Relevancy and admissibility of

i) **Dying Declaration**

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by

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(i) Relevancy and admissibility of Dying Declaration

Dying Declaration:

Dying declaration is admitted in evidence. The principle on which it is admitted as evidence is indicated in the legal maxim 'nemomoriturus prae-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.' In fact, no corroboration is required since corroboration is only a rule of prudence and not a rule of evidence.

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

"section 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 court unreasonable, 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 and
(iii) death should have ensued.

It is also pertinent to note that in the case of **Mallella Shyamsunder v. State of Andhra Pradesh**, the apex court made two additions to the essentials of a dying declaration which are as follows:

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

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, or prompting or product of imagination, the Declaration will not be accepted. If the contents of the very Dying Declaration contradict 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.

Relevant citations:

In 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.'

In the judgment of **Munnu Raja v. State of MP1976 AIR 2199** the Honorable Supreme court stated that the law pertaining to the admissibility of dying declaration should be applied and understood with caution because the declarant making such a statement shall not be cross-examined by the accused. In addition to this, the court also stated the requirement of corroboration for admissibility of dying declaration is not a rule of law but a rule of prudence.

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. In the Constitution Bench judgment of the Hon'ble Apex court in the case of **LAXMA .v. STATE OF MAHARASHTRA reported in AIR 2002 SC 2973,** it was explained that medical certification is not a sine qua non for accepting the Dying Declaration. The relevant law enunciated is as follows:

"For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in ***Paparambaka Rosamma and Others .v. State of Andhra Pradesh*** *(MA U/SC/0558/1999) to the effect that '... in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the inured was in a fit state of mind at the time of making a declaration' has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma and Others .v. State of Andhra Pradesh (MA U/SC/0558/1999) must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji and another .v. State of Gujarat (MA U/SC/0624/1999) case."*

In the case of **Pandian K Nadar v. State of Maharashtra** 1994 (3) Bom CR 295 Bombay High Court as well as Supreme Court in **Prem Chand v. State of U.P** AIR 1994 SC 1534 held that such declaration was recorded by the Special Executive Magistrate, who acknowledged that the declarant has the physical and mental competence to record the dying declaration which was also supported by the Police Officer. In such cases dying declarations were held to be valid despite the lack of evidence of a certificate from the medical professional.

In the case of **Dandu Lakshmi Reddy v State of AP on 17 August, 1999,** Honorable Supreme Court held that where, the parents of the deceased declarant said that their daughter had a mental illness, such facts cannot be kept aside by the court for reaching its admissibility as well as reliability. The quintessential way to prove the fit state of mind of the declarant is through presenting a certificate of fitness from the medical

professional stating that the declarant is fit and capable for making such statements. However, the omission to submit the certificate of fitness isn't a condition precedent for the rejection of such a dying declaration. The important aspect required by the court is that the individual who records such a dying declaration shall be confident and satisfied that the declarant was fit and mentally capable for making such statements. The presentation of a certificate of fitness can be regarded as a rule of caution. A credible and honest dying declaration can be accepted before the court even otherwise.

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.

In ***Gangaram Gehani v. State of Maharashtra*****1982 AIR 839,** the Honorable Supreme Court stated that if there are contradictions between any of them on the material part, then the court should try to resolve such contradictions. If no premise could explain such contradictions, then such dying declaration might be rejected by the court. In a circumstance, where there is a reasonable justification, then such a statement can be equated with an omission stated in Section 161 of the Criminal Procedure Code, 1908 which shall be taken into account as a matter of fact. In the case where the deceased declarant did not make an entire statement in her first dying

declaration and made it in the following dying declaration with the corroboration of medical evidence, then such dying declarations cannot be rejected by the court.

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. In the case of **KHUSHAL RAO .v. STATE OF BOMBAY (AIR 1958 SC p.22)**, 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*

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

(iv) *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,*

(v) *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,*

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

(vii) *that in order to test the reliability of a dying declaration the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to*

remember the facts stated had not been impaired at the time he was making the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.'

Though, law as it stood earlier was that the declaration be recorded in the form of question and answer, but in the case of **SATISHCHA DRA .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. 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 the matter of**Ram Bihari Yadav v. State of Biharon 18 August, 2021**, It was observed by the Patna High Court court that a statement recorded in a form of narration has the possibility of being more natural and reflects the truth of the cause of death of the declarant.

Insofar 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. Following 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.

(iv) 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.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) 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.

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

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

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

(x) 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.'

