

EVIDENCE ACT, 1872

Evidence - Appreciation - Police officers - Their evidence cannot be rejected simply because they were members of the preventive or raiding party if no hostility or animus is attributable to the police officers concerned. (Ian Roylance Stillman Vs State of H.P.) 2002(3) Criminal Court Cases 417 (H.P)

Evidence - Appreciation - Witness called by prosecution permitted to be cross examined by prosecution - Such a witness loses credibility and cannot be relied upon by the defence. (Ian Roylance Stillman Vs State of H.P.) 2002(3) Criminal Court Cases 417 (H.P)

Evidence - Audio Cassettes - Admissibility in evidence - Evidence to be admitted provisionally subject to right of parties to pursue their objections at final stage of hearing of proceeding - Parties shall be entitled to cross-examine witness in respect of said evidence without prejudice to their right to pursue their objections. (Boman P.Irani Vs Manilal P.Gala) AIR 2004 Bombay 123

SC **Evidence** - If major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. (Syed Ibrahim Vs State of Andhra Pradesh) 2006(3) Apex Court Judgments 59 (S.C.) : 2006(3) Criminal Court Cases 932 (S.C.)

SC **Evidence** - Plea taken in written statement - No evidence led to substantiate such a plea - Plea not pressed in the trial Court (In the instant case before the Industrial Tribunal-cum-Labour Court) - Plea also not raised in the High Court - Such plea not available in the Supreme Court. (General Manager, Haryana Roadways Vs Rudhan Singh) 2005(2) Apex Court Judgments 57 (S.C.)

Evidence - Question put to plaintiff in cross examination as to whether payment was made voluntarily - Held, this amounts to implied admission of the payment made by the plaintiff. (Louiz Vs Augustin) 2004(3) Civil Court Cases 464 (Kerala)

SC **Evidence Act, 1872** - Evidence Act does not make any distinction

between a civil proceeding and a criminal proceeding. (Ravinder Singh Gorkhi Vs State of U.P.) 2006(2) Apex Court Judgments 458 (S.C.) : 2006(3) Criminal Court Cases 577 (S.C.)

SC **Evidence Act, 1872, Section 3** - Air Gun recovered in two parts i.e. wooden part and iron part separately - Evidence of PW9 cannot be discarded merely for this reason as for the purpose of carrying out tests in forensic laboratory, the iron part of the gun is material. (Sivakumar Vs State by Inspector of Police) 2006(1) Criminal Court Cases 799 (S.C.)

SC **Evidence Act, 1872, Section 3** - Criminal trial - Defence witness - Evidence of defence witness not to be ignored - Like any other witnesses, his evidence has to be tested on the touchstone of reliability, credibility and trustworthiness particularly when he attempts to resile and speak against records and in derogation of his earlier conduct and behaviour - If after doing so, Court finds it to be untruthful, there is no legal bar in discarding it. (Banti @ Guddu Vs State of Madhya Pradesh) 2003(2) Apex Court Judgments 608 (S.C.) : 2004(1) Criminal Court Cases 27 (S.C.)

Evidence Act, 1872, Section 3 - Defence witnesses - Evidence of defence witnesses and prosecution witnesses stand on equal footing - No premium is to be given to the prosecution witnesses - If evidence of defence witnesses is truthful and reliable, then reliance should be placed on the same - Defence evidence should not be discarded simply on the ground that they were appearing in defence. (Sanjay Vs State of Haryana) 2005(3) Criminal Court Cases 33 (P&H)

SC **Evidence Act, 1872, Section 3** - Evidence - Rule of corroboration - One piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. (State of Punjab Vs Parveen Kumar) 2005(1) Criminal Court Cases 325 (S.C.)

Evidence Act, 1872, Section 3 - Evidence of eye-witness - Court should take proper care while examining the evidence of eye-witnesses and particularly the relative witnesses - If evidence of such witnesses found is found full of contradiction, the variance in evidence is of material nature and the evidence is not trustworthy then it should be discarded. (Anda Ram & Anr. Vs State) 2005(2) Criminal Court Cases 528 (Rajasthan)

SC **Evidence Act, 1872, Section 3** - Eye Witness - Expert Witness - Doctor - When evidence of eye witness is truthful and credible opinionative evidence of doctor cannot wipe out the effect of eye witness evidence. (Main Pal & Anr. Vs State of Haryana & Ors.) 2004(2) Criminal Court Cases 746 (S.C.) : 2004(2) Apex Court Judgments 10 (S.C.)

Evidence Act, 1872, Section 3 - Inconsistent statements - Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. (Amrik Singh Vs State of Punjab) 2005(4) Criminal Court Cases 900 (P&H)

SC **Evidence Act, 1872, Section 3** - Investigating Officer - Non examination - Does not in any way create any dent in the prosecution case much less affect the credibility of otherwise trustworthy testimony of eye witnesses - It is always desirable for prosecution to examine the Investigating Officer. (Raj Kishore Jha Vs State of Bihar & Ors.) 2003(2) Apex Court Judgments 656 (S.C.) : 2004(1) Criminal Court Cases 213 (S.C.)

SC **Evidence Act, 1872, Section 3** - Part acceptance and discarding unreliable part of testimony of a witness - Permissible while appreciating the evidence of a witness. (Haji Khan Vs State of Uttar Pradesh) 2006(1) Apex Court Judgments 691 (S.C.) : 2006(1) Criminal Court Cases 525 (S.C.)

Evidence Act, 1872, Section 3 - Part of testimony of a witness if unsafe to rely, it cannot be discarded in its entirety - Court after consideration of all the relevant circumstances has to come to a conclusion which part of the testimony of the witness to accept and which to reject. (Balwinder Singh alias Gudu Vs State of Punjab) 2002(1) Criminal Court Cases 201 (P&H)

SC **Evidence Act, 1872, Section 3** - Pellets noticed by autopsy surgeon not recovered - Doctor who conducted post mortem stated that foreign body seen through X-ray could not be recovered despite great effort made and that he noticed the penetrating injury in the vital organ of the chest part - Held, non recovery of pellets from the body of deceased during post mortem examination is not very material so as to discredit the entire prosecution case. (Sivakumar Vs State by Inspector of Police) 2006(1) Criminal Court Cases

799 (S.C.)

Evidence Act, 1872, Section 3 - Pleading of false facts - Statement on oath contrary to own pleading - Held, evidence of such party cannot be relied upon. (M/s Omprakash Har Narain & Sons & Ors. Vs Vijaya Bank Ltd.) 2003(1) Civil Court Cases 4 (Rajasthan)

SC **Evidence Act, 1872, Section 3** - Proof of title - Entries in Municipal record - An entry in municipal record is not evidence of title - The entry shows the person who is held liable to pay the rates and taxes to the municipality. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

SC **Evidence Act, 1872, Section 3** - 'Proved', 'disproved' and 'not proved' in civil or criminal case is one and the same - A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists - A fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

SC **Evidence Act, 1872, Section 3** - Suit based on title - Plaintiff has to succeed or fail on the title he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

Evidence Act, 1872, Section 3 - When defendant himself is not in a position to prove the fact, his witnesses cannot improve the case. (M/s Omprakash Har Narain & Sons & Ors. Vs Vijaya Bank Ltd.) 2003(1) Civil Court Cases 4 (Rajasthan)

SC **Evidence Act, 1872, Section 3** - Witness - Conduct - Unusual conduct - Appreciation of evidence - Every person cannot act or react in a particular

or very same way and it would depend on mental setup, extent and nature of fear and spot reaction to be seen in totality of circumstances. (Main Pal & Anr. Vs State of Haryana) 2004(2) Criminal Court Cases 746 (S.C.) : 2004(2) Apex Court Judgments 10 (S.C.)

SC **Evidence Act, 1872, Section 3, Criminal Procedure Code, 1973, Section 154** - FIR - Name of witnesses not mentioned in FIR - By itself not a ground to doubt their evidence. (Raj Kishore Jha Vs State of Bihar & Ors.) 2003(2) Apex Court Judgments 656 (S.C.) : 2004(1) Criminal Court Cases 213 (S.C.)

Evidence Act, 1872, Section 3, Criminal Procedure Code, 1973, Section 161 - Delay in recording statement of a witness - Does not affect the credibility of such witness unless it is shown that such witness had some motive to implicate the accused falsely in the crime. (The Registrar General, High Court of Karnataka Vs Shivu & Anr.) 2006(2) Criminal Court Cases 346 (Karnataka) (DB)

Evidence Act, 1872, Section 3, Dowry Prohibition Act, 1961, Sections 3, 6 - Dowry demand - Evidence of close relatives - Cannot be discarded merely because no independent witness is examined if their evidence is consistent and has withstood rigour of cross-examination - Conviction based on such evidence cannot be interfered with. (State By Chikkanayakanahalli Police Vs Muniyappa & Ors.) 2006(3) Criminal Court Cases 891 (Karnataka) (DB)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Section 300 - Murder - Death of young housewife within her house - Medical evidence that death was homicidal and not suicidal - No evidence, either direct or circumstantial - Suspicion, however, grave cannot be a substitute for proof through evidence beyond reasonable doubt which is requirement to sustain conviction - Held, in absence of such evidence, accused to be given benefit of doubt - Order of acquittal not to be interfered with. (State by Mico Layout Police Station Vs Devaraj alias Ramashankarappa) 2002(3) Criminal Court Cases 693 (Karnataka)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Section 300 - Murder - Injuries suffered by accused on a vital part of the body - Injuries suffered serious and could not be self inflicted - Failure of prosecution to

explain injuries - Plea of self defence not taken by accused - Held, omission on part of accused to take plea of self defence does not relieve burden of prosecution to prove case beyond reasonable doubt - Accused entitled to benefit of doubt and order of acquittal not to be interfered with. (State by Hukeri Police Vs Bhimraj Ramappa Naik) 2002(2) Criminal Court Cases 37 (Kant.)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Section 376 - Rape - Medical evidence - Prosecutrix stated that she was forcibly dragged and raped - No evidence to suggest marks of assault or that she cried for help - No injuries on her private parts - Opinion of doctor that no sexual intercourse committed - Conviction set aside. (Bhagwan Charan Mate Vs State of Maharashtra) 2006(4) Criminal Court Cases 595 (Bombay)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 300, Exception 4, 302, 304 Part II - Accused visiting house of deceased to demand return of money - Quarrel arose - In course of quarrel accused causing fatal injuries with knife on shoulder and neck of deceased - Knife not recovered - No material to show that accused brought knife along with him - Crime committed without premeditation - Act though done with knowledge that it was likely to cause death but without intention to cause death - Conviction altered from S.302 to S.304 Part II - Sentence reduced from life imprisonment to seven year RI and fine of Rs.20,000/- to be paid to daughter of deceased. (Prakash Vs State) 2003(1) Criminal Court Cases 37 (Karnataka)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 302/34 - Murder - Conviction - Appreciation of evidence - Allegations against appellants that they gave beating to deceased and he died on the spot - Testimony of two eye-witnesses found trustworthy and reliable - Corroborated by testimony of other witnesses - Land dispute between the parties - Medical evidence showed that 23 injuries including fractures and haematomas were sufficient in ordinary course of nature to cause death - No error found in the judgment passed by Court below. (Anda Ram & Anr. Vs State) 2005(2) Criminal Court Cases 528 (Rajasthan)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 323, 323 & 34 - Interested and injured witnesses - Their evidence corroborated by medical evidence - There is no rule that such evidence should not be

admitted unless there is corroboration by third party or independent witness.
(State Vs Sheku alias Shekhara Poojary) 2002(3) Criminal Court Cases 640
(Karnataka)

SC **Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 302, 149** - Contention that incident happened after sunset and witnesses could not have identified assailants and that witnesses were standing at a distance and due to paucity of light, they had no opportunity to identify assailants - Incident took place in the evening when deceased and witnesses were grazing cattle in their field and there would not have been much darkness - In cross examination no suggestion put to witnesses that there was no light and they were unable to see incident - Contention not acceptable. (Mishrilal & Ors. Vs State of M.P. & Ors.) 2005(2) Apex Court Judgments 637 (S.C.)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 300, 498-A, Dowry Prohibition Act, 1961, Sections 3, 4 - Dowry death - Unnatural death within two years of marriage - Burn injuries - Statement of deceased made at time of admission in hospital and recorded in accident register of hospital by duty doctor that deceased sustained burn injuries as a result of accidental stove burst in which saree she was wearing caught fire - Prosecution case that deceased was set on fire - Failure of prosecution to collect broken pieces of stove that is stated to have accidentally burnt in order to disprove statement recorded in hospital register - Trial Court acquitted accused on basis of statement recorded in hospital register - No interference warranted. (State by Kadugondanahalli Police Station Vs B.Ramesh) 2006(4) Criminal Court Cases 146 (Karnataka) (DB)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 302/34 - Murder - Conviction - Appreciation of evidence - Allegations against appellants that they gave beating to deceased and he died on the spot - Testimony of two eye-witnesses found trustworthy and reliable - Corroborated by testimony of other witnesses - Land dispute between the parties - Medical evidence showed that 23 injuries including fractures and haematomas were sufficient in ordinary course of nature to cause death - No error found in the judgment passed by Court below. (Anda Ram & Anr. Vs State) 2005(2) Criminal Court Cases 528 (Rajasthan)

Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 376, 302 - Rape and murder - Minor girl - Accused following victim who was

on her way to agricultural field in morning and founding her alone, dragged her to some distance and committed rape and murdered her by strangulation - Mother finding that her daughter did not return home after long time, herself going to field and loudly calling her daughter by her name - On hearing her voice, accused running away from scene, leaving behind dead body of victim - On seeing daughter dead, raising hue and cry which attracted villagers who immediately apprehended accused - Medical evidence indicating commission of rape - Involvement of accused earlier in two cases of attempt to rape and Panchayat letting them off with warning without reporting the matter to police - No scope from established facts to presume innocence of accused - Conclusion of trial Court about guilt of accused having been proved beyond reasonable doubt is just and correct. (The Registrar General, High Court of Karnataka Vs Shivu & Anr.) 2006(2) Criminal Court Cases 346 (Karnataka) (DB)

SC **Evidence Act, 1872, Section 3, Indian Penal Code, 1860, Sections 302, 149** - Contention that incident happened after sunset and witnesses could not have identified assailants and that witnesses were standing at a distance and due to paucity of light, they had no opportunity to identify assailants - Incident took place in the evening when deceased and witnesses were grazing cattle in their field and there would not have been much darkness - In cross examination no suggestion put to witnesses that there was no light and they were unable to see incident - Contention not acceptable. (Mishrilal & Ors. Vs State of M.P. & Ors.) 2005(3) Criminal Court Cases 209 (S.C.)

