# SECOND DISTRICT LEVEL

# WORK SHOP

# KURNOOL DISTRICT

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**TEAM -III**

# DYING DECLARATION

## Introduction:

Dying declaration is 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. The principle on which it can be admitted as evidence is indicated in the legal maxim '**nemomorituruspraе-sumitur mentire**' which means a man will not meet his maker with a lie in his mouth. This is exactly the reason as to why courts have held that an accused can be convicted solely on the basis of 'Dying Declaration' even without any corroboration.

## Section 32 of the Indian Evidence Act, 1872, deals with dying declaration and it is extracted below:

"32. Cases in which statement of relevant facts by the person who is dead or cannot be found etc. is relevant:-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the courtunreasonable, are themselves relevant facts in the following cases:

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

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 is an exception to the general rule of excluding the hearsay evidence. 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.

(iii) death should have ensued.

## Who should record the dying declaration:

Any person can record the dying declaration made by the deceased, but the person who is recording the dying declaration must have some nexus with the deceased either circumstantially or by some fact. However, the doctor or police officer hold more value as compared to the normal person. As far as the dying declaration is concerned the magistrate entrusted to record the dying declaration, as the statement recorded by him is considered more evidential rather than statement recorded by the doctor, police officer and by the normal person.

## Reasons for admitting dying declarations as evidence

A dying declaration is admitted as evidence that is truly based on the principle of "Nemo moriturns proesumitur mentiri (man will not meet his maker with a lie in his mouth). Dying declaration does not require any corroboration as long as it creates confidence in the mind of the Court and free from any form of tutoring. In case **Uka Ram vs State of Rajasthan, AIR 2001 SC 1814** Court held that dying declaration is admitted upon consideration is made in extremity; when the maker of the statement is at his bed end, every hope of this world is gone; and every motive of falsehood is silenced and mind induced to speak only truth. Indian law recognises this fact that "a dying man seldom lies".

In **Paniben vs state of Gujarat (1992) 2 SCC 474** it was observed that 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.

## Expectation of death is not necessary

Under English Law, the victim should not be under any expectation of death. Evidence Act has taken this law from English law. If the statement has been made even when no cause of death had arisen then also the statement will be relevant. It is not important at all that the statement recorded should be just before the death of the victim.

In the leading case of **PAKALA NARAYA A SWAMI .vs EMPEROR (**AIR 1939 PC 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.

Hon'ble Apex Court in **Nallapati sivaiah vs Sub Divisional officer, Guntur (2007) 15 SCC 465** and in **Bhajju alias Karan singh vs State of Madhyapradesh (2012) 4 SCC 327** had explained the admissibility for which the court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures."

**Deceased's fit state of mind is requisite for the admissibility of a dying declaration, and witness statements prevail over medical evidence:**

The judgment referencing the case of **Shama vs state of Harayana (2017) 11 SCC 535** highlighted that a fit state of mind is an essential prerequisite for the admissibility of a dying declaration.

The court also noted that traditionally, it has relied on medical evidence for admissibility of a dying declaration but if there were any witnesses who were present during the statement to prove that the deceased fit state of mind ,while recording the dying declaration then their statements prevail over the medical evidence.

Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But thiscannot 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. In the Constitution Bench judgment of the Hon'ble Apex court in the case of **LAXMAN v. STATE OF MAHARASHTRA AIR 2002 SC 2973,** it is succinctly explained that medical certification is not a sine qua non for accepting the Dying Declaration and re affirmed in the case of **Surendra Bangali vs state of Jharkhand** ( criminal Appeal No. 1078 of 2010).

## 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.

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.

## F.I.R as a dying declaration:

In a situation where a person dies after, when a F.I.R was lodged and stating that his life was in danger, it is relevant to be recorded as circumstantial dying declaration.

In the case of **Munnu Raja and another vs State of MP, AIR 1976 SC 2199,** the Supreme Court Of India observed that statement made by injured person recorded as FIR can be deemed as dying declaration and such declaration is admissible under Section 32 of Indian Evidence Act. It was also observed by the court that dying declaration must not shows the whole incident or narrate the case history. Corroboration is not necessary in this situation, Dying declaration can be declared as the exclusive evidence for the purpose of conviction.