The test of proximity was first questioned before the court in the case of **Sharad Birdhi Chand Sarda v. State of Maharashtra, 1984 AIR 1622**. The court held that the dying declaration was admissible because the statements made by the declarant were not remote in duration to lack their proximity with the circumstances of the death. The court also went on to make several propositions: (I) A dying declaration shall be valid when it is made by a person regarding the circumstances or reason of his death, irrespective of whether such death is homicidal or suicidal in nature. (II) The test of proximity cannot be moulded into a straight jacket formula as it depends on the facts and circumstances of different cases. In the matter, the Hon'ble Supreme Court stated, *"The prosecution had not examined the doctor who made the endorsement on the dying declaration that "the patient was in a fit state of mind to depose*". For example, when the death of the declarant is the result of a prolonged event, then a statement made on the occasion of the death or while recording such declaration must be understood and interpreted in its full context with the past events.

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 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.

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. While evaluating the evidence, especially in criminal cases, the court is expected to keep in mind the novel observation made by the apex court in the case of **STATE OF U.P. .v. KRISH AGOPAL (AIR 1988 SC p.2154– paragraph 13).** The relevant observation is as follows:

> *'.....There is an unmistakable subjective element in the evaluation of the degree of probability and quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.'*

In ***P.V. Radhakrishna. v. State of Karnataka, 2003:*** the question before the Supreme Court Court was to consider whether the percentage of burns suffered can act as a determinative factor in affecting the credibility and recording of a dying declaration. The Court held that there was no fixed universal rule in this regard, and it would depend upon the nature of burn, the impact of the burn, and the part of the body affected by that.

In **Chacko v. State of Kerala, 2003*, 2004 CriLJ 481*:** The Kerala High Court in this particular case was not willing to accept the genuineness and evidentiary value of the dying declaration. In the present Prosecution based case, the deceased woman of 70 years, who had suffered 80% of the burn injuries had given the detailed dying declaration after 7 to 8 hours of burning. It was difficult for the Court to accept that the injured lady, 80% burns, could report what had happened to her. Also, in this case, the doctor made no certification on the mental and physical condition of the deceased. The Court doubted the genuineness of the document since how it was given it could not have been in such an exact position.

In ***Sham Shankar Kankaria v. State of Maharashtra, 2006*:** In this case, the Honorable Supreme Court restated that *"the dying declaration is only a piece of untested evidence and just like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is safe to act upon it." In* **Abhishek Sharma vs State Govt Of NCT Of Delhi,2011:** In this case, the Honorable Supreme Court stated "The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

1. All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;
2. When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.
3. The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

4. Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.
5. When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.
6. In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.

Gopal Singh vs State Of Madhya Pradesh, on May 12th, 2010: In this case, the Honorable Supreme Court stated A court is entitled to convict on the sole basis of a dying declaration if it is such that in the circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required.

In **K Ramchandra Reddy and another vs Public Prosecutor 1976 AIR 1994** : The Honorable Supreme Court stated that dying declaration is undoubtedly admissible under Section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While 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 concoct a case so as to implicate an innocent person yet the C ourt has to be on guard against the statement of the deceased being a result of either tutoring prompting or a product of his imagination. The Court must be satisfied 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 rancour. O nce the C ourt is satisfied that thedying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

In **Padmaben Shamalbhai Patel vs State Of Gujarat 1991 SCR (1) 88:** The Honorable Supreme Court stated Nature of evidence and admissibility of dying declaration -Deceased sustaining 90% burn injuries and on inquiries made by the doctors examining the deceased in the hospital it was revealed by the deceased that the accused (deceased's husband's sister) had burnt her the doctors deposed that deceased was in a fit state of mind and able to speak albeit with difficulty when she spoke to them though soon thereafter her condition deteriorated and she was unable to speak, evidence of doctor about the fitness of the deceased, cannot be discarded merely because the deceased was severely burnt, Held that conviction could be based on the dying declaration of the deceased.

In **Thummalapally Koti Reddy vs State Of Andhra Pradesh** decided on November 25 ,1992: The Honorable A.P High Court stated that “[12] It is elementary that a dying declaration which satisfies all these requirements is sufficient to sustain conviction even without any further corroboration. We may refer in this connection to the decisions of the Supreme court in Khushal Rao vs. State of Bombay, Harbans Singh vs. State of Punjab, Tapinder Singh vs. State of Punjab, Lallubhai Devchand Shah vs. State of Gujarath. W e may usefully refer to the observations contained in Tapinder Singh and Lallubhai Devchand Shah. "it is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinize all the relevant attendant circumstances.(13) "in Lallubhai the court laid special stress on the fact that one of the important tests of the reliability of a dying declaration is that the person who recorded it must be satisfied that the deceased was in a fit state of mind and observed:"the fit state of mind" referred to is in relation to the statement that the dying man was making. In other words, what the case suggests is that the person who records a dying declaration must be satisfied that the dying man was making a conscious and voluntary statement with normal

understanding. (14) "the same principle was reiterated in K. Rainachandra Reddy vs. The Public prosecutor. In Kishenlal Sethi vs. Jagannadh and others it was reiterated that:"a dying declaration properly recorded by a competent Magistrate as far as practical in the words of the maker stands ona much higher footing than a dying declaration which depends upon oral testimony. ""