Evidence Act, 1872, Section 3, IPC, 1860, Section 300 - Witness not disclosing fact for days - By itself not a ground to discard his evidence - Different persons react differently to a given situation - There is no rule of human reaction on basis of non-conformity wherewith piece of evidence may be discarded. (Jinnappa Pareesh Hulakund Vs State of Karnataka) 2002(1) Criminal Court Cases 95 (Kant.)

Evidence Act, 1872, Sections 3 & 114 - Defendant appeared as a witness - As his defence was struck off as such his statement discontinued and closed - Plaintiff had no opportunity to cross examine the defendant - Incomplete evidence cannot be treated as evidence and no adverse inference can be drawn due to absence of cross-examination. (Raees Ahmed Vs Shrigopal Prakash) 2003(1) Civil Court Cases 666 (Rajasthan)

Evidence Act, 1872, Sections 3 & 32, Indian Penal Code, 1860, Sections 498-A, 300 - Death by burn injuries - Married woman - Victim succumbed to burn injuries - Two dying declarations contradicting each other - Earlier one recorded by police immediately after deceased was brought to hospital and in presence of doctor on duty to the effect that burn injuries on her body were accidental - Another oral dying declaration alleged to have been made by deceased to her father when he came to see her at hospital and recorded by police from father twenty days after her death, to the effect that accused persons, viz. her husband and in-laws poured kerosene on her and set her on fire - In case of two dying declarations the earlier version should be accepted unless the same is shown to be not trustworthy - Acquittal on basis of dying declaration recorded earlier, held, proper. (State by Mahila Police, Mysore Vs Gnanendra & Ors.) 2006(4) Criminal Court Cases 289 (Karnataka) (DB)

Evidence Act, 1872, Sections 3 & 8 - Tape recorded conversation - It is admissible in evidence - However, there being a lot of space for manoeuvring hence strict proof as to every aspect of its authenticity and perfection is to be insisted. (Pootholi Damodaran Nair Vs Babu) 2005(2) Civil Court Cases 583 (Kerala)

Evidence Act, 1872, Sections 3, 134, IPC, 1860, Section 300 - Sole eye witness who was accompanying deceased at time of incident - Corroborated by evidence of doctor who had conducted autopsy and further corroborated by other witnesses - Conviction based on such evidence is to be held proper. (Jinnappa Pareesh Hulakund Vs State of Karnataka) 2002(1) Criminal Court Cases 95 (Kant.)

Evidence Act, 1872, Sections 3, 35 & 45, Indian Penal Code, 1860, Sections 325, 323 & 34 - Wound certificate - Non examination of doctor - Not fatal where defence not disputing wound certificate - Examination of doctor is more important from angle of defence as it is open to defence to question correctness of wound certificate and of entries in official records by examining doctor - Acquittal on ground of non examination of doctor is not sustainable in law. (State Vs Sheku alias Shekhara Poojary) 2002(3) Criminal Court Cases 640 (Karnataka)

SC Evidence Act, 1872, Sections 3, 4 - “May presume”, “Shall presume” and “Conclusive proof” - Whenever it is directed that Court shall presume

a fact it shall regard such fact as proved unless disproved - Expression “shall presume” cannot be held to be synonymous with “conclusive proof”. (M.S.Narayana Menon @ Mani Vs State of Kerala & Anr.) 2006(2) Apex Court Judgments 411 (S.C.) : 2006(3) Civil Court Cases 468 (S.C.) : 2006(3) Criminal Court Cases 665 (S.C.)

SC **Evidence Act, 1872, Sections 3, 45** - Witness - Relative - Mere relation does not affect the credibility of witness - Expert Witness - Doctor - Court to critically examine the same and find whether same is credible and cogent. (Main Pal & Anr. Vs State of Haryana & Ors.) 2004(2) Criminal Court Cases 746 (S.C.) : 2004(2) Apex Court Judgments 10 (S.C.)

Evidence Act, 1872, Sections 3, 74 - Wound certificate - Issued by doctor in discharge of his official duties - Held, is a public document, contents of which are admissible in evidence - Can be tendered in evidence. (State Vs Sheku alias Shekhara Poojary) 2002(3) Criminal Court Cases 640 (Karnataka)

Evidence Act, 1872, Sections 4, 35 - Date of birth - Entry in school register - Is admissible but not conclusive proof of date of birth or age of a person. (Bhami Bewa Vs Krushna Chandra Swain @ Gochhayat & Ors.) 2004(2) Civil Court Cases 543 (Orissa)

SC **Evidence Act, 1872, Sections 4, 73, Constitution of India, 1950, Articles 23** - Specimen of handwriting or thumb impression of person in custody - Article 23 of the Constitution was not infringed by taking the specimen handwriting or signature or thumb impressions of a person in custody. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

SC **Evidence Act, 1872, Section 4** - “May presume” & “Shall presume” - Presumptions falling under the former category are compendiously known as “factual presumptions” or “discretionary presumptions” and those falling under the latter as “legal presumptions” or “compulsory presumptions” - Expression “shall be presumed” employed in Section 4(1) of the Act has the import of compulsion. (State of Andhra Pradesh Vs V.Vasudeva Rao) 2004(1) Criminal Court Cases 137 (S.C.)

Evidence Act, 1872, Section 6 - Admissibility of statement of fact on account of spontaneity and immediacy - Rape of 14 years girl - Victim reached home and narrated incident to her mother and committed suicide within half an hour - Statement of mother is relevant piece of evidence. (Sunil Kumar Arjun Das Gupta Vs State of Madhya Pradesh) 2003(1) Criminal Court Cases 245 (M.P.)

Evidence Act, 1872, Section 6, Indian Penal Code, 1860, Section 376 - Rape of married woman - She immediately narrated entire occurrence to her mother-in-law - This evidence is admissible under S.6 of Evidence Act. (Gajjan Singh Vs State of Haryana) 2003(2) Criminal Court Cases 206 (P&H)

SC Evidence Act, 1872, Section 6, Indian Penal Code, 1860, Sections 392/120B - Robbery - Accused declining to participate in test identification parade - Accused produced in Court 'baparda' (with face muffled) - Testimony of witnesses identifying accused in Court on the very next day of his arrest - Held, reliable. (Munna Vs State (N.C.T. of Delhi)) 2004(2) Apex Court Judgments 201 (S.C.)

SC Evidence Act, 1872, Section 6, Indian Telegraph Act, 1885, Section 5(2), Indian Telegraph Rules, Rule 419A - Res Gestae - Interception of Telephone calls - Tape recorded telephone interceptions - Illegal recording - Power to Intercept and Modalities and procedure to intercept governed by section 5 and rule 419A - Breach of rule 419A - Effect - Non compliance or inadequate compliance of Act or rules does not per se affect admissibility of Intercepted telephone conversation - Contemporaneous tape recording of conversation is admissible as res gestae. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Section 8 - Absconding after incident - May lend some weight to other evidence establishing the guilt of accused but by itself it is hardly an evidence of guilt. (Panchu @ Panchanan Mohapatra Vs State of Orissa) 2003(2) Criminal Court Cases 139 (Orissa)

SC Evidence Act, 1872, Section 8 - Conduct - Conduct must have close nexus with fact in issue or relevant fact - Mere statements as distinguished from acts do not constitute 'conduct' unless those statements accompany and

explain acts other than statements - Such statements are evidence of res gestae. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Section 8 - Motive - Case based on circumstantial evidence - Motive - Lends corroboration to prosecution case but absence or non-proof of it will not create a doubt on the case if circumstantial evidence is reliable and trustworthy. (Kamala Muniratnam & Anr. Vs State of A.P.) 2004(1) Criminal Court Cases 829 (A.P.)

SC **Evidence Act, 1872, Section 8** - Murder case - Based on circumstantial evidence - Presence of accused at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act. (A.N.Venkatesh & Anr. Vs State of Karnataka) 2005(4) Criminal Court Cases 18 (S.C.)

Evidence Act, 1872, Section 8, Indian Penal Code, 1860, Section 300 - Murder - By husband of his estranged wife who had left him and was living with her parents - Fact that deceased wife had some time before her death, had secured order for maintenance in her favour and that she had also filed complaint of offence of bigamy against her husband, establishes motive of husband to finish her off - It is immaterial whether motive attributed to accused is too remote or inadequate to fix charge of murder when there is direct, clear and convincing evidence of crime. (Jinnappa Pareesh Hulakund Vs State of Karnataka) 2002(1) Criminal Court Cases 95 (Kant.)

Evidence Act, 1872, Section 8, Indian Penal Code, 1860, Section 302 - Murder of father - Accused had a motive to commit murder of his father - Several injuries inflicted on head of deceased - Evidence of eye witnesses unblemished - Medical evidence and ocular evidence in consonance with each other - Conviction upheld. (Ajit Singh Vs State of Punjab) 2005(4) Criminal Court Cases 843 (P&H) (DB)

Evidence Act, 1872, Sections 8 & 21, Criminal Procedure Code, 1973, Section 154 - FIR - Admissible and inadmissible part - After excluding inadmissible part there is no legal bar against using the admissible part of the first report in evidence for the purpose of appreciating the other evidence led by the prosecution, likewise the factum of lodging of the first report by

the appellant, on the date and time which is not in dispute. (Guman Mal Vs State of Rajasthan) 2003(2) Criminal Court Cases 330 (Rajasthan)

Evidence Act, 1872, Sections 8, 154, 21 & 25 - FIR lodged by accused - The fact of his giving the information to the police is admissible against him as evidence of his conduct u/s 8 of Evidence Act and to the extent it is non-confessional in nature, it is also relevant but the confessional part of FIR by the accused to police officer cannot be used at all against him in view of the ban of S.25 of Evidence Act. (Bandu Yedu Metkari Vs State of Maharashtra) 2002(2) Criminal Court Cases 592 (Bombay)

Evidence Act, 1872, Sections 8, 21 & 27, Criminal Procedure Code, 1973, Section 154, Indian Penal Code, 1860, Section 302 - FIR lodged by accused himself and gave details as to how the incident in question took place - Trial Court held the part of facts disclosed in FIR as admissible and not confessional in nature and relying upon the same besides motive and other evidence convicted the accused - Held, the only admissible circumstances in FIR were the motive of the crime, relationship of accused with his sister PW 6, her presence in the house at the time of commission of crime and presence of blood stains on the clothes of accused seized by the police when accused had gone to lodge FIR - Rest of the contents of FIR being confessional in nature could not be used against the accused - In the circumstances conviction and sentence set aside. (Bandu Yedu Metkari Vs State of Maharashtra) 2002(2) Criminal Court Cases 592 (Bombay)

SC Evidence Act, 1872, Sections 9, 3 - Murder case involving two accused - Finger prints of accused No.2 found at scene of occurrence - Plea that prosecution failed to prove that finger prints used for comparison were that of accused No.2 cannot be raised by 1st accused, when accused No.2 has not challenged the evidence. (Gade Lakshmi Mangraju alias Ramesh Vs State of Andhra Pradesh) 2002(2) Criminal Court Cases 715 (S.C.)