## If the declarant does not die:

When the dying declaration given by the deceased is recorded. But the question arises that after the dying declaration was recorded and the deceased is still alive, was the statement holds the same effect. In that situation, the deceased now turned to be a witness against the accused to narrate what the actual story was. As the dying declaration itself mentioned the word dying, so it is necessary that there must be an expectation of death on the part of the declarant.

Declaration given to a police officer is not hit by Section 162(2) of Cr.P.C. If the statement of a victim is recorded by the police as a first information and if there is a declaration, it is safe to rely on the declaration.

## Incomplete Dying Declaration:

Dying declaration made by the person, which is found to be incomplete can not be admissible as evidence. When the condition of the deceased is grave and at his own request a statement made by him in the presence of the doctor was later taken by the police but could not be completed as the

deceased fell into a coma from which he could not recover. It was held that the dying declaration was not admissible in court as the declaration appears to be incomplete on the face of it. But the statement, though it is incomplete in the sense but conveys the declarant all necessary information or what he wanted to state, yet stated as complete in respect of certain fact then the statement would not be excluded on the ground of its being incomplete.

## Evidentiary value of dying declaration:

In the case of **KHUSHAL RAO .v. STATE OF BOMBAY (AIR 1958 SC22),** Hon'ble apex court has held that uncorroborated dying declaration can be the basis for conviction. Following are the principles laid down in the said judgment:

(i) that it cannot be laid sown as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated.

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

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

(iv) that a dying declaration stands on the same footing as another piece of evidence has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence, though, law as it stood earlier was that the declaration be recorded in the form of question and answer, but in the case of **SATISHCHANDRA .v. STATE OF MADHYA PRADESH (2014) 6 SCC 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. A magistrate is expected to record the statement in the absence of the police. Steps must be taken to see that no interested persons remain there while recording the declaration.

In so far as proof of oral dying declaration is concerned, the court should, as a matter of prudence, look for corroboration in order to know whether such a declaration was truthful.

Broad principles have been laid down by the Hon'ble Apex Court in the case of **ATBIR v. GOVT. ( CT OF DELHI) reported in [2010] 9 SCC** 1 in paragraph 22 which are extracted below:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) 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.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(v) Where the dying declaration is suspicious, it shouldnot be acted upon without corroborative evidence.

(vi) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(vii) Even if it is a brief statement, it is not to be discarded.

(viii) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

**Manjunath and Others Vs State of Karnataka 2023 SCC OnLine SC 1421 dt; 6-11-2023**

Numerous judgments have held that provided a dying declaration inspires confidence of the court it can, even sans corroboration, form the sole basis of conviction**.**

**Hariprasad alias Kishan Sahu Vs State of Chhattisgarh 2023 SCC OnLine SC 1454 dt; 7-11-2023**

As per the settled law, though a statement made by a person who is dying is made exception to the rule of hearsay and has been made admissible in evidence under Section 32 of the Evidence Act, it would not be prudent to base conviction, relying upon such dying declaration alone.

The magistrate recording the statement should obtain the signature/thumbimpression of the declarant on the declaration. if all the fingers of the declarant are seriously burnt, it will not be possible to obtain thumb impression/signature, there must be an explanation to that effect in the declaration itself. 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.

**Conclusion:**

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. 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. But the Hon'ble apex court, in several leading decisions, while considering the facts of each case, has laid down some broad guidelines and thus they have become binding precedents under Article 141 of the Constitution of India.

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# EXPERT OPINION

## Introduction

Generally, when a person is summoned by court for giving testimony as a witness, he is expected to state only facts and not to give any opinion. It is the job of the court to form an opinion in the case. Moreover, if a person is asked to give his testimony then it is expected that the person must be factually related to the case not merely a third party.

But there is an exception to this rule. The experts are considered as witnesses although they are not actually related to the case. The court requires these experts to give an opinion regarding the case to help the court in having a wider perspective to give justice. The rationale behind the same is that it is not practical to expect the Judges to have adequate knowledge of special subjects like medical subjectand forensic etc.The statutes regarding the experts' opinion are discussed in The Indian Evidence Act, 1872.