In **Babulal & Ors. vs. State of M.P. 2003 (12) SCC 490** the Supreme Court observed vide in paragraph 7 of the said decision as under:

> *"A person who is facing imminent death, with even a shadow of continuing in this world practically non- existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice" [13] In Ravi & Anr. vs. State of T.N. 2004 (10) SCC 776 the Supreme Court observed that "if the truthfulness of the dying declaration cannot be doubted, the same alone can form the basis of conviction of the accused and the same does not require any corroboration whatsoever, in law."*

In **Muthu Kutty & Anr. vs. State 2005 (9) SCC 113,** vide paragraph 15 the Supreme Court observed as under : "Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of

the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben vs. State of Gujarat 1992 (2) SCC 474, pp.480-81, paras 18-19) (emphasis supplied)

(i) *There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.* (***See Munnu Raja & Anr. v. The State of Madhya Pradesh*** *[1976] 2 SCR 764)*

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. **(See State of Uttar Pradesh v.Ram Sagar Yadav and Ors**.,AIR (1985) SC 416 and **Ramavati Devi v. State of Bihar**, AIR (1983) SC 164)

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. **See K. Ramachandra Reddy and Anr. v. The Public Prosecutor**,AIR (1976) SC 1994].

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg. v. State of Madhya Pradesh, [1974] 4 SCC 264).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. **[See Kaka Singh v. State of M.P.,** AIR (1982) SC 1021].

(vi) A dying declaration with suffers from infirmity cannot form the basis of conviction. **(See Ram Monrath and Ors v. State of U.P.**,[1981] 2 SCC 654).

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [**See State of Maharasthra V. Krishnamurthi Laxmipati Naidu** AIR (1981) SC 617].

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. **[See Surajdeo Oza and Ors v. State of Bihar,** AIR (1979) SC 1505].

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. **[See Nanahau Ram and Anr. V. State of Madhya Pradesh** AIR (1988) SC 912].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. **[See State of U.P. v. Medan Mohan and Ors.,** AIR (1989) SC 1519].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v. State of Maharashtra, AIR (1982) SC 839].

(ii) Relevancy and Admissibility of Expert Opinion

Introduction:

Sec. 45 to Sec.51 under Chapter-II of the Indian Evidence Act provides relevancy of expert. These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness. The exception is based on the principle that the court can't form opinion on the matters, which are technically complicated and professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters.

Expert Opinion

The definition of an expert referred in the provision of Sec.45 of Indian Evidence Act that an 'Expert' means a person who has special knowledge, skill or experience in any of the following

1. foreign law,
2. science
3. art
4. handwriting or
5. finger impression and such knowledge has been gathered by him—
    a) by practice,
    b) observation or
    c) proper studies.

Section 46 states that the facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of the expert, when such opinions are relevant it means that the facts which are not relevant will be relevant if the opinion of expert is supported by them.

Opinion of handwriting expert:

When the court needs an opinion as to the person, by whom a document is written or signed, any other person acquainted with the handwriting whether it is supposed to be done or not by the accused or questioned person is a relevant fact. Section 47 deals with this.

The section states that every person acquainted with the handwriting of a particular person is relevant. It means that the person who is witness to signature or written document.

In the case of **shankarappa v. Sushilabai AIR 1984 Kant 112** it was held by Karnataka High Court that the wife can be considered as the person acquainted with the handwriting of her husband.

In the case of **Prahlad Saran Gupta v Bar Council of India on 26 February, 1997 in Appeal (civil) 3588 of 1984,** it was held by Apex Court that the opinion by a handwriting expert is the final and there is no need to confirm it, as a result it stated the importance of expert opinion.

Dispensation of some Scientific Experts

The law has dispensed with examination of some scientific experts. For example, Sec.293 Cr.P.C. provides a list of some Govt. Scientific Experts as following:-

a) Any Chemical Examiner / Asstt. Chemical examiner to the Govt.
b) The Chief Controller of explosives
c) The Director of Fingerprint Bureau
d) The Director of Haffkein Institute, Bombay
e) The Director, Dy. Director or Asst. Director of Central and State Forensic Science Laboratory.
f) The Serologist to the Govt.
g) Any other Govt. Scientific Experts specified by notification of the Central Govt.