SC Evidence Act, 1872, Section 9 - Dacoity with murder - Evidence of neighbour that he went to place and remained there for 2-3 minutes and flashed torch at dacoits to identify them - Evidence not believable - Witness was concerned with his own safety and could not dare to flash torch light on armed dacoits. (Umesh Kamat Vs State of Bihar) 2005(1) Criminal Court Cases 923 (S.C.)

SC **Evidence Act, 1872, Section 9** - Gold ornaments - Identification - Female kin of deceased female is in a better position than a male kin to identify the jewellery or ornaments worn by a woman. (Gade Lakshmi Mangraju alias Ramesh Vs State of Andhra Pradesh) 2002(2) Criminal Court Cases 715 (S.C.)

SC **Evidence Act, 1872, Section 9** - Identification - Substantive evidence is identification in Court and test identification parade provides corroboration to identification of witness in Court - Weight which is to be attached to evidence of identification in Court not preceded by test identification parade is a matter for Courts of fact to examine. (Malkhansingh & Ors. Vs State of Madhya Pradesh) 2003(3) Criminal Court Cases 206 (S.C.) : 2003(2) Apex Court Judgments 331 (S.C.)

SC **Evidence Act, 1872, Section 9** - Identification of accused - Photographs - If during the course of investigation witness gives identifying features of assailants the same could be confirmed by I.O. by showing the photographs of the suspect but I.O. should not first show a single photograph but should show more than one photograph of the same person, if available - If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance. (Gopalakrishnan Vs Sadanand Naik) 2005(1) Criminal Court Cases 515 (S.C.)

SC **Evidence Act, 1872, Section 9** - Identification of accused - Photographs - Offence u/ss 143, 147 and 304 Part II IPC - Investigating Officer procured the album containing the photographs with the names written underneath and showed this album to the eye witnesses and recorded their statements u/s 161 Cr.P.C. - Procedure adopted by police not justified under law - Conviction set aside. (Gopalakrishnan Vs Sadanand Naik) 2005(1) Criminal Court Cases 515 (S.C.)

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SC **Evidence Act, 1872, Section 9** - Identification of accused - Photographs - Offence u/ss 143, 147 and 304 Part II Indian Penal Code, 1860 - Investigating Officer procured the album containing the photographs with the names written underneath and showed this album to the eye witnesses and recorded their statements u/s 161 Criminal Procedure Code, 1973 - Procedure adopted by police not justified under law - Conviction set aside. (Gopalakrishnan Vs Sadanand Naik) 2005(1) Criminal Court Cases 515 (S.C.)

Evidence Act, 1872, Section 9 - Identification parade - Falls within the realm of investigation as such it is required to be held during the investigation of the case. (Raju Gurung Vs State) 2002(2) Criminal Court Cases 335 (P&H)

Evidence Act, 1872, Section 9 - Photographs - Without negatives - Are inadmissible in evidence. (Arun Balakrishnan Iyer & Anr. Vs M/s Soni Hospital & Ors.) 2004(2) Civil Court Cases 183 (Madras)

SC **Evidence Act, 1872, Section 9** - Robbery - Test identification parade - Accused arrested, kept in muffled face and produced before Court next day - Accused refused to participate in Test Identification parade - In such a case identification of accused by P.W. for the first time in Court, relied upon. (Munna Vs State (N.C.T. of Delhi)) 2004(1) Criminal Court Cases 277 (S.C.)

SC **Evidence Act, 1872, Section 9** - Sniffer dogs - Criminal Courts need not bother much about the evidence based on sniffer dogs. (Gade Lakshmi Mangraju alias Ramesh Vs State of Andhra Pradesh) 2002(2) Criminal Court Cases 715 (S.C.)

Evidence Act, 1872, Section 9 - Test identification parade - Conducted after one month of arrest - In between accused produced in Court for remand - No effort made to conceal his identity - In absence of corroborative evidence, implicit reliance on identification made at the test identification parade cannot be made. (Kansa alias Kansraj Vs State of U.P.) 2002(2) Criminal Court Cases 629 (All.)

SC **Evidence Act, 1872, Section 9** - Test Identification Parade - Evidentiary Value - It is done for investigation - Identification in court is Substantive evidence - Test identification parade has only corroborative value - TI parade not conducted - Not fatal when identification in court is trustworthy. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

SC **Evidence Act, 1872, Section 9** - Test identification parade - In the absence of identification in Court at the time of tendering evidence the results of test identification parade are of little value. (Umesh Kamat Vs State of Bihar) 2005(1) Criminal Court Cases 923 (S.C.)

SC **Evidence Act, 1872, Section 9** - Test identification parade - Not a substantive piece of evidence - It is done only for the satisfaction of the prosecution that the investigation was moving in the right direction. (Ayyub etc. Vs State of U.P.) 2002(2) Criminal Court Cases 485 (S.C.)

Evidence Act, 1872, Section 9 - Test identification parade - One of accused not named in FIR - He identified in Court for the first time - Conviction set aside - If an accused is not named in First Information Report, his identification in the Court cannot form the basis of conviction. (Pardeep Kumar Vs State of Haryana) 2006(1) Criminal Court Cases 486 (P&H) (DB)

SC **Evidence Act, 1872, Section 9, Indian Penal Code, 1860, Section 302** - Murder - Test identification parade - Accused named in FIR but PW did not name him before police - No test identification parade held - PW examined in Court after 2-1/2 years and identified the accused in Court - Held, accused cannot be convicted on belated identification. (Dana Yadav @ Dahu & Ors. Vs State of Bihar) 2003(1) Criminal Court Cases 706 (S.C.)

SC **Evidence Act, 1872, Section 9, Indian Penal Code, 1860, Section 304 Part II** - Test identification parade - Evidentiary value - Whole idea of test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source - Test is done to check upon their veracity - Main object of holding an identification parade, during the

investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime - Identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act - It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused - This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade - If circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. (Munshi Singh Gautam (D) & Ors. Vs State of M.P.) 2005(1) Criminal Court Cases 645 (S.C.)

Evidence Act, 1872, Section 9, Indian Penal Code, 1860, Section 302 - Test identification parade - Murder by an unknown person - Test Identification parade conducted after a gap of 14 days - Delay was only procedural - Eye witnesses identified the accused - Held, there was no unreasonable delay in conducting test identification parade - Test identification paraded relied upon - Conviction upheld. (Bhupinder Singh Vs State of Punjab) 2006(1) Criminal Court Cases 913 (P&H) (DB)

SC Evidence Act, 1872, Section 9, Indian Penal Code, 1860, Section 304 Part II - Test identification parade - Evidentiary value - Whole idea of test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source - Test is done to check upon their veracity - Main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime - Identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act - It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused - This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade - If circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. (Munshi Singh Gautam (D) & Ors. Vs State of M.P.) 2005(1) Criminal Court Cases 645 (S.C.)

Evidence Act, 1872, Section 9, Indian Penal Code, 1860, Section

395 - Dacoity by six accused - One accused identified in test identification parade by only one PW - Other three PWs were unable to identify - Accused acquitted giving benefit of doubt. (Musku Pentu in Central Prison, Warangal & Anr. Vs State of A.P. rep. by Public Prosecutor of High Court) 2005(3) Criminal Court Cases 383 (A.P.)

Evidence Act, 1872, Section 9, Narcotics Drugs and Psychotropic Substances Act, 1985, Section 15 - Test Identification Parade (TIP) - Recovery of 19 bags of Poppy Husk - Each bag weighing 35 kgs. - Appellants were sitting on gunny bags - On seeing police they ran away and managed to escape - Police already knew accused and were identified in Court - In such circumstances TIP has no meaning. (Mukhtiar Singh Vs State of Punjab) 2006(4) Criminal Court Cases 948 (P&H) (DB)

SC **Evidence Act, 1872, Sections 10, 30** - Conspiracy to murder - Confession of co-accused - If prima facie evidence of the existence of a conspiracy is given and accepted, the evidence of acts and statements made by anyone of the conspirators in furtherance of the common object is admissible against all - Confession recorded long after the offence when conspiracy had culminated - Section 10 of Evidence Act cannot be pressed into service. (Jayendra Saraswathi Swamigal Vs State of Tamil Nadu) 2005(1) Apex Court Judgments 249 (S.C.) : 2005(1) Criminal Court Cases 760 (S.C.)

SC **Evidence Act, 1872, Section 10 and 30, Prevention of Terrorism Act, 2002, Section 32** - Confession - Against co-accused - Whether confession which cannot be proved against co-accused either u/s 32 (1) Prevention of Terrorism Act, 2002 or u/s 30 Evidence Act would be relevant evidence u/s 10 - Section 10 is based on principle of agency and exception to rule against hearsay - Statement made by accused after his arrest cannot be relied on - As agency comes to an end. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Section 13 - Earlier judgments - Admissibility in evidence - Injunction suit against Wakf Board claiming suit property as their own - Suit property same property in respect of which earlier suits were filed - In the said suit predecessor-in-interest of defendants admitted the suit property as Wakf property - One of the plaintiffs was a party to the earlier suit - Those judgments held the properties as Wakf properties - Held, earlier

judgments are admissible in evidence - Suit for injunction therefore liable to be dismissed. (Andhra Pradesh Wakf Board Vs Syed Jalaluddin Sha) 2004(3) Civil Court Cases 469 (A.P.)

Evidence Act, 1872, Section 13 - Statement made by a party in an earlier litigation - Is relevant against the party making such a statement but if other persons were not party, then it cannot be binding on their rights. (Pritam Kaur Vs Chanan Singh & Anr.) 2003(3) Civil Court Cases 494 (P&H)

Evidence Act, 1872, Sections 13 & 68, Succession Act, 1925, Sections 276, 213(1) - Will - Subsequent Will - Probate - Probate Court alone has jurisdiction to adjudicate upon the validity of the Will - Civil Court has no such jurisdiction even if consented to by the parties - Findings of civil Court will not operate as res judicata in probate proceedings - However, where a clear admission as to valid execution of subsequent Will is made and acted upon by the parties for a long time then no other proof is required as provided u/s 68 of Evidence Act - Such finding arrived at in collateral proceedings in a suit to which a person was party, binds him in subsequent proceedings. (Rajan Suri & Anr. Vs. State & Anr.) 2006(2) Civil Court Cases 386 (Delhi)

Evidence Act, 1872, Section 17 & 18 - Statement by a person against his own interest - Generally such a statement is accepted as correct because it is treated as admission within the meaning of Sections 17 & 18 of Evidence Act. (Gurinder Singh & Ors. Vs Kundan Lal) 2005(2) Civil Court Cases 128 (P&H)

Evidence Act, 1872, Section 17 to 21 - Admission - Application for additional evidence by way of appointing Local Commissioner - Averment made in application to provide justification for appointment of Local Commissioner cannot be treated as admission of the fact that suit land is different than the one mentioned in judgment and decree. (Malkhan Singh & Anr. Vs Deep Chand & Anr.) 2005(3) Civil Court Cases 15 (P&H)

Evidence Act, 1872, Sections 17 & 18 - Statement by a person against his own interest - Generally such a statement is accepted as correct because it is treated as admission within the meaning of Ss. 17 & 18 of Evidence Act. (Gurinder Singh & Ors. Vs Kundan Lal) 2005(2) Civil Court Cases 128 (P&H)

Evidence Act, 1872, Sections 17, 20 - Admission - In earlier maintenance proceedings marriage stated to be already dissolved - Dissolution of marriage not in issue in those proceedings - Opposite party in present case not a party in earlier proceedings - Held, statement so made cannot be taken as admission. (Mallika Begum Vs Asha Begum) 2003(1) Civil Court Cases 16 (A.P)

Evidence Act, 1872, Sections 21, 31, 115 - Agreement to sell - Vendor admitting in agreement, affidavits and other papers about delivery of possession made to purchaser on date of agreement - Heavy burden lies on vendor to show that said admission was not correct - Admission coupled with the fact that heavy amount was paid to vendor on the date of agreement for immediately vacating the property - It is a strong circumstance that possession of property was delivered on date of agreement - It does not lie in the mouth of vendor to say that recital in agreement regarding delivery of possession in the agreement was for sake of papers only. (M/s Chetak Constructions Limited Vs Om Prakash & Ors.) 2003(3) Civil Court Cases 477 (M.P.)

SC **Evidence Act, 1872, Section 21** - Extra judicial confession to a social worker not known earlier - It is wholly unlikely that accused would make extra judicial confession to a person whom he never knew. (Sunny Kapoor Vs State (UT of Chandigarh)) 2006(2) Apex Court Judgments 570 (S.C.) : 2006(3) Criminal Court Cases 01 (S.C.)

SC **Evidence Act, 1872, Section 24** - Confession - Genuineness of confession is to be decided on the basis of the extensive evidence, which lends corroboration to the confession. (Sidharth etc. Vs State of Bihar) 2005(4) Criminal Court Cases 781 (S.C.) : 2006(1) Apex Court Judgments 40 (S.C.)