## PRINCIPLES OF EXPERT EVIDENCE

According to Phipson, the cardinal principle of the law of evidence states that the best evidence should be adduced before a court of law. This rule is known as Best-Evidence rule. Best-Evidence means the evidence collected through the direct source. Derivative and second-hand evidence shall be excluded. As a general rule, the opinions, inferences, beliefs and mere speculations of witnesses are inadmissible before a court of law. The exception of the above-mentioned rule is the 'expert evidence'. Expert testimony is admissible on the principle of necessity. The help of experts is necessary when the question involved is beyond the range of common experience or common knowledge or where the special study of a subject or a special training or skill or special experience is called for. In Khushboo Enterprises v. Forest Range Officer, it was held that "under Indian evidence 'expert evidence'is 'opinion evidence' and as a general rule, the opinion of a witness on a question of fact or law is irrelevant.

The opinion of witnesses possessing peculiar skills (as of experts) is an exception to this rule".

Section 45 of the Evidence Act makes opinion of experts admissible. It lays down, that, when the court has to form an opinion upon a point of science, the opinion upon that point of a person specially skilled in such science is a relevant fact.

In order to bring the evidence of a witness as that of an expert, it has to be shown that he has made a special study of the subject or acquired a special experience therein. In other words that he is skilled and has adequate knowledge of the subject. However, the opinion of an expert is not binding on the court. It is stated in Titli v. Jones (AIR 1934 All 237) that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

## Admissibility of expert opinion:

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. the evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: “Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value”.

## EVIDENTIARY VALUE OF EXPERT OPINION

An Expert Opinion depends on two things. First, it depends on the facts upon which it is based. If the dispute relates to whether A is the father of B, a DNA report by a medical expert is sufficient to settle the dispute. Second, expert opinion also depends on the 'validity of the process' to reach the conclusion, the same was held in the case between **Ramesh Chandra Agarwal Vs Regency Hospital Ltd, (2009) 9 SCC 709**. In other words, the opinion of an expert must be supplemented by some data or material along with reasons, as noted in State of H.P v. Jai Lal. It cannot be solely relied upon to convict an accused. In **State of Maharshtra v. Damu s/o Gopinath Shinde and Ors, (2000) 6SCC** the Court noted: "Mere assertion without mentioning the data or basis is not evidence, even if it comes form expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

It has already been discussed that the expert opinion must be in consonance with the direct or ocular evidence. Expert opinion is different from a testimony given by a witness. While an expert gives rules and reasons to support his opinion by either citing a book or an authority, the witness gives his testimony solely on the basis of what he has perceived through his senses. Since an Expert Opinion is used as a corroboration device, what will happen in a situation where the Expert Opinion is inconsistent with the direct or ocular evidence it has been held that, in a case of inconsistency between expert opinion and ocular evidence, the latter shall prevail over the former. In **Darbara Singh v. State of Punjab, (2012) 10 SCC 476** the Supreme Court reiterated this position in the context of medical expert evidence and noted. "So far as the question of inconsistency between medical evidence and ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy." However, if in a situation where the inconsistency between both, the ocular and medical

evidence, is so extreme that the medical witness totally rules out the possibility of the ocular evidence being true, then the occular evidence must be disregarded, the same was held in the case between **State of UP vs Hari Mohan, 2000 8SCC 598.**

## Handwriting expert's opinion and its evidentiary value:

When the court has an opinion that who has written or signed a document the court will consider the opinion of a person who is acquainted with the handwriting. That person will give an opinion that particular handwriting is written or not written by that particular person or not.

## The handwriting of a person may be proved in the following ways:

- A person who is an expert in this field
- A person who has actually seen someone writing, or
- A person who has received any document which is written by the person whose handwriting is in question or under the authority of such person and is addressed to that person
- A person who regularly receives letters or papers which are written by that person
- A person who is acquainted with the signatures or writing of that person
- A certifying authority who has issued a digital signature certificate when the court has formed an opinion as to the digital signature of a person. This is mentioned under section 47-A of the act.
- The evidence of the writer himself. This is mentioned in section 60 of the act.