The report of any of the above Govt. Scientific Experts is admissible in evidence in any inquiry, trial or other proceeding and the court may, if it thinks fit, summon and examine any of these experts. But his personal appearance in the court for examination as witnesses may be exempted unless the court expressly directs him to appear personally. He may depute any responsible officer to attend the court who is working with him and conversant with the facts of the case and can depose in the court satisfactorily on his behalf.

Can an Expert suo moto examine and furnish his opinion?

No, an expert can't initiate examination or analysis and furnish his opinion unless the Investigating Officer has sought his opinion in compliance with the formal procedure. An expert can't do anything suo moto in regard to analysis or examination and formation of his opinion.

Various Rules For Expert Opinion

1. The first rule is of expert educational background. That means even the doctor is examined and is subjected to scrutiny and cross-examination. And if his opinion and observations contained in his statement are supported, then the report can be looked at otherwise not. So, even the examination of a doctor becomes essential.
2. The second test is of the exhibits and the illustrations that the expert brings with him or makes. He should not base his opinion on the basis of memory and abbreviated notes. But he should have the opinion of such a level that even if there is expert evidence of the opposite party, then also, he is able to defend his stand.
3. The third test is of readiness to detail his techniques and procedures. An expert should not be of skillful nature to outlining the procedures that he has followed. And he should be so confident that no qualms can say that he has skipped procedures in reaching his own conclusions.

The conclusive test is that an expert is conservative and is cautious. It is a well-settled principle that the opinion of an Expert should be taken with great caution, and moreover, the decision should not be based simply on the basis of the opinion of an Expert, without a substantial corroboration, as it is unsafe otherwise. The opinion of an Expert by its very nature, weak, and infirm and in itself cannot of itself form the basis for a conviction and should be taken with great caution.

In Ramesh Chandra Agrawal Vs Regency Hospital Ltd. andamp; Ors.on 10 July, 2001, The Hon'ble Supreme Court laid some requirements of the opinion of an expert also the court stated that the opinion of expert is out of knowledge of any layman. In this case Petitioner requested the registrar of National Consumer Dispute Redressal Commission to forward all

relevant papers for the expert opinion. Somehow, it was not done. Supreme Court referred the case back to National Commission with direction to seek the expert opinion and reconsider its judgment in it.

In the case, **State of Himachal Pradesh Vs. Jai Lal and others** , **1999 Supp(2) SCR 318**, it was held by apex court that an expert has to be cross examined in the court along with providing opinion as assigned also some functions of experts were stated.

In the case of **Gade Lakshmi Mangaraju v/s. State Of Andhra Pradesh**, **on 10 July, 2001** the apex court held that the absence of finger impressions does not indicate an absence of a particular person at the scene. In the case where the court has to form an opinion about the science, opinion of such skilled persons in science is a relevant fact, as seen in the case of **Sulochana Vs. A.P.S.R.T.C.**

In **Forest Range officer v. P. Mohammad Ali 1994 AIR 120 1993 SCR (3) 497,** it was held by the Apex court that expert opinion is only the opinion evidence. It does not help the Court in interpretation. The mere opinion of an expert cannot override the positive evidence of the attesting witness. Expert opinion is not necessarily binding on the Court.

In **Muralila v. State of Madhya Pradesh on 30 April, 2021** it was held by the Madhya Pradesh High Court that there is no justification for condemning the opinion evidence of an expert to the same class of evidence as that of an accomplice and insist upon corroboration.

In **Pritam Singh vs. State of Punjab1950 AIR 169,** it was held by the Apex court that disputed footprints in blood near a dead body and going towards the bathroom were compared with those of the accused taken in printer's ink. The expert gave evidence giving points of nine similarities in respect of the right foot and ten in respect of the left foot: And three dissimilarities only in each case and explained the dissimilarities with reference to the different densities of blood and ink. It was held that the comparison stood the test well, and under the circumstances, these foot impressions in blood near the place of the incident were proved to be those of the accused.

Trained dogs are used for detection of crime. The trainer of tracking dogs can give evidence about the behavior of the dog. The evidence of the tracker dog is also relevant U/s-45. In **Abdul Razak V. State of Maharashtra AIR 1970 SC 283** question arises before the Supreme Court whether the evidence of dog tracking is admissible in evidence and if so, whether this evidence will be treated at par with the evidence of scientific experts.

The Supreme Court held that evidence of the trainer of tracking dog is relevant and admissible in evidence, but the evidence can't be treated at par with the evidence of scientific experts analyzing blood or chemicals. The law is made clear by the Supreme Court by enunciating the principle that the evidence of dog tracking is admissible, but not ordinarily of much weight and not at par with the evidence of scientific experts.