SC **Evidence Act, 1872, Section 24** - Confession - Made to an acquaintance with whom accused had no intimate relation - No explanation by PW as to why he did not take the accused to police station after confession - Testimony of PW doubtful - Conviction set aside. (Jaswant Gir Vs State of Punjab) 2006(2) Criminal Court Cases 378 (S.C.)

Evidence Act, 1872, Section 24 - Confession - Means admission of crime by the accused charged with a crime - Such confession is an evidence against the maker of it. (Amrush Barla Vs State of Orissa) 2003(2) Criminal

Court Cases 717 (Orissa)

Evidence Act, 1872, Section 24 - Confession - Retracted - Retracted confession may form the legal basis of conviction if Court is satisfied that it was true and voluntary - Retraction if found to be an after thought the same should not weigh with the Court. (Amrush Barla Vs State of Orissa) 2003(2) Criminal Court Cases 717 (Orissa)

SC **Evidence Act, 1872, Section 24** - Confession - Retracted Confession - General rule of prudence lays down that it must be corroborated - General corroboration is sufficient - But court can in exceptional cases where confession is voluntary and trustworthy may convict accused only on the basis of confession. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Section 24 - Confession - Statement given by accused to Village Administrative Officer after commencement of investigation - Though admissible in evidence but it is a very weak piece of evidence. (Pachamuthu Vs State) 2004(2) Criminal Court Cases 09 (Madras)

Evidence Act, 1872, Section 24 - Confession of co-accused - Cannot be treated as substantive evidence - Can only be used to lend assurance to the other independent evidence sufficient for sustaining a conviction. (Kamala Muniratnam & Anr. Vs State of A.P.) 2004(1) Criminal Court Cases 829 (A.P.)

Evidence Act, 1872, Section 24 - Extra judicial confession - Conviction can be based on extra judicial confession if it is made voluntarily and truthfully to a trustworthy unbiased person - Extra judicial confession to be relied on as against an accused must be clear, unambiguous and unmistakably conveyed that accused had committed the crime. (Mary Mathew Vs State of Kerala) 2002(1) Criminal Court Cases 310 (Kerala)

Evidence Act, 1872, Section 24 - Extra judicial confession - Is a weak piece of evidence - It can be believed without corroboration only if it made to a credible person to whom the accused may repose confidence like a responsible person in the nearby locality or a close relative etc. (Chellappan

Nair Vs State of Kerala) 2006(2) Criminal Court Cases 368 (Kerala) (DB)

Evidence Act, 1872, Section 24 - Extra judicial confession - Is very weak piece of evidence and it should be looked into very cautiously and in absence of any corroboration it will be always unsafe to rely upon such evidence for convicting an accused. (Ashoke Giri & Anr. Vs State of West Bengal) 2005(2) Criminal Court Cases 314 (Calcutta)

SC **Evidence Act, 1872, Section 24** - Extra judicial confession - It is a weak piece of evidence for conviction - Such evidence deserves strict scrutiny - Strong circumstantial evidence can get strength from extra judicial confession. (Kalpana Mazumdar Vs State of Orissa) 2002(3) Criminal Court Cases 363 (S.C.)

SC **Evidence Act, 1872, Section 24** - Extra judicial confession - It is admissible if it inspires confidence and made voluntarily. (State of Andhra Pradesh Vs Kanda Gopaludu) 2005(4) Criminal Court Cases 711 (S.C.)

SC **Evidence Act, 1872, Section 24** - Extra judicial confession - Made before Village Administrative Officer - The same is admissible and can be relied upon. (Sivakumar Vs State by Inspector of Police) 2006(1) Criminal Court Cases 799 (S.C.)

SC **Evidence Act, 1872, Section 24** - Extra judicial confession - May or may not be a weak evidence - Each case to be examined on its own facts. (Sivakumar Vs State by Inspector of Police) 2006(1) Criminal Court Cases 799 (S.C.)

Evidence Act, 1872, Section 24 - Extra judicial confession - Value - Depends upon the reliability of the person to whom it is made, interval between the occurrence and the confession, reproduction of the exact words of the person making confession to the crime, and the follow up action which the person to whom the confession made. (Kamala Muniratnam & Anr. Vs State of A.P.) 2004(1) Criminal Court Cases 829 (A.P.)

SC **Evidence Act, 1872, Section 24** - Extra judicial confession if voluntary and true and made in a fit state of mind can be relied upon by the Court - Confession will have to be proved like any other fact - Test of credibility - Analysed. (State of Rajasthan Vs Rajaram) 2003(2) Apex Court

Judgments 398 (S.C.)

Evidence Act, 1872, Section 24 - Extra-judicial confession - To be scrutinized very carefully - Extra-judicial confession is not a strong piece of evidence - It is to be seen before whom the extra-judicial confession was made, whether he is a person who could be believed. (Jatinder Kumar & Anr. Vs State of Haryana) 2006(1) Criminal Court Cases 1069 (P&H) (DB)

Evidence Act, 1872, Section 24 - Judicial confession - Even retracted confession can solely form basis of conviction if it is found to be true and voluntary. (Mitra Prasad Rai Vs State of Sikkim) 2004(4) Criminal Court Cases 601 (Sikkim)

SC Evidence Act, 1872, Section 24, Criminal Procedure Code, 1973, Section 164 - Confession - Must be free from threat, duress or inducement at the time of making the confession - On the evidence and the circumstances in a particular case Court should be satisfied that there was not threat, inducement or promise, though the said fact is not strictly proved - As a rule of prudence Court should look to corroboration from other evidence - There need not be corroboration in respect of each and every material particular - Court should have assurance from all angles that the retracted confession, was, in fact, voluntary and it must have been true. (Parmananda Pegu Vs State of Assam) 2005(1) Criminal Court Cases 522 (S.C.)

Evidence Act, 1872, Section 24, Criminal Procedure Code, 1973, Section 164, Indian Penal Code, 1860, Sections 376 and 300 - Rape and Murder - Extra judicial confession - Accused implicating three more persons - Extra judicial confession not corroborated by any other evidence - Non compliance with requirements of Section 164(4) - Confession inadmissible - Conviction of accused on the basis of confessional statement, improper. (Murugan Vs State) 2006(4) Criminal Court Cases 042 (Madras) (DB)

SC Evidence Act, 1872, Section 24, Criminal Procedure Code, 1973, Section 164 - Confession - Must be free from threat, duress or inducement at the time of making the confession - On the evidence and the circumstances in a particular case Court should be satisfied that there was not threat, inducement or promise, though the said fact is not strictly proved - As a rule of prudence Court should look to corroboration from other evidence - There need not be corroboration in respect of each and every material particular - Court should

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Evidence Act, 1872, Section 24, Essential Commodities Act, 1955, Section 8(1)(a) - Confession - Offence under Essential Commodities Act, 1955 - Confession before concerned officer - No evidence that confession was extracted under threat as referred to under S. 24 of Evidence Act - Confession not invalid. (Om Parkash Vs State of Haryana) 2006(4) Criminal Court Cases 776 (P&H)

Evidence Act, 1872, Section 24, Essential Commodities Act, 1955, Section 8(1)(a) - Offences under Sections 2 & 7 of Essential Commodities Act, 1955 - Report under Section 173 Criminal Procedure Code, 1973 submitted to Court after expiry of one year of FIR - Report not illegal - Trial Court did not commit any error in taking cognizance of report filed under Section 173 Criminal Procedure Code, 1973 beyond a period of one year. (Om Parkash Vs State of Haryana) 2006(4) Criminal Court Cases 776 (P&H)

Evidence Act, 1872, Section 24, Indian Penal Code, 1860, Section 300 - Murder of wife - Extra judicial confession made orally to witness who lodged FIR - No mention of extra judicial confession in FIR by witness but disclosed by him subsequently in his deposition before Court - Non disclosure of extra judicial confession at earliest point of time casts serious doubt of credibility of witness - Such extra judicial confession, held, cannot, be acted upon without same being corroborated from independent source. (State by Madhugiri Police Vs Puttarnagappa) 2002(2) Criminal Court Cases 324 (Karnataka)

SC Evidence Act, 1872, Section 24, Indian Penal Code, 1860, Section 302, Criminal Procedure Code, 1973, Section 164 - Murder - Confession before Judicial Magistrate u/s 164 Criminal Procedure Code, 1973 - Accused also made extra judicial confession - Confession corroborated by other evidence - Confession made not under any inducement, threat or promise and voluntary in nature - Confession is admissible in evidence - Conviction and sentence upheld. (Sidharth etc. Vs State of Bihar) 2005(4) Criminal Court Cases 781 (S.C.)

SC **Evidence Act, 1872, Section 24, Indian Penal Code, 1860, Section 302** - Murder - Extra judicial confession - Recorded by PW1 an Administrative officer - Extra judicial confession true as same corroborated by recovery of blood stained clothes and weapon of offence - PW2 and PW4 fully corroborated extra judicial confession - No manner of doubt that accused was assailant as he was annoyed with his deceased wife because of co-habitation with PW2 - Conviction upheld. (Namala Subba Rao Vs State of Andhra Pradesh) 2006(4) Criminal Court Cases 1032 (S.C.)

Evidence Act, 1872, Section 24, Indian Penal Code, 1860, Sections 302, 364-A, 201, 120-B & 34 - Murder - Kidnapping for ransom and murder - Extra judicial confession - Inspiring confidence - On disclosure statement articles recovered besides the dead body of deceased - Motive of murder was ransom - Deceased last seen in company of deceased - Conviction upheld. (Jatinder Kumar & Anr. Vs State of Haryana) 2006(1) Criminal Court Cases 1069 (P&H) (DB)

Evidence Act, 1872, Section 24, Indian Penal Code, 1860, Sections 302 r/w 201/34 - Extra judicial confession by husband to his co-villagers that he killed his wife by throttling - Extra judicial confession corroborated by statement of witnesses - As regards extra judicial confession nothing to question credibility of prosecution witnesses - Apart from husband no body else present in room - Guilt proved beyond doubt - Conviction u/s 302 not liable to be set aside - However as there is no evidence to prove concealment of evidence of murder as such conviction u/s 201 Indian Penal Code, 1860 set aside. (Sahajaman Mia & Ors. Vs State of West Bengal) 2006(2) Criminal Court Cases 502 (Calcutta) (DB)

Evidence Act, 1872, Section 24, Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 18, 67 - Confessional statement - Admissibility - Confession by accused made before officers of Narcotics Department - They are not Police Officers - Confessional statement is admissible in evidence. (Nandkishore Vs Central Bureau of Narcotics, Neemuch) 2005(4) Criminal Court Cases 811 (M.P.)

Evidence Act, 1872, Sections 24 & 25 - Extra judicial confession - If true and voluntary can be relied upon by Court to convict accused. (K.Kunhaman @ Kunhiraman Vs State of Kerala) 2003(2) Criminal Court Cases 338 (Kerala)

SC **Evidence Act, 1872, Sections 24 to 26** - Extra judicial confession - Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. (State of Karnataka Vs M.N.Ramdas) 2002(3) Criminal Court Cases 587 (S.C.)

SC **Evidence Act, 1872, Sections 24 to 26** - Extra judicial confession - Murder - Accused immediately revealing fact to a stranger like PW2 - Confession may not be consistent with ordinary human conduct but on that account there should not be astute reluctance on part of Court to accept extra judicial confession - Court will however be on guard to get assurance of truth of corroborative evidence. (State of Karnataka Vs M.N.Ramdas) 2002(3) Criminal Court Cases 587 (S.C.)

Evidence Act, 1872, Sections 24, 25 - Confession - Extra judicial confession - Cannot be called a weak piece of evidence if it withstands the tests (i) Is the witness proving the confession generally credible? (ii) Is his relation with the accused of such nature that the latter could confide in him? (iii) Is there any motive for the witness to implicate the accused falsely (the witness might be trying to save himself or some one else by laying the blame on the accused)? and (iv) Is the confessional statement consistent with other facts and circumstances brought on record? (Nachika Deruku Vs State of Orissa) 2003(3) Criminal Court Cases 268 (Orissa)

SC **Evidence Act, 1872, Sections 24, 25 & 26** - Confession - Scope - Confessions are highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth - Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law - But court must be satisfied that it was freely and voluntarily made - A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of confession - The confession should have been made with full knowledge of the nature and consequences of the confession. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Sections 24, 27 - Confession - Admission of guilt to police - Not admissible in evidence because it may be in the nature of confession and would be hit by S.24 - However, Section 27 of Evidence Act carves out an exception to the general rule by making only that part of the statement admissible which has led to the recovery because recovery itself would ensure the veracity of the statement excluding the falsehood. (Surjit Singh & Ors. Vs State of Punjab) 2005(1) Criminal Court Cases 729 (P&H)

Evidence Act, 1872, Sections 24, 27 - Confession - Admission of guilt to police - Not admissible in evidence because it may be in the nature of confession and would be hit by Section 24 - However, Section 27 of Evidence Act carves out an exception to the general rule by making only that part of the statement admissible which has led to the recovery because recovery itself would ensure the veracity of the statement excluding the falsehood. (Surjit Singh & Ors. Vs State of Punjab) 2005(1) Criminal Court Cases 729 (P&H)

SC **Evidence Act, 1872, Sections 24, 30** - Confession by co-accused - Cannot be the sole basis for conviction - Confession of an accused person is not evidence - It cannot be made the foundation of a conviction and can only be used in support of other evidence. (Sidharth etc. Vs State of Bihar) 2005(4) Criminal Court Cases 781 (S.C.) : 2006(1) Apex Court Judgments 40 (S.C.)

SC **Evidence Act, 1872, Sections 25 & 26, Narcotic Drugs and Psychotropic Substances Act, 1985, Section 20 (b) (2) & (23)** - Confession - Admission of accused before the Customs Authorities - Such admission is not hit by either Section 25 or Section 26 - Effect of such admission was relevant factor. (Union of India Vs Munna) 2005(1) Criminal Court Cases 100 (S.C.)

SC **Evidence Act, 1872, Sections 25 to 27** - Recovery of weapon at the instance of accused - Accused specifically saying that he concealed the weapon himself - Recovery of weapon held admissible in evidence. (State of M.P. through C.B.I etc. Vs Paltan Mallah & Ors. etc.) 2005(1) Apex Court Judgments 295 (S.C.) : 2005(1) Criminal Court Cases 899 (S.C.)

Evidence Act, 1872, Sections 25, 27 and Criminal Procedure

Code, 1973, Section 154 - Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by section 25 of the Evidence Act - No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by section 27 of the Evidence Act. (Bandu Yedu Metkari Vs State of Maharashtra) 2002(2) Criminal Court Cases 592 (Bombay)

Evidence Act, 1872, Section 25 - Confessional statement made before police - Hit by provision of Section 25 of Evidence Act. (Mahant Chand Nath Yogi Vs State of Haryana & Ors.) 2006(3) Criminal Court Cases 486 (P&H)

Evidence Act, 1872, Section 25 - First information report given by accused which amounts to confessional statement - Perusal of contents of first information report for the accused is permissible - Explanation for murder in a confession by the accused to police in a first information report can be relied on to prove motive or provocation with a view to extenuate the offence or sentence i.e. there is no bar to a confession in first information being used in favour of the accused. (Madhavgir Vs State of Maharashtra) 2005(1) Criminal Court Cases 722 (Bombay)

Evidence Act, 1872, Section 25, Criminal Procedure Code, 1973, Section 154 - FIR - Given by accused in nature of confession - It cannot be used against the accused in evidence. (Naresh Vs State of M.P.) 2003(2) Criminal Court Cases 595 (M.P.)

Evidence Act, 1872, Section 25, Criminal Procedure Code, 1973, Section 154 - FIR - Lodged by accused himself - Held, contents of FIR are absolutely irrelevant when it is confessional in nature and has been filed by the accused himself. (Keshav Maharaj Sangle Vs State of Maharashtra) 2006(3) Criminal Court Cases 852 (Bombay)

Evidence Act, 1872, Section 25, Custom Act, 1962, Section 108, Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 22, 29 - Confession - Recovery of contraband effected by custom officer - Statement of accused recorded by custom officer - Absolute bar of S.25 Evidence Act is not application to Custom Officer as he is a person other than a Police Officer - Court has just to see as to whether the inculcating portions were

made voluntarily or whether they were made on account of duress, coercion or physical threat etc. (Mohinder Singh alias Minda Vs Inspector Customs) 2003(2) Criminal Court Cases 475 (P&H)

Evidence Act, 1872, Section 25, Indian Penal Code, 1860, Section 302 - FIR - Lodged by accused himself after committing the murder of his wife - Contents of FIR not admissible in evidence as contents are confessional in nature - Statement made before police officer is hit by Section 25 of Evidence Act - Statement of accused in FIR that his wife abused him and provoked him at time of incident can be used in favour of accused to prove motive or provocation. (Keshav Maharu Sangle Vs State of Maharashtra) 2006(3) Criminal Court Cases 852 (Bombay)

SC Evidence Act, 1872, Section 26 - Confession - Statements made to media while accused was in custody of police or statements made in press conference arranged by police - Such statements not relevant. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Section 27 - “Fact discovered” - On interrogation accused made statement that “I have kept fire-arm concealed behind the old house in a heap of wood” - Fact discovered is not the gun but fact discovered is that accused had concealed the gun behind old house under heap of wood. (Pandurang Kalu Patil Vs State of Maharashtra) AIR 2002 S.C. 733

Evidence Act, 1872, Section 27 - Applicability of S.27 of Evidence Act - Conditions or requirements for applicability are : (1) The fact must have been discovered in consequence of the information received from the accused; (2) The person giving the information must be accused of an offence; (3); He must be in custody of a police officer; (4) Only that portion of the information which relates strictly to discovery can be prove and the rest is irrelevant; (5) The discovery of fact must relate to the commission of some crime; (6) Before the statement is proved somebody must depose that some articles was discovered in consequence of the information received from the accused.(Deepak & Anr. Vs State of Rajasthan) 2003(3) Criminal Court Cases 484 (Rajasthan)

Evidence Act, 1872, Section 27 - Applicability of the provision - To attract S.27 four conditions necessary are: (1) Discovery of fact, albiet

a relevant fact in consequence of the information received from a person accused of an offence; (2) Discovery of such fact must be proved; (3) At the time of receipt of the information, the accused must be in police custody and the information must be voluntarily made and true; (4) Last and the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered, is admissible and the rest of the information has to be excluded - Word “distinctly” means “directly” “independently” “strictly” and “unmistakably”. (Chunia Vs State of Rajasthan) 2004(1) Criminal Court Cases 458 (Rajasthan)

Evidence Act, 1872, Section 27 - Conditions for applicability of the provision are : (1) The fact must have been discovered in consequence of the information received from the accused; (2) The person giving the information must be accused of an offence; (3) He must be in custody of a police officer; (4) Only that portion of the information which relates strictly discovery can be proved and the rest is irrelevant; (5) The discovery of fact must relate to the commission of some crime and (6) Before the statement is proved somebody must depose that some article was discovered in consequence of the information received from the accused. (Prithviraj Vs State of Rajasthan) 2004(3) Criminal Court Cases 111 (Rajasthan)

Evidence Act, 1872, Section 27 - Delay in discovery of weapon at instance of accused - Amount of delay could have fatal consequences because of unexplained delay. (Bhalchandra Namdeo Shinde Vs State of Maharashtra) 2003(3) Criminal Court Cases 193 (Bombay)

Evidence Act, 1872, Section 27 - Disclosure statement - A statement to the police by the accused which does not lead to any discovery is inadmissible. (Shyam & Anr. Vs State of Haryana) 2006(3) Criminal Court Cases 884 (P&H) (DB)

Evidence Act, 1872, Section 27 - Disclosure statement - Conviction cannot be based on the basis of disclosure statement when police had prior knowledge of the information given. (Shish Pal & Anr. Vs State of Haryana) 2006(3) Criminal Court Cases 619 (P&H) (DB)

Evidence Act, 1872, Section 27 - Disclosure statement - No recovery made following disclosure statement - No part of statement can be proved u/s 27 of Evidence Act. (Mahant Chand Nath Yogi Vs State of Haryana &

Ors.) 2006(3) Criminal Court Cases 486 (P&H)

Evidence Act, 1872, Section 27 - Disclosure statement - Not required to be recorded when he was to be interrogated and was not accused in any case. (Karnail Singh Vs State of Punjab) 2003(3) Criminal Court Cases 474 (P&H)

Evidence Act, 1872, Section 27 - Disclosure statement - Recovery - It is a valid piece of evidence only against accused making disclosure statement and not against co-accused. (Buta Singh Vs State of Punjab) 2006(1) Criminal Court Cases 838 (P&H)

SC **Evidence Act, 1872, Section 27** - Disclosure statement - Recovery of arms from a place frequented by public - Arms recovered on disclosure statement of accused, which were concealed under the sand and covered by stones from a river bank which is frequented by public - Held, statement of accused as to recovery of arms pursuant to disclosure statement is admissible in evidence. (Nisar Khan @ Guddu & Ors. Vs State of Uttaranchal) 2006(1) Apex Court Judgments 480 (S.C.) : 2006(1) Criminal Court Cases 1066 (S.C.)

Evidence Act, 1872, Section 27 - Discovery of fact - Prosecution must prove that information given by accused has led to discovery of some fact stated by him. (Arun Dharma Chavhan Vs State of Maharashtra) 2002(1) Criminal Court Cases 162 (Bom.)

SC **Evidence Act, 1872, Section 27** - Discovery of fact - Whether it is necessary that the discovery of fact should be by the person making the disclosure or directly at his instance? The subsequent event of discovery by police with the aid of information furnished by the accused - whether can be put against him under Section 27 - Held Yes - Not necessary to take accused to spot for recovery - Only requirement is that information furnished was the immediate and proximate cause of discovery - Discovery of fact would be admissible. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

SC **Evidence Act, 1872, Section 27** - Discovery of fact - Whether the discovery of fact referred to in Section 27 should be confined only to the

discovery of a material object and the knowledge of the accused in relation thereto or the discovery could be in respect of his mental state or knowledge in relation to certain things, concrete or non-concrete - Discovery of fact referred to in Section 27 should be confined only to the discovery of a material object and the knowledge of the accused in relation thereto - Plain mental fact without the discovery of physical object will not be covered u/s 27 Evidence Act. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(4) Criminal Court Cases 294 (S.C.) : 2005(2) Apex Court Judgments 320 (S.C.)

Evidence Act, 1872, Section 27 - Discovery of weapon of offence - Disclosure statement - Neither the I.O. nor the witnesses in whose presence accused is said to have given information has indicated the exact information given or statement made by the accused - Held, seizure of weapon of offence cannot be held to have been made u/s 27 of Evidence Act. (Mandangi Relli Vs State of Orissa) 2005(3) Criminal Court Cases 542 (Orissa)

SC **Evidence Act, 1872, Section 27** - Discovery/Disclosure - Joint disclosure - Simultaneous disclosures per se are not in admissible under section 27 - A person accused need not necessarily be a single person but could be plurality of accused - Simultaneous disclosures includes information given one after other without any break - Evidentiary value of such disclosure would depend on evaluation of evidence. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(4) Criminal Court Cases 294 (S.C.) : 2005(2) Apex Court Judgments 320 (S.C.)

SC **Evidence Act, 1872, Section 27** - Dowry death - Disclosure statement - Upon disclosure statement earrings, hair clip, pieces of bangles belonging to deceased recovered from the well - These articles are of common use and can be found out in any house. (State of Rajasthan Vs Teg Bahadur) 2005(1) Criminal Court Cases 49 (S.C.) : 2005(1) Apex Court Judgments 88 (S.C.)

SC **Evidence Act, 1872, Section 27** - Extra judicial confession - In order to make an extra judicial confession a reliable evidence it has to be shown that the same was voluntary. (State of Haryana Vs Jagbir Singh & Anr.) 2004(1) Criminal Court Cases 296 (S.C.)

Evidence Act, 1872, Section 27 - Information furnished by an accused in his confession statement that he had handed over the stolen articles for

disposal to another accused is admissible in evidence provided truth of that information is established. (Ayyappan Vs State of Kerala) 2004(4) Criminal Court Cases 315 (Kerala)

Evidence Act, 1872, Section 27 - Knife - Recovery of - Non recording of disclosure statement - Does not vitiate recovery evidence - Even in absence of such statement, Court can take into consideration the fact of seizure, when independent witnesses have come forward proving that in presence of the accused, police recovered the weapon. (Bablu Mahanto Vs State of West Bengal) 2006(1) Criminal Court Cases 536 (Calcutta) (DB)

Evidence Act, 1872, Section 27 - Murder - Recovery of weapons - Handles of rope used to strangle deceased found at instance of accused - Contention that since seized articles were not produced during course of trial, it could not be construed as recovery under Section 27 - Held, that discovery of fact referred to under Section 27 of Evidence Act is not the object recovered but the fact emphasized the place from where the object is recovered and the knowledge of accused to it. (Rumi Bora Dutta & Anr. Vs State of Assam) 2006(4) Criminal Court Cases 436 (Gauhati) (DB)

Evidence Act, 1872, Section 27 - Recovery from a place accessible to all at the instance of accused - Would not diminish evidentiary value - If the articles hidden are not visible to others, then it is immaterial whether the concealed place is accessible to others or not. (Jinnappa Pareesh Hulakund Vs State of Karnataka) 2002(1) Criminal Court Cases 95 (Kant.)

Evidence Act, 1872, Section 27 - Recovery of incriminating materials - Goes a long way in establishing the guilt of the appellant. (Araque Lutifi @ Dazy Vs State of Orissa) 2003(1) Criminal Court Cases 508 (Orissa)

Evidence Act, 1872, Section 27 - Weapons of offence - Seizure - Not seized on the statements of the accused persons and none of the same sent for chemical examination - Such seizure from the houses of the accused persons is of no consequence. (Pramod Kumar Khadamsingh & Ors. Vs State of Orissa) 2002(3) Criminal Court Cases 244 (Orissa)

Evidence Act, 1872, Section 27, Arms Act, 1959, Section 25(a) - Fire arm - Place of recovery already brought to knowledge of I.O. by informer - Statement recorded u/s 27 Evidence Act is inadmissible in law - Once the

place of recovery is in the knowledge of the Investigator, then recording the statement u/s 27 of Evidence Act is a futile exercise - Investigator without recording the statement of accused can interrogate him and can effect the recovery. (Chanan Singh Vs The State of Punjab) 2003(3) Criminal Court Cases 29 (P&H)

Evidence Act, 1872, Section 27, Arms Act, 1959, Section 25 - Recovery of arms - Disclosure statement in presence of official witnesses and an independent witness - Independent witness if not produced, impinges upon the truth of prosecution case - Prosecution will have to satisfy the conscience of the court as to why the independent witness was not put forth to support the recovery. (Jarnail Singh Vs State of Punjab) 2002(1) Criminal Court Cases 218 (P&H)

SC Evidence Act, 1872, Section 27, Criminal Procedure Code, 1973, Section 100 - Search and Seizure - Independent Witness - Non joining - Discovery of fact - Absence of independent witnesses in search and seizure not always fatal - Closer scrutiny of evidence is what is required. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

SC Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Section 302 - Disclosure statement - Recovery of dead body on the basis of information already known - Section 27 of the Evidence Act has no application. (State of Haryana Vs Jagbir Singh & Anr.) 2004(1) Criminal Court Cases 296 (S.C.)

Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Section 411 - Evidence Act, 1872, Section 27 - Stolen wood - Recovery of - On basis of disclosure statement of accused u/s 27 of Evidence Act - Independent witness not joined - S.27 does not require that recovery be conducted in presence of independent witnesses. (Surjit Singh & Ors. Vs State of Punjab) 2005(1) Criminal Court Cases 729 (P&H)

Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Section 364-A - Kidnapping for ransom - Disclosure statement - It is relevant only regarding the fact discovered in pursuance thereof and not any other details. (Sunder Pal Vs State of Haryana) 2006(2) Criminal Court Cases 222 (P&H) (DB)

Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Section 396 - Confessional statement of accused - Followed by looted articles - The same is admissible in evidence in an offence of dacoity. (Raju Manjhi Vs State of Bihar) 2006(2) Criminal Court Cases 1067 (Patna) (DB)

Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Section 411 - Evidence Act, 1872, Section 27 - Stolen wood - Recovery of - On basis of disclosure statement of accused u/s 27 of Evidence Act - Independent witness not joined - Section 27 does not require that recovery be conducted in presence of independent witnesses. (Surjit Singh & Ors. Vs State of Punjab) 2005(1) Criminal Court Cases 729 (P&H)

Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Sections 302, 253 - Murder - Acquittal - Disclosure statement as to concealment of 5 live cartridges and got recovered the same - Independent witnesses to disclosure statement not examined and no explanation for the same given - Judgment of acquittal upheld. (State of Haryana Vs Anand) 2006(2) Criminal Court Cases 73 (P&H) (DB)

Evidence Act, 1872, Section 27, Indian Penal Code, 1860, Sections 302, 34 - Murder - Discovery and seizure of bloodstained clothes of accused and a sickle said to be murder weapon - Mere recovery of such articles with no definite indication to the accused would not indicate that it was accused alone who are the perpetrators of the crime - Accused entitled to benefit of doubt. (Sridhara @ Sripathi & Anr. Vs State of Karnataka by Siddapura Police) 2005(4) Criminal Court Cases 433 (Karnataka) (DB)

Evidence Act, 1872, Section 27, Narcotic Drugs and Psychotropic Substances Act, 1985, Section 15 - Contraband - Disclosure statement - Conscious possession - Police received secret information which gave specific and clear information about the place where contraband was lying - In fact, recording of disclosure statement of accused at the spot was a clever move of the I.O. - This creates suspicion as regards so-called recovery - Prosecution has not been able to establish the charge of conscious possession of the contraband - Conviction set aside. (Jarnail Singh Vs State of Punjab) 2005(3) Criminal Court Cases 837 (P&H)

Evidence Act, 1872, Sections 27 & 30, Indian Penal Code, 1860, Section 302 - Murder - Extra judicial confession - Confession retracted -

Corroboration not available - As per confession one single blow given on head but there were four incised wounds - Prosecution failed to explain how four wounds occurred - Conviction on basis of confession without corroboration cannot be based - Conviction set aside. (Lambardar Vs State of Punjab) 2005(4) Criminal Court Cases 743 (P&H) (DB)

Evidence Act, 1872, Sections 27, 114, Illus.(e), Indian Penal Code, 1860, Section 300, Criminal Procedure Code, 1973, Sections 100(5), 161 and 162 - Murder - Discovery of weapon alleged to have been used to commit crime - Discovery made as consequence of statement made by accused person in police custody - Seizure Panch who had signed seizure memo turning hostile - No ground to discard evidence of I.O. who recorded statement of accused and discovered weapon - It is for accused to show that evidence is unreliable. (Boraiah alias Pujari Boraiah Vs State) 2004(2) Criminal Court Cases 490 (Karnataka)

Evidence Act, 1872, Section 30 - Confession of co-accused - Cannot be treated as substantive evidence - It can be pressed into service only when Court is inclined to accept other evidence and feels the necessity of seeking of an assurance in support of its conclusion deducible from the said evidence. (Mothilal Vs State) 2002(3) Criminal Court Cases 346 (Karnataka)

Evidence Act, 1872, Section 30 - Confession of co-accused - Not substantive evidence - It can be called in aid in appropriate cases and can be used only for lending the assurance and is merely an element in considering the evidence in the case - It cannot be called in aid to supplement evidence otherwise insufficient and in no case it can be used to fill up the gaps in the prosecution evidence. (State of H.P. Vs Ishwar Dass & Ors.) 2006(3) Criminal Court Cases 568 (H.P.) (DB)

SC Evidence Act, 1872, Section 30 - Confession of co-accused - Requires corroboration by independent evidence. (State of Madhya Pradesh Vs Mukesh & Ors.) 2006(4) Criminal Court Cases 996 (S.C.)

SC Evidence Act, 1872, Section 30 - Confession of co-accused - Retracted Confession against co-accused - Stands on different footing from the use of such confession against the maker - Confession of co-accused cannot be elevated to the status of substantive evidence - It is only one corroborating piece of evidence. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru)

2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Section 30 - Conviction cannot be based on confession of co-accused when he is not tried jointly with accused - Confession statement cannot be treated as substantive evidence - Court has to appreciate the evidence against the accused, excluding the confession altogether from consideration. (Bhavsingh D.Rathod Vs Asst. Collector of Customs) 2005(3) Criminal Court Cases 439 (Kerala)

SC **Evidence Act, 1872, Section 30** - Extra judicial confession - By co-accused - Can be admitted in evidence only as a corroborative piece of evidence - In absence of any substantive evidence against accused persons, the extra judicial confessional allegedly made by co-accused loses its significance and there cannot be any conviction based on such extra judicial confession. (State of M.P. through C.B.I etc. Vs Paltan Mallah & Ors. etc.) 2005(1) Apex Court Judgments 295 (S.C.) : 2005(1) Criminal Court Cases 899 (S.C.)

Evidence Act, 1872, Section 30 - Retracted confession - Can be taken into consideration against confessing accused and his co-accused - However, Court is required to seek independent corroboration of retracted confessions whether judicial or extra judicial. (Lambardar Vs State of Punjab) 2005(4) Criminal Court Cases 743 (P&H) (DB)

Evidence Act, 1872, Section 30, Customs Act, 1962, Section 108 - Statement recorded u/s 108 of Customs Act - Admissible in evidence but by virtue of S.30 Evidence Act it is not a substantive piece of evidence. (Tarlochan Singh Vs The Assistant commissioner, Customs) 2003(1) Criminal Court Cases 184 (P&H)

SC **Evidence Act, 1872, Section 31** - Admission - Evidentiary value - Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted - An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous. (Divisional Manager, United India Insurance Co. Ltd. & Anr. Vs Samir Chandra Chaudhary) 2005(2) Apex Court Judgments 217 (S.C.) : 2005(3) Civil Court Cases 196 (S.C.)

Evidence Act, 1872, Section 32 - 100% burn injuries - Doctor gave

certificate that deceased was fit to make statement - Submission that deceased with 100% burn injuries was unable to make dying declaration falls to the ground. (Izaz Vs State of Haryana) 2005(3) Criminal Court Cases 145 (P&H)

Evidence Act, 1872, Section 32 - Autopsy - Doctor who conducted autopsy could not be produced without delay and expense - Trial Court admitted post mortem report into evidence - No illegality or irregularity committed by trial Court. (Kanista Barik Vs State of Orissa) 2002(2) Criminal Court Cases 148 (Ori.)

Evidence Act, 1872, Section 32 - Autopsy report - Doctor who conducted autopsy not examined - Autopsy report can be admitted into evidence. (Basu Harijan Vs State of Orissa) 2003(3) Criminal Court Cases 170 (Orissa)

SC **Evidence Act, 1872, Section 32** - Deceased nurturing a grudge against her husband for a long time - Deceased while committing suicide herself may try to implicate him so as to make his life miserable - Such circumstance clearly point out that what might have been stated in the dying declaration may not be correct. (P.Mani Vs State of Tamil Naidu) 2006(2) Apex Court Judgments 143 (S.C.) : 2006(2) Criminal Court Cases 01 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - 100% burn injuries - Certificate of doctor that deceased was fit to make statement - Face and hands of deceased were also burnt - Deceased being in this position could not have thumb marked the dying declaration nor could she state anything before Sub Inspector of Police - Dying declaration not believable. (Amrik Singh Vs State of Punjab) 2005(3) Criminal Court Cases 841 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - 100% burn injuries - Dying declaration thumb marked - Proved by HC and doctor - No evidence that thumb of deceased was affected by burns - 100% burns only means the intensity of burn injuries and not that the whole body without exception has burn injuries. (Izaz Vs State of Haryana) 2005(3) Criminal Court Cases 145 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - 100% burn injuries - Sedative injection 'Fortwin' given to relieve from pain soon after

victim was brought to hospital - Detailed and long dying declaration recorded thereafter - Cannot be relied upon to base conviction. (Mohan Sadhu Kawale Vs State of Maharashtra) 2005(3) Criminal Court Cases 255 (Bombay)

SC **Evidence Act, 1872, Section 32** - Dying declaration - 85% burn injuries - Percentage of burns suffered is not determinative factor to affect the credibility of dying declaration - Credibility factor depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors - Percentage of burns alone would not determine the probability or otherwise of making dying declaration. (P.V.Radhakrishna Vs State of Karnataka) 2003(2) Apex Court Judgments 311 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - 95% burn injuries - Thumb impression on dying declaration - Linings of thumb impression in case of 95% burn injuries - Linings of thumb will appear in case tips of thumb are not burnt. (Sarwan Kumar Vs State) 2006(2) Criminal Court Cases 912 (Delhi) (DB)