・If another person admits that the documents were written by him. This is mentioned in section 21 of the act.

・A person who has seen the person writing or signing. This is mentioned under section 6o of the act.

・When the court himself compares the document in question with any other document which is proved genuine in the court. This is mentioned in section 73.

・The court may ask the person to write something for the court to compare it with the document in question.

**Identity of handwriting –** Sections 45 and 47 of the Evidence Act prescribe the method by which signature can be proved. Under section 45, opinion of the handwriting expert is relevant, while under section 47, the opinion of any person acquainted with the handwriting of the person who is alleged to have signed the document, is admissible. The Apex court in **Murarilal v. State of M.P, AIR 1980 SC 531,** held that "the opinion of thehandwriting expert is required to be carefully considered and examined because of the reason that the science of identification of the handwriting is not so perfect that it excludes the chance of the risk".

In **Ram Narain v. State of U.P (1973)2 SCC 86,** it was held that "if after comparison of disputed and admitted writings by the court itself, it is considered safe to accept the opinion of the expert, then the conclusion so arrived at cannot be attacked on special leave merely on the ground that comparison of handwriting is generally considered hazardous and inconclusive. It should be noted that the evidence of experts is not final or conclusive. The court may satisfy itself before relying on the expert opinion".

In case of **Alamgir v. State (N.C.T. Delhi) AIR 2003 SC 282** 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 the case of Devi Prasad v. State, 1964 it was held that evidence given by a person who has insufficient familiarity should be discarded. Indian Evidence Act insists that documents either be proved by primary evidence or by secondary evidence.

In case of **Manorama Naik vs State of Odisha, 2022 LiveLaw (SC) 297** dt; 14-3-2022, Apex court held that opinion of the handwriting expert is not the only way or mode of proving the signature and handwriting of a person.the signature and handwriting of the person can also be proved under sections 45, 47 and 73 of the Indian Evidence Act.

## Opinion of medical experts and its evidentiary value:

As far as medical experts are concerned the Courts in India have different opinions. In certain cases they have accepted the evidence. The husband alleged his wife was pregnant at the time of marriage. The doctor who was an expert in mid-wifery had deposed the contention to be true. Though he was not gynecologist, the Court accepted his evidence and the same was held in the Apex Court between in **Baldev Raj Mighani vs Urmila, AIR 1979 SC 879**. but, again the Court held in other cases medical evidence is hardly conclusive and decisive, because it is primarily an evidence of opinion. The Court has to consider not merely medical evidence but also the other evidence and circumstances appearing on the point, the same was held in the case between **Mani Ram vs State of Rajasthan, AIR 1993 SC 2453**. but as far as post mortem reports are concerned sufficient weightage is given to the doctors'deposition who had conducted the post-mortem. When the post mortem report is more favourable to the accused and there are discrepancies between the medical evidence and the inquest report, the benefit of discrepancies should be given to the accused by accepting the post-mortem report instead of inquest report, the same was held in the case **Maula Bux vs state of Rajasthan, 1983 1SCC 379**. Where the report of the serologist

stated that the blood on the two items of clothes wasumanblood and the items belonged to the accused, they connect him with crime, the same was held in the case **Boddu Murali vs State, 1993**. Regarding injuries and time of death the evidence of the experts is accepted depending on the other circumstances.regarding age positive evidence furnished by birth register, by members of the family, with regard to the age, will have preference over the opinion of the doctors: but, if the evidence is wholly unsatisfactory, and if the ossification test in the case is complete, such test can be accepted as a surer ground for determination of age, the same was reiterated in the case between **SK Belal vs state of orissa, 1994.**

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 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 204it 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.

## Conflicting opinion of two doctors:

In case of T.P. Divetia v. State, AIR 1997 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 it was held that if there is confliction between medical evidence and direct evidence given by eye witnesses then direct evidence given by eye witnesses must be preferred if its testimony is undoubted and not the opinion evidence of the medical expert.