Where the opinion of one medical witness is contradicted by another and both experts are equally competent to form an opinion, the court will accept the opinion of that expert which supports the direct evidence in the case. Held in **Piara Singh v. State of PunjabAIR 1977 SC 2274.**

When there is a conflict between the medical evidence and ocular evidence, oral evidence of an eye witness has to get primacy as medical evidence is basically opinionated. Where the direct evidence is not supported by the expert evidence, the evidence is wanting in the most material part of the prosecution case and therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with medical evidence, it is the most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained, it is sufficient to discredit the evidence as well as the entire case, held in **Mani Ram v. State of U.P. 1994 SCC (Cri) 1242.**

In Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204, Hon'ble supreme court held that A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion

and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted it is not the opinion of the medical officer but of the Court.

In Mafabhai Nagarbhai Raval v. State of Gujarat, (1992) 4 SCC 69 Hon'ble supreme court held that Unless there is something inherently defective, court cannot substitute its opinion for that of the doctor .

In Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, Hon'ble supreme court held that Contrary opinion rendered by Professor and Head of the Deptt. of Forensic Science, Medical College (not examined as a witness), being cryptic and based on conjectures, not acceptable.

In Ram Dev v. State of U.P., 1995 Supp (1) SCC 547 Hon'ble supreme court held that Medical opinion is only opinion evidence and it is not decisive. Where oral testimony of eyewitnesses found to be truthful, reliable and trustworthy vague opinion of doctor cannot affect their value and credibility of the prosecution case, On facts, finding of the High Court that all injuries could have been caused by dispersed pellets of a single fire affirmed.

In *Laxmipat Choraria* v. *State of Maharashtra*, (1968) 2 SCR 624 Hon'ble supreme court held that Even if the originals be not forthcoming, opinions as to handwriting can be formed from the photographs. It is common knowledge that experts themselves base their opinion on enlarged photographs. The photos were facsimiles of the writings and could be compared with the enlargements of the admitted comparative material.

IftheCourtissatisfiedthatthereisnotrickphotographyandthephotographisa bove suspicion, the photograph can be received in evidence. It is, of course, always admissible to prove the contents of the document but subject to the safeguards indicated, to prove the authorship.

Evidence of photographs to prove writing or handwriting can only be received if the original cannot be obtained and the photographic reproduction is faithful and not fake or false. So the evidence of photographs as to contents and as to handwriting was receivable.

In Kalua v. State of U.P., 1957 SCR 187 Hon'ble supreme court held that Ballistic expert opinion is conclusive to prove that a cartridge was fired from a particular pistol The expert's evidence in this case shows that he had fired four test cartridges from the pistol Ex.3. He found the individual characteristics of the chamber to have been impressed upon the test cartridge Exs.9 and 10 and those exactly identical markings were present on the paper tube of the cartridge Ex.1. He made micro photographs of some of these individual marks on Exs.1 and 10. In giving his reasons for his opinion, the firearms expert stated that every firearm has individual characteristics on its breech face striking pin and chamber. When a cartridge is fired, gases are generated by the combustion of the powder, creating a pressure of 2 to 20 tons per square inch. Under the effect of this pressure the cap and the paper tube of the cartridge cling firmly with the breech face striking pin and chamber and being of a softer matter the individualities of these parts are impressed upon them. By firing a number of test cartridges from a given firearm and comparing them under a microscope with the evidence cartridge, it can definitely be stated, if the marks are clear, whether the evidence cartridges had been fired or not from that firearm. In the present case the firearms expert made the necessary tests and was careful in what he did. There is no good reason for distrusting his opinion. The High Court was accordingly justified in coming to the conclusion that the cartridge Ex.1, found near the cot of the deceased was fired from the pistol Ext.3 produced by the appellant from his house.

In M Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, *(2014) 2 SCC 576* Hon'ble supreme court held that the result of a genuine DNA test is scientifically accurate. It is nobody's case that the result of the DNA test is not genuine and, therefore, the Court has to proceed on an assumption that the result of the DNA test is accurate. The DNA test reports show that the appellant is not the biological father of the girl child.

In M Musheer Khan v. State of M.P., *(2010) 2 SCC 748* Hon'ble supreme court held that Evidence of fingerprint expert is not substantive evidence but can only be used for corroboration — In the instant case it was never alleged that there was any altercation between deceased and accused

at place of occurrence, or that accused had any physical contact with deceased — Deceased was fired at from point-blank range and he immediately fell down, half inside a car — Thus, no prosecution evidence to the effect that A-4 and A-5 had any occasion to touch car and that too with ring finger — Hence, evidence of fingerprint expert on car irrelevant — Even if evidence of fingerprint expert on scooter accepted, but that by itself insufficient to prove connection with crime — Besides, he failed to give any evidence of fingerprint on alleged weapon of offence which was discovered pursuant to disclosure made by accused.

In *M Anil Rai v. State of Bihar,(2001) 7 SCC 318*Hon'ble supreme court held that Reliable direct evidence should not be rejected on hypothetical medical evidence — Where medical evidence shows two possibilities, the one consistent with the reliable direct evidence should be accepted

It is also not possible to accept the contention that as the doctor who conducted post-mortem examination had stated in his cross-examination that two injuries on deceased C were caused by rifle, prosecution case cannot be believed because what was recovered from A-2 was a gun and not a rifle. The doctor in his examination-in- chief had stated that the injuries on C were caused by firearm. Both gun and rifle are firearms. The expert witness has no where stated that such injuries could not be caused by gunshots. The doctor was an expert on medical science and not a ballistic expert. Otherwise also, the opinion of the expert would lose its significance in view of the reliable, consistent ocular testimony of PW1. Thus such a plea has to be rejected for two reasons, (1) that if direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence, and (2) if medical evidence when properly read shows two alternative possibilities but not any inconsistency, the one consistent with the reliable and satisfactory statements of the eyewitness has to be accepted.

Conclusion

As a general rule, the opinion of a judge, only plays a part and is thus relevant in the decision of a case, and therefore, the opinion of any person other than the judge about any issue or relevant fact is irrelevant in deciding the case. The reason behind such a rule is that if such opinion is made relevant, then that person would be invested with the character of a judge. Thus, Section 45 Is, therefore, an exception to this general rule, as it permits the experts' Opinion to be relevant in deciding the case.

The reason behind this is that the Judge cannot be expected to be an expert in all the fields - especially where the subject matters involve technical knowledge as he is not capable of drawing an inference from the facts which are highly technical. In these circumstances, he needs the help of an expert- who is supposed to have superior knowledge or experience in relation to the subject matter.

(iii) Relevancy and Admissibility Civil Court Judgments in Criminal Courts and Vice-Versa

Introduction:

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. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

There are no apparent provisions in civil law in India regarding admissibility of criminal judgments in civil proceedings. Findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa as standard of proof is different in civil and criminal cases.

There is neither any statutory nor any legal principle 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 basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.

The Indian Evidence Act, mentions the relevancy of other judgments and when they are admissible in Sections 40, 41, 42 and 43. The scheme of the Act is such that admissibility of judgments in other proceedings to criminal proceedings is an exception to the rule, and such exceptional features are laid out in the aforesaid provisions.

Relevant sections:

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

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.

Thus, under Section 40 of the Act, previous judgments are admissible in support of a plea of **res judicata** in civil cases or of **autre fois acquit** or **autre fois convict** in criminal cases.

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

A final judgment, order or decree of a Competent Court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or to take 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 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 confer accrued at the time when such judgment, order or decree come into operation;
2. That any legal character to which it declares and 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 to which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had cased 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 what is known as judgment in rem, which not only bind the parties at the representatives to it, but also are 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:

1. The judgment must be a final judgment.
2. The court delivering the judgment must be competent.
3. The judgment must have been delivered by the court in the exercise of Probate, size of Matrimonial, Admiralty or Insolvency jurisdiction.

4. 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 declared that any person is entitled to any specific thing absolutely.

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 inquiry; such judgments, orders or decrees are not conclusive proof of that which they state.

Illustrations

X sues Y for trespass on his land, Y alleges the existence of a public right of way over the land, which X denies. The existence of a decree in favor of the defendant, in a suit by X against Z or a trespass on the same land, in which Z alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of ways exists.

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 provision of this Act.

Illustrations

- A prosecutes B for adultery with C, As wife. B denies that C is As wife, but the court convicts B of adultery. Afterwards, C is prosecuted for bigamy in marrying B during As lifetime. C says that she never was As wife. The judgment against B is irrelevant as against C.
- A prosecuted B for stealing a cow from him, B is convicted. A, afterwards, sues C for cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.
- A has obtained a decree for the possession of land against B. C,Bs son murders A in consequence. The existence of the judgment is relevant, as showing motive for a crime.

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

Relevant citations

In the case of **Seth Ramdayal Jat v. Laxmi Prasad, AIR 2009 SC 2463,** the respondent secured a loan from the appellant by pledging jewellery. Subsequently, the respondent returned the loan, but the appellant continued to charge interest even after return. In a criminal proceeding the appellant admitted his guilt and the Trial Court imposed a fine on the appellant on the basis of his admission. The respondent filed a suit for the recovery of jewellery, and the Trial Court decreed the suit in favour of the respondent. The appellant preferred an appeal against the decree of the Trial Court and subsequently the First Appellate Court reversed the decree of Trial Court on the ground that the decree was passed on the basis of judgment in a criminal Court which is inadmissible in evidence. Thereafter, the respondent proceeded with a second appeal, and the High Court after framing the substantial question of law decided the case in favour of the respondent. The case then came forward to the Supreme Court as an appeal by the appellant against the order of High Court. The primary issue was whether the admission of guilt in criminal case would be admissible in civil suit. It was held that Section 43 makes judgment in Criminal Court inadmissible for fixing civil liability and further Section 58 of the Indian Evidence Act states that facts admitted need not be proved; therefore facts which were admitted in criminal proceeding would be admissible in civil case in respect of similar transaction. It was stated that any explanation in respect of the said admission could be decided by appreciating evidence, and in the instant case the appellant had previously admitted his guilt in the criminal proceeding and therefore, the admission would be admissible in civil suit. Referring to Section 43, it was stated that in terms of the provision, the judgment in a criminal case shall be admissible provided it is a relevant fact in issue, and its admissibility

otherwise is limited. It was held that a civil proceeding is also a criminal proceeding and may go on simultaneously.

No statute in particular puts an embargo in relation thereto, and a decision in a criminal case is not binding on a civil court. However, 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 held to be admissible.

K .G. Premshanker v. Inspector of Police and Anr. (2002) 8 SCC 87

This case dealt with the quashing of criminal proceedings on the ground of pendency of civil suit on the same cause of action. It was held that if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of the Sections 40 to 43 of the Evidence Act, 1872 are satisfied, but if it cannot be said that the same would be conclusive except as provided in Section 41.

Seth Ramdayal Jat v. Laxmi Prasad (2009) 11 SCC 545

In this particular case the respondent had secured a loan from the appellant and the pledge was jewellery. The issue arose when the appellant continued to charge interest even after the respondent returned the loan. The appellant admitted his guilt in a criminal proceeding, however. Subsequently an order was passed by the High Court, out of which the current appeal arose to the Supreme Court as to whether the admission of guilt in criminal case would be admissible in civil suit. It was held that Section 43 of the Indian Evidence Act makes judgment in criminal Court inadmissible for fixing civil liability; however Section 58 of Act of 1872 also says that facts admitted need not be proved. It was therefore held in this case that facts which were admitted in criminal proceeding would be admissible in civil case in respect of similar transaction and any explanation in respect of said admission can be decided by appreciating evidence.

V.M. Shah v. State of Maharashtra and another (1995) 5 SCC 767

This case dealt with a conviction under Section 630 of Companies Act, 1956. A company initiated proceedings under Section 630 for continued occupation of a flat. The appellant was convicted for an offence under Section 630, and the issue was whether the conviction under Section 630 sustainable. The facts in the form of a previous judgment revealed that the appellant came

into possession of flat through independent tenancy rights from principal landlord and not through the company. The judgment was held as admissible and it was held that the appellant could not be convicted under Section 630.

In **M/s Karamchand Ganga Pershad & Anr. Vs. Union of India & Ors**., **AIR 1971 SC 1244**, Supreme Court, while dealing with the same issue, held as under:

"It is well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true." The said Judgment was delivered by a three-Judge Bench of without taking note of the Constitution Bench Judgment in **M.S. Sherrif Vs. The State of Madras & Ors.**, **AIR 1954 SC 397** on the same issue, wherein it was held as under:

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point."

In **K.G. Premshankar Vs. Inspector of Police & Anr.**, AIR 2002 SC 3372, the Supreme Court placed reliance upon the Judgment of the **Privy Council in Emperor Vs. Khwaja Nazair Ahmad**, AIR 1945 PC 18 wherein it has been held as under:

"It is conceded that the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Moreover, the police investigation was stopped and it cannot be said with certainty that no more information could be obtained. But even if it were not, it is the duty of a criminal court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision which is not binding upon it."

In **Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.**, (2005) 4 SCC 370, the Supreme Court held as under:

"*Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings is entirely different. 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. There is neither any statutory*

provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

In R. Thangavel vs. K. Palaniswamy, On 8th October, 2015, in CRL.A.No.429 of 2016, madras high court held that

> *"30. It is to be pointed out that the judgment in Criminal Court may be relevant only to point out that there was a trial resulting in Conviction or Acquittal. The decision of the concerned Criminal Court cannot be pressed into as one binding in civil action. The Criminal Court Judgment is held admissible evidence in civil proceedings only with an aim of exhibiting that there was a Criminal Case with identical facts entailing an Acquittal. Further, an admission in criminal proceedings cannot be proved in a civil case by furnishing the Criminal Court Judgment as a Civil Court is bound to arrive at a decision by itself, based on the given facts placed before it. Any finding in criminal proceedings, is not binding in civil proceedings as opined by this Court. Besides this, it cannot be forgotten that a judgment of acquittal is irrelevant in a civil suit based on the same cause of action, just as a judgment of conviction is irrelevant in a civil suit that facts on which conviction is passed as per decision ONKARMAL v. BANWARILAL reported in AIR 1962 RAJ. at page 127.31."*