Evidence Act, 1872, Section 32 - Dying declaration - 98% burn injuries - Recorded after 11 hours of incident - Absence of medical evidence reflecting the mental state of deceased before giving her statement - Held, investigating agency has resorted to padding. (Balwinder Kumar & Ors. Vs The State of Punjab) 2006(3) Criminal Court Cases 103 (P&H) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Answer to queries given by husband of deceased - Deceased affirmed the answer - In true sense it cannot be called a dying declaration. (Suchand Pal Vs Phani Pal & Anr.) 2004(2) Criminal Court Cases 292 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Certificate of doctor that “patient is conscious while recording the statement” - Held, it is not in accordance with legal position - Certificate should be that at the time of recording dying declaration injured was in a fit state of mind - In medical science, two stages namely conscious and a fit state of mind are distinct and are not synonymous - One may be conscious but not necessarily in a fit state of mind. (Rajendra Vs State of Rajasthan) 2003(1) Criminal Court Cases 254 (Rajasthan)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Comma put after word 'Ravi' and then written 'kumar' giving impression as two persons - Whereas it is one accused 'Ravikumar' - It is a mistake committed by Magistrate in splitting the name of Ravikumar into two names - Dying declaration is not liable to be rejected. (Ravikumar alias Kutti Ravi Vs State of Tamil Nadu) 2006(1) Apex Court Judgments 429 (S.C.) : 2006(2) Criminal Court Cases 246 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Conviction can be based on the uncorroborated dying declaration of the deceased if it is truthful and that the person recording dying declaration is satisfied that the dying man is making a voluntary and consistent statement with normal sense of understanding - It is sacred duty of Court while examining dying declaration to ensure that deceased was in a fit mental condition and was not under any pressure from any source. (Mamta Vs State of Punjab) 2003(1) Criminal Court Cases 578 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - Conviction can be based solely on the dying declaration if there is sufficient evidence to show that the deceased gave the said statement in a fit state of mind - Non examination of doctor on question of fitness of declarant is not fatal. (Boina Mallaiah Vs State of A.P.) 2003(2) Criminal Court Cases 617 (A.P.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Conviction can be based solely on the basis of dying declaration if it is wholly reliable - In case of suspicion the same requires some corroborative evidence - If dying declaration does not reveal the entire truth then it may be considered only as a piece of evidence and conviction cannot be based solely on that basis. (P.Mani Vs State of Tamil Nadu) 2006(2) Criminal Court Cases 01 (S.C.) : 2006(2) Apex Court Judgments 143 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Conviction on the basis of - No requirement of law that dying declaration must necessarily be made to a Magistrate - When dying declaration is recorded by Magistrate then there is no specified statutory form of such record - Person who records dying declaration must be satisfied that the deceased was in a fit state of mind - Dying declaration can be acted upon even in absence of a declaration by doctor that deceased was in a fit state of mind to make the statement when it

is proved from the testimony of Magistrate that declarant was fit to make the statement and Court holds the same to be voluntary and truthful. (Moniyabai Vs State of M.P.) 2006(1) Criminal Court Cases 843 (M.P.) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Conviction solely on that basis - Noting of statement of mind of declarant by Doctor is essential requirement for prosecution to prove - Mere certificate by even a doctor at the end of the declaration that the patient is conscious while recording the statement is not sufficient. (Panchdeo Singh Vs State of Bihar) 2002(2) Criminal Court Cases 602 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Conviction without further corroboration - Court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination - 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 - If Court finds dying declaration true and voluntary then conviction can be based on it without any further corroboration - Rule requiring corroboration is merely a rule of prudence. (Sham Shankar Kankaria Vs State of Maharashtra) 2006(3) Apex Court Judgments 344 (S.C.) : 2006(4) Criminal Court Cases 075 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Corroboration - When it is a truthful version and inspires confidence then it does not require any corroboration. (Surinder Kumar Vs State of Haryana) 2005(4) Criminal Court Cases 520 (P&H) (DB)

Evidence Act, 1872, Section 32 - Dying declaration - Cryptic dying declaration is an indication of its genuineness. (Sher Singh & Ors. Vs State of Punjab) 2005(2) Criminal Court Cases 261 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - Death after six days - Statement does not lose its value if the person lives for a longer time than expected. (Om Parkash @ Omi Vs State of Haryana) 2006(2) Criminal Court Cases 210 (P&H) (DB)

Evidence Act, 1872, Section 32 - Dying declaration - Death by burning - Dying declaration - Thumb marked - Ridges and curves of thumb impression very clear - Deceased had 90% burns - From the testimony of

doctor it clear that thumb and fingers of deceased had 1st to 3rd degree burns - Dying declaration not relied upon - Accused acquitted. (Ram Piari & Anr. Vs State of Haryana) 2005(4) Criminal Court Cases 63 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - Death by burning - Dying declaration recorded by Executive Magistrate - Opinion of doctor as to whether deceased was fit to make statement not taken though doctor was present - Magistrate stating that PW8 Asstt. Sub Inspector was not present at the time of recording dying declaration whereas PW8 stating that dying declaration was read over to the deceased - Doctor who was present at the time of recording of dying declaration not asked to attest it as a witness - At the asking of Executive Magistrate dying declaration recorded by some staff member of hospital but name of scribe not coming forward - Dying declaration thumb marked by deceased but right thumb impression of deceased was burnt - Conviction set aside. (Ram Piari & Anr. Vs State of Haryana) 2005(4) Criminal Court Cases 63 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - Deceased admitted in hospital with burn injuries - Mother of deceased was with her for 10 minutes exclusively - Dying declaration recorded after 5 hours - When others had opportunity to influence the mind of deceased then no reliance can be placed on dying declaration. (Smt. Batool Vs State of Rajasthan) 2003(2) Criminal Court Cases 320 (Rajasthan)

SC Evidence Act, 1872, Section 32 - Dying declaration - Doctor in Accident Register recorded that deceased lit fire on herself - Subsequently doctor erased that entry when correct picture got emerged - Defence version of suicide cannot be accepted on the face of two dying declarations of the deceased recorded by Magistrate and Head Constable implicating accused. (Ravikumar alias Kutti Ravi Vs State of Tamil Nadu) 2006(1) Apex Court Judgments 429 (S.C.) : 2006(2) Criminal Court Cases 246 (S.C.)

SC Evidence Act, 1872, Section 32 - Dying declaration - Entries in diary and certain statements recorded on a micro cassette - Entries in diary and representation submitted apprehending danger at hands of industrialist were in general terms - Even though name of some accused persons mentioned in the diary and in the cassette, that is not admissible as the entries in diary and cassette do not refer to any event which ultimately was the cause of his death - To be admissible u/s 32 of the Act, statements should be either to

the cause of death or any of the circumstances which led to his death. (State of M.P. through C.B.I etc. Vs Paltan Mallah & Ors. etc.) 2005(1) Criminal Court Cases 899 (S.C.)

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SC **Evidence Act, 1872, Section 32** - Dying declaration - Entries in diary and certain statements recorded on a micro cassette - Entries in diary and representation submitted apprehending danger at hands of industrialist were in general terms - Even though name of some accused persons mentioned in the diary and in the cassette, that is not admissible as the entries in diary and cassette do not refer to any event which ultimately was the cause of his death - To be admissible u/s 32 of the Act, statements should be either to the cause of death or any of the circumstances which led to his death. (State of M.P. through C.B.I etc. Vs Paltan Mallah & Ors. etc.) 2005(1) Apex Court Judgments 295 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Evidentiary value - (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration; (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration; (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; (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence; (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected; (vi) A dying declaration which suffers from infirmity cannot form the basis of

conviction; (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected; (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; (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; (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon; (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. (P.V.Radhakrishna Vs State of Karnataka) 2003(2) Apex Court Judgments 311 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Evidentiary value - Law summed up :- (1) It is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration; (2) Conviction based on dying declaration against the correctness of which no cogent reasons have been given or suggested, is sustainable in law; (3) Though dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated - Court must look out for corroboration unless it comes to the conclusion that a dying declaration suffers from an infirmity; (4) Dying declaration alluring confidence of the Court would be a sufficient piece of evidence to sustain conviction; (5) There is no format as such of dying declaration; (6) Where conviction is solely based on dying declaration there is an obligation on the part of the Court to consider with extreme care and caution both the dying declaration as also the evidence of the witnesses supporting it; (7) In the absence of medical certificate that injured was in a fit state of mind at the time of making that declaration, it would be very risky to accept the subjective satisfaction of the Magistrate, who opined that the injured was in a fit state of mind at the time of making a declaration. (Panchdeo Singh Vs State of Bihar) 2002(2) Criminal Court Cases 602 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Fit to make

dying declaration certified by doctor who conducted the post mortem - Deceased had 95% burn injuries and she was put on oxygen the moment she was brought to hospital and continued on oxygen till she died - In such a situation it is difficult to believe that she could have made a dying declaration when she was not capable of breathing by herself - She died within half an hour of making the dying declaration - Held, dying declaration is not a genuine document. (Kamalakar Nandram Bhavsar & Ors. Vs State of Maharashtra) 2003(2) Apex Court Judgments 674 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Fitness certificate given by doctor other than the treating doctor - Held, it is not necessary that only a treating doctor must certify fitness for making statement - Nothing urged to suggest that the doctor was in any way interested in the outcome of the case - No reason to doubt the fitness certificate. (Shanti & Anr. Vs State of Haryana) 2006(2) Criminal Court Cases 460 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Form of recording - Dying declaration if found acceptable, the same need not be described to be in question and answer form. (Vithal Vs State of Maharashtra) 2006(4) Criminal Court Cases 939 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Four dying declarations - Not contradictory to and inconsistent with each other - No reason as to why reliance cannot be placed thereupon. (Vithal Vs State of Maharashtra) 2006(4) Criminal Court Cases 939 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - If found reliable, does not require corroboration and a conviction can solely be based on it. (Sarwan Kumar Vs State) 2006(2) Criminal Court Cases 912 (Delhi) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - If inspires confidence can be the sole basis for conviction. (Heeralal Yadav Vs State of M.P. & Ors.) 2006(3) Criminal Court Cases 063 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - If the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make a dying declaration then such dying declaration will not be invalid solely on the ground that it is not certified by the doctor as to the condition of the declarant to make the dying declaration. (P.V.Radhakrishna

Vs State of Karnataka) 2003(2) Apex Court Judgments 311 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - In absence of the dying declaration recorded by the Magistrate being verified by the Doctor that the patient was in a conscious condition, no reliance can be placed on such dying declaration. (Rajendrasinh Bahadursinh Zala Vs State of Gujarat) 2004(1) Criminal Court Cases 423 (Gujarat)

SC **Evidence Act, 1872, Section 32** - Dying declaration - In law there is no bar in acting on a part of the dying declaration but it has to pass the test of reliability. (Narain Singh & Anr. Vs State of Haryana) 2004(4) Criminal Court Cases 593 (S.C.) : 2004(2) Apex Court Judgments 517 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - In some other language - Translated in English by person recording the same, though he admitted that he knew that other language also - Person recording statement admitted that deceased was surrounded by many attendants who were talking with deceased - Fact that he had entire statement of deceased in other language and keeping same in memory, he wrote it down in English - Not mentioned in dying declaration - No bed-head ticket taken out in which treatment and condition of patient was recorded - Fact that deceased had stated that his statement could be considered as his dying declaration, cannot be believed - Entire story of recording dying declaration was doubtful. (Kajal Sen Vs State of Assam) AIR 2002 S.C. 61

SC **Evidence Act, 1872, Section 32** - Dying declaration - It is rarely to be found in a criminal case that the description of the incident and injury described in the dying declaration gets full corroboration from the medical evidence contained in Injury Report and Postmortem Report. (State of Uttar Pradesh Vs Ram Sewak & Ors.) 2003(1) Apex Court Judgments 715 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Law as to - (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration; (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration; (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; (iv) Where a dying declaration is suspicious, it should not

be acted upon without corroborative evidence; (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected; (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Madan Lal Vs State of Rajasthan) 2006(4) Criminal Court Cases 1060 (Rajasthan) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement - The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death - However, dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable and it is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination - Dying declaration if found reliable can form the base of conviction. (Narain Singh & Anr. Vs State of Haryana) 2004(4) Criminal Court Cases 593 (S.C.) : 2004(2) Apex Court Judgments 517 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Made to younger brother and co-villager - Both consistent with each other and nothing elicited from their mouth to discredit them or discard their testimony from consideration - Held, they cannot be said to be partisan or interested witnesses and their statements are not tainted with interestedness. (Ladga Majhi Vs The State of Orissa) 2002(2) Criminal Court Cases 350 (Orissa)

Evidence Act, 1872, Section 32 - Dying declaration - May form the sole basis for conviction without independent corroboration if it stands the tests viz. (1) The person making it had the opportunity of identifying the person implicated; (2) It is thoroughly reliable and free from blemish; (3) The maker of the statement was in a fit state of mind; (4) Voluntarily made the statement on the basis of personal knowledge without being influenced by others; and (5) The Court, on strict scrutiny, finds it to be reliable. (Mst. Amina Vs State of Rajasthan) 2003(1) Criminal Court Cases 436 (Rajasthan)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Mental condition - Can be inferred in a case of peculiar facts and circumstances - Such circumstances can at least be used as supporting evidence about the mental condition alongwith other evidence available on record. (Dhanraj & Ors. Vs State of Maharashtra) 2003(2) Apex Court Judgments 167 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Mother-in-law aged 82 years who walked with a stick alleged to have poured kerosene oil on deceased aged 22 years on which she started running and thereafter accused set her on fire - Held, it is not possible for accused to set deceased on fire when she started running - Dying declaration does not inspire confidence. (State of Punjab Vs Harbans Kaur) 2006(4) Criminal Court Cases 107 (P&H) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Murder - Deceased died of burn injuries - Injuries happened to be 95% - Executive Magistrate recorded dying declaration for 45 minutes - Doubtful whether for 45 minutes patient in that serious condition could go on responding to questions to the extent of minute details. (State of Maharashtra Vs Sanjay) 2005(1) Criminal Court Cases 603 (S.C.) : 2005(1) Criminal Court Cases 603 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Non mentioning of fact that PW3 his son was present on the spot - Dying declaration cannot be disbelieved merely for this reason as it has nothing to do with veracity and creditworthiness of dying declaration. (Heeralal Yadav Vs State of M.P. & Ors.) 2006(3) Criminal Court Cases 063 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Not recorded in the language of the maker - Dying declaration loses its authenticity. (Ranjeet Singh Vs State of Rajasthan) 2005(4) Criminal Court Cases 443 (Rajasthan) (DB)