## Medical evidence as to age

In case of S.K. Belal v. State, 1994 it was held that if medical evidence shows her age between 17 to 18 years but on theother side documentary evidence shows her age about 18 years, a victim girl cannot be proved minor. But in case of Jagtar Singh v. State, 1993 it was held that if birth certificate is not reliable, the opinion of doctor should be relied upon regarding the age of victim.

## Certificate of doctor on plain piece of paper if to be rejected:

In case of Ammini v. State, 1998 it was 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.

## Deoxyribonucleic Analysis (DNA)

Each person's genetic makeup contains DNA. This differs from individual to individual. DNA can be obtained through blood, saliva, semen, or hair. This helps in identifying a person. If a drop of blood or a strand of hair is found at a crime scene, it can be compared to a person's known DNA to see if there is a match, thereby linking the person to the crime. An expert witness can give an opinion about the likelihood that the blood that was found at the crime scene came from the individual whose sample was compared. DNA analysis is also used to establish paternity. experts believe that the ability to link the culprit to the crime scene through his DNA prints is unquestionable as unlike conventional fingerprints that can be surgically altered, DNA is found in every tissue and no known chemical intervention can change it.

## Evidence of DNA expert

In case of Pantangi Balarama Venkata Ganesh v. State of A.P., 2003 it was held that "the evidence of DNA Expert is admissible in evidence as it is a perfect science".

## Surinder kumar vs state of punjab, (2020 SCC Online SC3)

The Apex Court stated that the mere fact that the case of the prosecution is based on the evidence of official witnesses does not mean that same should not be believed. On this point the Apex Court referred to **Jarnail Singh v. State of Punjab, (2011 ) 3SCC 521**wherein it has been held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.

# CONCLUSION

In conclusion, that person of peculiar skill on the subject are called experts, and they are allowed to give their opinions in evidence as well as testify to facts. expert opinion plays a significant role in criminal proceedings. it assists the court in understanding the facts of the case in a better fashion and to make a decision. expert Opinions are corroborative in nature. It is a rule of caution that a Judge not solely rely on expert evidence to convict an accused. the experts must supplement their opinion with relevant data and material, and should not make a mere assertion.

The opinions of medical men are constantly admitted in matters related to time of death, age of the parties, cause of death, possibility of the weapons used, disease, injury, sanity and insanity of the parties so on and so forth. Now a day the DNA test is often used in fixing the paternity of the child in family law related cases such as maintenance and legitimacy of the child. It is in short, a general rule the opinion of a person who has special skill in that particular field shall be admissible in the Court of law. there may be exceptions to this rule, inspite of it, if there is an inconsistency

between direct or ocular evidence and an expert opinion, the former shall prevail. A cross examination of expert witness is an integral part of criminal proceeding.

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# CIVIL COURT JUDGMENTS BINDING 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."

If civil suit is decreed on the particular subject matter, again on the same subject matter if criminal case is instituted, then advocates argue before the trail court to consider the findings delivered by the civil court, but court will not consider the findings as Standard of proof is different in Civil and Criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. The apex court had clearely emphasised this aspect in several instances

In **2005 (4) SCC 370 (Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another**), the Apex Court has held that The findings given in one proceeding is not binding on the other. Civil cases are decided on the basis of preponderance of evidence, while in a Criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given.

Hon'ble Apex Court in **Kishan Singh (D) Thru Lrs vs Gurpal Singh & Ors reported in 2011 (1) ALT (Crl.) 148 = AIR 2010 SC 3624**, after referring several judgments of Supreme court, Privy Counsil and other High Courts, observed "Thus, in view of the above, the law on the issue stands crystallized to the effect that the **findings of fact recorded by the Civil Court do not have**

**any bearing so far as the criminal case is concerned and viceversa.** Standard of proof is different in Civil and Criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principal that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the bais of the evidence adduced therein".

**CONCLUSION**

Considering the related apex court judgments it may be concluded that civil court judgment will not be binding on criminal court and vice versa as the Standard of proof is different in Civil and Criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt.