “nemo debet bis vexari pro una et edem causa” which means “No man ought to be tried twice for the same cause of action”
- Similarly, the Code of Criminal Procedure bars a second trial of a person once tried or convicted. As per the doctrine of autre fois acquit or autre fois convict, when a person had been tried for an offense and is either acquitted or convicted, he cannot be tried once again for the same offense and in the event of his being tried, the evidence of previous judgment would be admissible under section 40 in order to prevent the court from holding a trial in such a case.

In case of judgments operating as res judicata they are conclusive proof between the parties and prohibit the matters already decided from being re-litigated. So if the matter was decided by a competent court and it is sought to be reopened as between the same parties or their representatives, then the person in whose favour it was already decided could produce the judgment, and it would be relevant under section 40 read with section 11 CPC, because it prevents the court from registering the suit or holding a trial of the particular issue. Similarly, if a man is prosecuted for an offense,for which he has already been tried and may be either acquitted or convicted, then he can produce the judgment in the prior case and such judgment would be relevant under section 40 because its existence, read with section 300 Cr.P.C. prevents the court from holding the trial.

S.A.Venkatraman Vs. Union of India [AIR 1954 SC 375]

In this case appellant who was an Indian Civil Services Officer was dismissed from service on the charges of corruption in pursuance of a finding of the enquiry board. He was also prosecuted before a criminal court under the provisions of Prevention of Corruption Act and was punished. He challenged the prosecution as illegal on the ground that he was already punished by way of dismissal from service. But the Hon’ble Apex court held that the departmental enquiry proceedings against the appellant were not in the nature of a proceedings before the court of law and the dismissal of the appellant was in pursuance of the Rules of Service. Hence, Article 20(2) was not applicable. What is prevented by the constitution is “Prosecution and Punishment” for the second time.

Subba Rao Vs. Enquiry Officer, Cotton Corporation of India and others
[2022 Livelaw AP 121]

In this judgment, Hon'ble AP High court relying on ***K.Sridhar Vs APSRTC [W.P.No.8031 of 2022 dt: 04-07-2022]*** reiterated that disciplinary enquiry and criminal proceedings can continue simultaneously and pendency of the criminal proceedings is no legal bar for conducting departmental enquiry.

Section 41: Relevancy of certain judgments in probate, etc., jurisdiction.

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

1. that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;
2. that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person;
3. that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease;
4. and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.

Section 41 deals with Judgment in rem, which means that judgment is not only binding the parties and their representatives but also binding as against the whole world. For a judgment to be binding and conclusive proof under section 41 the following conditions have to be satisfied:-

- The judgment must be a final judgment.
- The court delivering the judgment must be competent.
- The judgment must have been delivered by the court in the exercise of Probate, Matrimonial, Admiralty and Insolvency jurisdiction.

- The judgment must confer on or take away from any person any legal character or declare that any person is entitled to such legal character or declare that any person is entitled to any specific thing absolutely.
- The judgment is conclusive proof of matters (Probate, Matrimonial, Admiralty and Insolvency jurisdiction).

Such judgments, order or decree is “Conclusive Proof”.

Judgment is of two kinds. They are

1) Judgment in rem. It is a adjudication pronounced upon the status of a person or a thing by competent court to the world generally.

2) Judgment in personum. These are the ordinary judgments not affecting the status of any subject matter, any person or thing. This judgment is binding only the parties.

Section 41 usually deals with “judgment in rem”. As a matter of principle a person is not bound by any transaction to which he is not a party. But section 41 is an exception and the judgment which is judgment in rem is admissible under this section. As per this section, judgments of courts exercising Probate, Matrimonial, admirality or insolvency jurisdictions are judgments in rem. Public policy requires that the status of a person should not be allowed to be in continual doubt and should be made known to every member of the public who may have to deal with him.

Example:-

Say for instance, a Divorce Decree is granted by the court between A and B, husband and wife. The divorce decree which is a judgment in rem takes away the legal character from the parties to marriage that they are husband and wife and declares to the whole world that they cease to stand in that relationship from the date of the divorce decree. Similarly, when a person is adjudicated as an insolvent by a court’s decree of insolvency it takes away the legal character of his being solvent and declares to the whole world that he is insolvent from the date of the decree.

- The effect of a judgment in rem is that it is conclusive proof of the fact that the legal character which it confers, accrued to the person concerned from the date on which the judgment came into force.
- Similarly, when a judgment declares a person to be entitled to anything, it is a conclusive proof that the person in question became entitled to the property from the time from which it declared him as entitled.
- When a judgment takes away legal character from any person, it is conclusive proof of the fact that he or she ceased to hold such legal character from the date from which the judgment declared them to have ceased.

So, section 41 is exhaustive as to what judgments would be treated as judgments in rem and when a judgment is delivered in relation to probate, matrimonial, insolvency and admirality jurisdiction by a competent court, then such judgment is binding not only between the parties or their legal representatives but also as against the whole world and it is conclusive proof as per Section 41 of Indian Evidence Act.

Section 42: Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41

Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration:- A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

- Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to the matters of public nature, but such judgments, orders or decree are not conclusive proof of that which they state.
- Under section 42 judgments are admissible not as res judicata but as evidence although they may not be between the same parties but they must relate to matters of public nature.
- In case of judgments relating to matters of public nature, though they are not conclusive, but relevant as adjudication against person who are not parties to them, as in the matters of public nature, every member of the public is deemed to be a party to them.
- Say for example, on a question of custom, a decision in a case as regards the existence or non existence of the custom is good evidence in other cases.

Section 43: Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

Illustrations:-

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife. B denies that C is A's wife, but the court convicts B of adultery. Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife. The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him, B, is convicted. A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B, C, B's son, murders A in consequence. The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

- Section 43 lays down a general rule that all judgments, decrees and orders not mentioned under section 40 to 42 are irrelevant. To this general rule of exclusion, the section provides two exceptions.
- The judgment, decree or orders not relevant under the three preceding sections are relevant:-
  1) when the existence of such judgment, decree or order is a fact in issue.
  2) when the judgment, decree or order is relevant under some other provisions of the act.
- The judgment may not be admissible for proving the truth of the particular points which it decided, but it may be admissible for other purposes, as for instance when its existence is a fact in issue or when it is relevant under the rules of relevancy contained in the other provisions of the act Eg., Section 8,11,13,54 Explanation 2.

- The cases contemplated by section 43 are such it itself illustrates,viz., where the fact of any particular judgment having been given is a matter to be proved in the case, a former judgment which is not a judgment in rem nor one relating to matter of public nature is not admissible in a subsequent suit either as res judicata or as proof of the particular point which it decided unless between the parties or those claiming under them.

Object of Section 43:-

The object of enacting Section 43 is well explained in the following judgment,

Gopal Vs. State of Rajasthan [(1997) CrLJ 2162 Raj HC]

In this case Hon'ble Rajasthan High court held that *" The judgment delivered by the magistrate in case in which person accused is acquitted is irrelevant within the meaning of section 43. therefore it cannot be looked into for any purpose. The object behind enacting section 43 appears to be two fold; the first object appears to be to treat every case a class by itself so that the judgment delivered in one case may not be availed of by parties to another case and the second object appears to be to maintain the independence of the courts by preventing the parties from submitting before the court herein their cases the judgments of other courts. The exception to the above rule are judgments which are relevant under Article 141 or 227 of the constitution as binding precedents or the judgments which are relevant under sections 41 and 42 of Indian evidence act or which are necessary to be taken into consideration when plea of res judicata is raised."*

Judgment, a fact in issue:-

If the object of producing the judgment be merely to prove the existence of the judgment, its date or its legal consequence, the proof of a certified copy is conclusive evidence of those facts.

Tirumala Tirupati Devastanams Vs. K.M.Krishnaiah [(1998) 3 SCC 331]

In this case, the question arose for consideration is *" whether the judgment in OS.No.51 of 1937 of the sub court, chittor dated 15-06-1942 declaring the title of the TTD, was admissible and could be relied upon by the TTD as evidence in the present case, even though the present plaintiff was not a party to OS.No 51 of 1937?"*

It was held by Hon'ble Supreme Court that the judgment produced as evidence to prove the title in regard to the suit property is admissible in evidence even though plaintiff was not party to that suit if it is fact in issue. Hence, judgments not inter parties is admissible in evidence under section 13

of Indian evidence act as evidence of assertion of a right to property in dispute.

Relevant under some other provisions of the act:-

- The existence of a judgment will sometimes be a relevant fact under some of the other provisions of the act as to relevancy.
- ***"or is relevant under some other provisions of this act"*** clearly show that there are other provisions in this act, under which judgments not inter parties are relevant; for instance under section 8,11,13 and 54 explanation 2, judgments not inter parties are relevant. The cases mentioned above and illustration (d),(e) and (f) of the section clearly show the meaning of "or is relevant under some other provision of this act"
- Example:- The fact that A has obtained a decree of ejectment against B may be a motive for B's murdering A. Therefore the decree of ejectment will be admissible to prove the motive of murder at the trial of B for the murder of A. Motive is relevant under section 8 of the Indian evidence act and therefore a decree showing motive is admissible under Section 43.
- Illustrations (d),(e),(f) are instances of judgment being relevant otherwise than under the three preceding sections of Indian evidence act.

Relevancy of previous judgment in a civil case, in a subsequent criminal case. It is not always conclusive though it is always relevant:-

K.G.Premshanker Vs Inspector of Police and another [(2002) 8 SCC 87]

In this case the contention of the appellant is that the de facto complainant had filed a suit for damages for the alleged acts before the civil court against the appellant and other accused and the trial court had dismissed the suit against which the appellant had preferred appeal before the high court, in view of dismissal of the suit the decision rendered by the civil court would prevail and the criminal prosecution pending against the appellant was required to be dropped.

At the time of hearing of the appeals before the Hon'ble Supreme court, it was pointed out that the appeals filed against dismissal of the suit were allowed and the judgment and decree passed by the trial court were set aside and the matters were remitted to the trial court to try the suit from the stage

of framing of issues. The net result was that both criminal prosecution for the offenses and civil suit for damages are pending at trial stage.

Dismissing the appeal, Hon'ble supreme court held that,

" Section 40 to 43 of Indian evidence act provide which judgments of court of justice are relevant and to what extent. In this context the following principles emerge:

1) the previous judgment which is final can be relied upon as provided under sections 40 to 43 of the evidence act;

2)in civil suits between the same parties, principle of res judicata may apply;

3)in a criminal case, section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offense if the conditions mentioned therein are satisfied;

4)if the criminal case and the civil proceedings are for the same cause, judgment of the civil curt would be relevant if conditions of any of sections 40 to 43 are satisfied, but it cannot be said that same would be conclusive except as provided in section 41. section 41 provides which judgment would be conclusive proof of what is stated therein."

" Further, the judgment, order or decree passed in a previous civil proceedings, if relevant, as provided under section 40 to 42 or other provisions of the evidence act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matters decided therein. Take for illustration, *"in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such a case, A may be convicted for trespass."* Hence, in each and every case, the first question which would be required for consideration is – whether judgment, order or decree is relevant, if relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon facts of each case."

Binding of Writ proceedings:-

Bhupendra Vs. State [AIR 1960 Ori 46]

In this case, it was held by the Hon'ble High court of Orissa that,

" Judgment of High Court in Writ proceedings is binding and conclusive between the parties unless reversed. As regards persons not parties it becomes a valuable precedent."

Sulekh Chand Vs Satya Gupta [(2008) 13 SCC 119]

" A judgment relating to the existence of a custom is admissible to corroborate the evidence adduced to prove such custom in another case."

Judgments of Criminal court when relevant and irrelevant in civil cases and vice versa:-

- Decision of a criminal court cannot be relied on as one binding in a civil action.

Raja ram Garg Vs Chhanga Singh [AIR 1992 All 28]

In this case, it was held by Hon'ble Allahabad High court that " judgment in the criminal court would not be relevant in the claim petition under the Motor Vehicles Act. The judgment in the claim petition under Motor Vehicle act would not be relevant in the criminal case for establishing the guilt of the accused." The same view was taken by Hon'ble Andhra Pradesh High court in ***APSRTC Vs Saavaji Aruna [AIR 1990 AP 162]***

Decision by Civil Court Binds the criminal court. But decision by a criminal court does not bind the civil court:-

Shanti kumar Panda Vs. Shakuntla Devi [(2004) 1 SCC 438]

In this judgment the following points were observed by Hon'ble Supreme court:

- It was held that a decision by a criminal court does not bind the civil court, while a decision by the civil court binds the criminal court.
- An order passed by the executive magistrate in proceedings under Section 145 and 146 of Cr.P.C. is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the magistrate is only one out of several pieces of evidence.
- The reasoning recorded by the magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is not bound by the findings arrived at by the magistrate even on the question of possession though as between the parties, the order of the magistrate would be evidence of possession.
- The finding recorded by the magistrate does not bind the court. In a civil action between different parties the finding of a criminal court cannot be treated as binding except to the extent of being evidence of

the factum of a particular judgment having been delivered by the particular criminal court on a particular date.

- The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the executive magistrate even on the question of possession.

Hence, the finding given in this judgment is that the order passed by executive magistrate is to be treated as the one out of criminal proceedings and the findings of criminal court is not binding on the civil courts.

Relevancy of admission made in Criminal proceedings and its binding on civil court:-

Seth Ramdayal Jat Vs. Lakshmi Prasad [(2009) 11 SCC 545]

In this case, the plaintiff pledged some gold ornaments with the defendant and obtained loan from the defendant. Later, defendant/accused was charged under sections 3 and 4 of Madhya Pradesh Money lenders Act,1934 for imposing excess interest upon the loan. Meanwhile he admitted his guilt in the criminal case against him for which a fine of Rs.150/- was imposed on him. Eventually, plaintiff filed a suit for recovery of gold ornaments which are pledged to the defendant. In this civil case, plaintiff laid his hands and relied on the admission of guilt made by the defendant in the criminal case by him.

The following observations are made in this case by Hon'ble Apex Court:

- A judgment in a criminal case is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever.(para 13)
- Except for Section 43 of Indian evidence act, which refers to Sections 40,41 and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit. **What, however would be admissible is the admission made by a party in a previous proceeding.(para 20)**
- although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible. (para 23).

Vishnu Dutt Sharma Vs. Daya Sapra [(2009) 13 SCC 729]

In this case, originally defendant borrowed amount from plaintiff and in discharge of debt, a cheque was issued by the defendant. The said cheque was dishonoured for which plaintiff/complainant filed complaint under section 138 of Negotiable Instruments act which resulted in acquittal of accused/defendant as she successfully proved that the said cheque in

question was not issued to the complainant by way of repayment of loan. Thereafter, the defendant filed an application before the trial court in the suit under order 7 rule 11(d) of CPC for rejection of plaint on the strength of her acquittal under section 138 of NI Act.

It was held that, the judgment of a criminal court in a civil proceedings will only have limited purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding. In this judgment, The Hon'ble Supreme Court ,

- Reiterated right of creditor to maintain both civil and criminal proceedings simultaneously.
- Distinguished standard proof required in civil proceedings from that in criminal proceedings, particularly where relevant statutory provisions impose reverse burden on accused (as under Section 139 of Negotiable instrument act)
- Considered that civil suit was not barred on day it was filed and also held that acquittal in criminal proceedings would not make continuation of the civil proceedings abuse of process of court.

R.Hanumaiah Vs. State of Karnataka [(2010) 5 SCC 203]

In this case, it was held that,
" where the plaintiff had filed suit earlier for permanent injunction claiming that he was in possession of the suit plot, that suit and appeal therefrom were dismissed by court by recording a finding that he failed to establish possession, the observation of the High court while dismissing the appeal from the decision in the earlier injunction suit that the plaintiff establishing title in the subsequent suit for declaration of title, will not dilute the finding recorded by the trial court and the High court that the 1st appellant was not in possession, which has attained finality."

Admissibility of criminal court judgment in a suit for damages for Malicious Prosecution:

Raj Jung Bahadur Vs. Raj Gudur Sahoy,
In this case, Hon'ble Calcutta High court held that,
In a suit for damages for malicious prosecution, the order of the criminal court acquitting the plaintiff is admissible in evidence. It is not that judgment of the criminal court has to be ignored altogether but it should not be relied upon as conclusive for deciding the civil suit for malicious

prosecution. A civil court has to go into the matter on evidence before it in the civil suit independently of the view expressed by the criminal court.

Decree of divorce on the ground of desertion and its effect on Maintenance proceedings

Ranjit Pandey Vs. Swaha [(1979) Cr LJ 1301],
It was held that where the decree for dissolution of marriage is passed by the civil court on the ground of desertion by the wife in a petition under Section 13 of Hindu Marriage Act, in proceedings under Section 127(2) Cr.P.C., the fact of desertion has to be proved independently. The civil court finding cannot be the sole basis for cancellation of maintenance.
In *Dr. Swapan Kumar Banerjee Vs state of West Bengal* and another,[(2020) 19 SCC 342], Hon'ble Apex court has observed that "a wife, who has been divorced by the husband, on the ground that the wife has deserted him, is entitled to claim maintenance under section 125 of Cr.P.C.

Judgment of Civil Court is binding on criminal court for proving legally enforceable debt

In the recent judgment of Hon'ble Andhra Pradesh in
M/s. Kakinada Chit Funds (p) Ltd Vs. Sri Chukkala Satyanarayana and another,
Criminal. Appeal.No.853 of 2007 dt. 14-09-2023,
In this case, Hon'ble AP high court has upheld the acquittal of the accused under section 138 of NI Act i.e., criminal case since the civil court had adjudicated that only Rs.25,000/- was due but the cheque dishonoured was of Rs.75,000/-.it was observed that when the complainant filed a suit seeking a huge amount, only an amount of Rs.25,000/- was held to be due by the accused to the complainants company. *It was further pointed out that the judgment of civil court is binding on the criminal court* and the complainant could not establish that the cheque was issued towards discharge of a legally enforceable debt.

Section 44: Fraud or collusion in obtaining judgment or incompetency of court, may be proved:-
Any party to a suit or other proceedings may show that any judgment, order or decree which is relevant under Section 40,41 or 42 and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

- The general rule is, a judgment of a competent court shall be binding on the parties operating as res judicata in subsequent proceedings between the same parties. Section 44 is an exception to this rule.
- Section 44 deals with Fraud or Collusion in obtaining judgment, or incompetence of court.
- As per section 44, a judgment is liable to be impeached /annulled on the ground of:-
  1) of want of jurisdiction
  2) fraud
  3)collusion

Section 44 gives an opportunity to the adverse party to raise questions that the judgment obtained under sections 40,41 and 42 by the first party in the previous suit or proceeding was not in accordance with the principles of the law of evidence. It is not necessary for the adverse party to bring a separate suit to have the previous judgment set aside, but he can challenge the judgment in the same suit or proceeding that the judgment was delivered by the court not competent to deliver it or the judgment was obtained by fraud or collusion. This section applies to both Civil and Criminal proceedings.

Conclusion:-

Hence, in regard to applicability and admissibility of criminal judgments in civil proceedings, the Indian Evidence Act sets parameters to be followed concerning the admissibility of other judgments, keeping in mind the standards of proof used in civil and criminal proceedings. Whereas in regard to admissibility of civil judgments in criminal proceedings, there exists no ambiguity due to the presence of statutory provisions in the Indian Evidence Act that regulate the admissibility of other judgments but nevertheless make them admissible when they are clearly relevant.

So, on considering all the dictum laid by Hon’ble Apex court as well as Hon’ble High courts of various states, civil court judgments are binding in criminal proceedings whereas criminal court judgments are not binding in civil proceedings but they are binding only to the effect of admission made in criminal proceedings.