In Ravi Bansal vs. State of Punjab And Another S, on 14 August, 2013, Crl. Misc. No. M-67294 of 2006, Punjab & Haryana High Court held that "As per ratio of judgement referred to herein above, there is no hard and fast rule which can be laid down as to which of the proceedings i.e. *civil* or *criminal* can be stayed. It has been held that possibility of conflicting decision by the *civil* and *criminal* courts cannot be considered as a relevant consideration for stay of proceedings. Hon'ble the Apex *Court* in the case of Karam Chand Ganga Prasad v. Union of Inida(1970) 3 SCC 694, made the following general observations, it is a well established principle of law that the decisions of the *civil* courts are *binding* on the *criminal* courts. The converse is not true. This statement has been held to be confined to the facts of that case in a later decision in K.G Premshanker v. Inspector of Police, 2002 (4) RCR (*Criminal*) 596."

In Sumeet Machines Private Ltd. Nasik & Others… vs. Sumeet Research And Holding Ltd., And others, on October 15th, 1992, in Crl. Original Petition Nos.6219 to 6221 of 1992, Madras High Court held that "*11. Courts in this country have also conceived of situations of conflicting decisions being arrived at by the civil and criminal forums, respecting a transaction giving rise to cause of actions for both actions This sort of a view has been taken in Ramanamma v. Appalanarasayya (AIR 1932 Madras 254) and a Division Bench of this Court observed as under; It has often been said in this Court that, where a civil suit and a criminal complaint have been filed, which raise the same issues between the same parties, the hearing of the complaint should be stayed until the suit has been decided. And this has been put on the ground that it will avoid a possible conflict in decision. Our brother Jackson has pointed out in a judgment, in which we entirely concur, Gnansigamani Nadar v. Vedamuthu Nadar (AIR 1927 Madras 308), that the risk of such a conflict is one that is inherent in the division of causes into criminal and civil. The judgment of neither is binding on the other and each must decide the cause of the evidence before it. If they arrive at different conclusions, it is regrettable, but unavoidable*"

In Rizwan Shah… vs. Shweta Joshi & Ors…, on 20 December, 2011, Delhi High Court held that "*27. It is further the contention of counsel for respondents that the findings by a criminal court have no bearing on a civil suit for malicious prosecution and the judgment of the criminal court can only be used as an evidence to prove the acquittal of the appellant and not beyond. To support the aforementioned contention, the counsel for respondent places reliance upon Kishan Singh (D) through LRS. v. Gurpal Singh reported in (2010) 4 JCC 2547 and more particularly at para 19 which reads as under:19. 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 vice versa. 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 principle 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 basis of the evidence adduced therein. However, there may be cases where the provisions of sections 41 to 43 of the Indian evidence act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."

In **Rattan Kaur v. State Of Punjab**, **on 5 March, 2009** the Punjab and Haryana High court held that *"..., on the preponderance of evidence. They further submitted that the judgment of the Civil Court, was only binding upon the Criminal Court, to some extent. They further ...the judgment of the Civil Court, is binding, on the Criminal Court, it was held in K.G Premshanker v. Inspector of Police and another, (2002) 8, SCC, 8...required to be decided on the preponderance of evidence. Merely, on the basis of the Civil Court judgments, it could not be conclusively held, in the criminal trial, that the sale deeds ..."*

In **Satpal and another vs State of Punjab another, on 24 November, 2020,** the Punjab and Haryana High court held that once the dispute has been settled on the civil side and upheld by this court in regular second appeal, and the said judgment has attained its finality, the criminal proceedings cannot be allowed to continue on the same issue as the finding of fact recorded by the civil court is binding on the criminal court. Consequently, the complaint is liable to be quashed.

In a Criminal Appeal No.853 OF 2007 of AP HIGH Court dated 14.9.2023, Single Bench of Justice A.V.Ravindra Babu observed, "*Needless to point out here that the judgment of the Civil Court is binding on the Criminal Court. The learned Magistrate elaborately discussed all these aspects. So, it is quite clear that the claim of the complainant before a competent Senior Civil Judge claiming huge amount of Rs.75,000/- was disbelieved by holding the amount due was only Rs.25,000/-. So, in such circumstances, it is really doubtful as to whether accused could have issued Ex.P-1 for a sum of Rs.75,000/-.*"

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