Evidence Act, 1872, Section 32 - Dying declaration - Not signed by its maker - Statement of doctor that the hands of the deceased were completely burnt and she was unable to put her signature/thumb impression on the statement - Dying declaration cannot be rejected merely for this reason. (Dharmej Singh Vs State) 2005(3) Criminal Court Cases 418 (J&K)

Evidence Act, 1872, Section 32 - Dying declaration - Not true and voluntary and a manufactured one to implicate the accused - Reliance cannot be placed on such dying declaration. (Pramod Kumar Khadamsingh & Ors. Vs State of Orissa) 2002(3) Criminal Court Cases 244 (Orissa)

Evidence Act, 1872, Section 32 - Dying declaration - Oath is not

required - Presence of a Magistrate is not absolutely necessary - When such statement is recorded by a Magistrate there is no specified statutory form for such recording - It is essential that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind - If Magistrate proves by his testimony that declarant was fit to make the statement even without examination by the doctor declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful - Certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. (Laxman Vs State of Maharashtra) 2003(1) Criminal Court Cases 01 (S.C)

Evidence Act, 1872, Section 32 - Dying declaration - Once Court is satisfied that dying declaration is true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence. (Dharmej Singh Vs State) 2005(3) Criminal Court Cases 418 (J&K)

Evidence Act, 1872, Section 32 - Dying declaration - Oral - Can form basis of conviction in a given case but such dying declaration has to be trustworthy and free from every blemish and inspire confidence. (Natha Vs State of Madhya Pradesh) 2003(2) Criminal Court Cases 26 (M.P.)

Evidence Act, 1872, Section 32 - Dying declaration - Parcha bayan can in a given case be taken as dying declaration. (Mst.Amina Vs State of Rajasthan) 2003(1) Criminal Court Cases 436 (Rajasthan)

Evidence Act, 1872, Section 32 - Dying declaration - Patient in a fit state of mind to make the statement - Certificate of doctor - Doctor certified on the docket that patient is fit to record her statement - Dying declaration bearing attestation of the doctor at its footnote - Dying declaration cannot be rejected merely for the reason that there is no certificate of doctor that patient is fit to record her statement. (Dharmej Singh Vs State) 2005(3) Criminal Court Cases 418 (J&K)

Evidence Act, 1872, Section 32 - Dying declaration - Permission of doctor not taken before recording dying declaration - Doctor not present at the time of recording dying declaration - Time of recording declaration not available - Same language as uttered by patient not written - A staff nurse,

mentioned as a witness in the recorded dying declaration, stated that patient was unconscious from the very beginning - Held, dying declaration is not admissible. (Bablu Mahanto Vs State of West Bengal) 2006(1) Criminal Court Cases 536 (Calcutta) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Principles governing - Analysed. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (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. (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does contain the details as the occurrence it is not to be rejected. (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. (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. (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (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. (Muthu Kutty & Anr. Vs State by Inspector of Police, Tamil Nadu) 2005(1) Criminal Court Cases 859 (S.C.) : 2005(1) Apex Court Judgments 389 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Principles laid down by Supreme Court : (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration; (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration; (iii) Court has to scrutinise the dying

declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination - The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration; (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence; (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected; (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction; (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected; (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; (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 has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail; (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of Punjab Vs Harbans Kaur) 2006(4) Criminal Court Cases 107 (P&H) (DB)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by doctor - If declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration. (Kanak Singh Raisingh Rav Vs State of Gujarat) 2003(1) Apex Court Judgments 14 (S.C.) : 2003(1) Criminal Court Cases 285 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by Magistrate - Absence of medical certificate that injured was in a fit state of mind at the time of making declaration - Magistrate categorically stated in his evidence that the declarant was in a fit state of mind - Held, dying declaration can be acted upon. (Laxman Vs State of Maharashtra) 2003(1) Criminal Court Cases 01 (S.C)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by Magistrate - Doctor certified that deceased was fit to make statement and doctor appended certificate at the foot of statement that deceased remained conscious throughout her statement - Absence of words 'fit state of mind' would not render the declaration unacceptable. (Radhey Sham Vs State of Punjab) 2003(1) Criminal Court Cases 222 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by Magistrate in presence of doctor who endorsed the statement that victim was in fit conscious state of mind - Non examination of doctor who recorded endorsement on dying declaration - Not fatal to prosecution case when Magistrate had satisfied that deponent was in a fit condition to make the statement. (Shaik Nurjahan Vs State of A.P.) 2004(3) Criminal Court Cases 348 (A.P.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by Police Officer - Doctor opined that deceased was in a fit state of mind to make the statement but present when statement was recorded and that the said statement was signed by deceased in token of its correctness - Adds credibility to the same. (Vidhya Devi & Anr. Vs State of Haryana) 2004(4) Criminal Court Cases 61 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by police official in presence of doctor - Deceased had sustained 80 to 85% ante mortem burns - No material to show that dying declaration was result of product of imagination, tutoring or prompting - It appeared trustworthy and had credibility - Courts below were justified in placing reliance on it for convicting appellant. (P.V.Radhakrishna Vs State of Karnataka) 2003(2) Apex Court Judgments 311 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by Sub Judicial Magistrate that deceased opposed accused marrying second time and accused poured kerosene oil on her and set her on fire - Doctor's evidence that victim was conscious and in a position to give statement - Nothing elicited to discredit the doctor's evidence - Conviction recorded by trial Court affirmed by High Court - No reason to interfere. (Ashok Laxman Gaikwad Vs State of Maharashtra) 2006(2) Criminal Court Cases 858 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by a person who did not know the language of deceased - Declaration recorded with help of translator and another person who knew both the languages - Veracity of dying declaration established. (Srinivasa & Ors. Vs State by Santebennur Police) 2005(4) Criminal Court Cases 239 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by a

senior clerk appointed by Tehsildar to act as an Executive Magistrate for that purpose - Such a dying declaration does not gets same sanctity as a dying declaration recorded by a Magistrate - There is no law which mandates that a dying declaration should be recorded only by a Magistrate. (Rajendra & Ors. Vs State of Maharashtra) 2006(3) Apex Court Judgments 232 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by a Judicial Magistrate even without proper medical certification is valid and must be accepted. (Sital Kaur Vs State of Punjab) 2005(3) Criminal Court Cases 43 (P&H)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by a person who did not know the language of deceased - Declaration recorded with help of translator and another person who knew both the languages - Veracity of dying declaration established. (Srinivasa & Ors. Vs State by Santebennur Police) 2005(2) Apex Court Judgments 663 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by a senior clerk appointed by Tehsildar to act as an Executive Magistrate for that purpose - Such a dying declaration does not gets same sanctity as a dying declaration recorded by a Magistrate - There is no law which mandates that a dying declaration should be recorded only by a Magistrate. (Rajendra & Ors. Vs State of Maharashtra) 2006(4) Criminal Court Cases 195 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by Chief Judicial Magistrate - Fitness certificate given by doctor - CJM examined as a witness - Non examination of doctor who gave fitness certificate - Not a ground to reject the dying declaration. (Shanti & Anr. Vs State of Haryana) 2006(2) Criminal Court Cases 460 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by doctor - Disbelieved by High Court for the reason that doctor did not state that deceased was in a fit mental condition to give dying declaration and throughout remained conscious when statement was recorded - Doctor himself recorded dying declaration - Doctor stated that deceased must have gone in shock at the place of incident but recovered consciousness as he was given glucose saline and medicines - Reasoning of High Court fallacious as doctor recorded fitness certificate on dying declaration - Dying declaration well corroborated inspired confidence - Order of acquittal passed by High

Court set aside and order conviction passed by trial Court restored. (Heeralal Yadav Vs State of M.P. & Ors.) 2006(3) Criminal Court Cases 063 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by Judicial Magistrate - No reason to disbelieve the dying declaration - Nothing to suggest even remotely why Judicial Magistrate would implicate the accused and his family members. (Joginder Singh Vs State of Haryana) 2005(4) Criminal Court Cases 139 (P&H)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by Magistrate in presence of doctor - Non examination of doctor - Dying declaration if found true and voluntary, can be acted upon without corroboration. (Paras Nath Vs State of Rajasthan) 2005(1) Criminal Court Cases 681 (Rajasthan)

Evidence Act, 1872, Section 32 - Dying declaration - Recorded by Magistrate in presence of doctor who endorsed the statement that victim was in fit conscious state of mind - Non examination of doctor who recorded endorsement on dying declaration - Not fatal to prosecution case when Magistrate had satisfied that deponent was in a fit condition to make the statement. (Shaik Nurjahan Vs State of A.P.) 2004(3) Criminal Court Cases 348 (A.P.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by Police Officer - Doctor opined that deceased was in a fit state of mind to make the statement but present when statement was recorded and that the said statement was signed by deceased in token of its correctness - Adds credibility to the same. (Vidhya Devi & Anr. Vs State of Haryana) 2004(4) Criminal Court Cases 61 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Recorded by Sub Judicial Magistrate that deceased opposed accused marrying second time and accused poured kerosene oil on her and set her on fire - Doctor's evidence that victim was conscious and in a position to give statement - Nothing elicited to discredit the doctor's evidence - Conviction recorded by trial Court affirmed by High Court - No reason to interfere. (Ashok Laxman Gaikwad Vs State of Maharashtra) 2006(2) Apex Court Judgments 317 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Reliability
- Statement may be brief or longish but deceased must be in a fit state of mind and capable of making a statement at the point of time when dying declaration was made or recorded - If Court entertains grave doubts as to physical fitness and mental state to make the statement, Court may in the absence of corroborative evidence lending assurance to the contents of the declaration refuse to act on it. (Ladga Majhi Vs The State of Orissa) 2002(2) Criminal Court Cases 350 (Orissa)

Evidence Act, 1872, Section 32 - Dying declaration - Scribe not examined - Reason for not disclosing name of scribe not explained - Scribe having not been produced, dying declaration cannot be said to be duly proved and thus is unreliable. (Ranjeet Singh Vs State of Rajasthan) 2005(4) Criminal Court Cases 443 (Rajasthan) (DB)

Evidence Act, 1872, Section 32 - Dying declaration - Serious doubt as to whether the victim has at all made any dying declaration or that he was in a position to make any such dying declaration in view of the seriousness of injury which resulted in fracture of left temporal and parietal bone and caused laceration of brain also - Not believable that victim made any dying declaration. (Prithvi Raj Vs State of Rajasthan) 2003(2) Criminal Court Cases 587 (Rajasthan)

Evidence Act, 1872, Section 32 - Dying declaration - Should be in question answer form - In case it is not so recorded but is otherwise held to be proved, no successful challenge can be made by the defence on this score. (Bimal Kumar Vs State of Punjab) 2005(2) Criminal Court Cases 456 (P&H)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Sole basis of conviction without corroboration - Conviction can be based on the sole basis of dying declaration if it is true and voluntary, without any further corroboration - It is not an absolute rule of law that dying declaration cannot form the sole basis of conviction unless it is corroborated - Rule requiring corroboration is merely the rule of prudence. (Ravikumar alias Kutti Ravi Vs State of Tamil Nadu) 2006(2) Criminal Court Cases 246 (S.C.) : 2006(1) Apex Court Judgments 429 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying Declaration - Suicide - Two

dying declarations - In first dying declaration only a general allegation against mother in law - Second dying declaration recorded by a Head constable after 5 minutes of first dying declaration - Allegation of harassment against husband and mother in law - Dying declarations not consistent - Not safe to rely on them without corroboration. (Lella Srinivasa Rao Vs State of Andhra Pradesh) 2004(2) Criminal Court Cases 390 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - There is no law which mandates that a dying declaration should be recorded only by a Magistrate. (Rajendra & Ors. Vs State of Maharashtra) 2006(3) Apex Court Judgments 232 (S.C.) : 2006(4) Criminal Court Cases 195 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - To be admissible in evidence it is not necessary that maker of statement at the time of making statement should be under shadow of death or should entertain the belief that his death was imminent. (State of Haryana Vs Mange Ram & Ors.) 2003(1) Apex Court Judgments 135 (S.C.) : 2003(1) Criminal Court Cases 372 (S.C.)

SC **Evidence Act, 1872, Section 32 -- Dying declaration** - To record dying declaration there is no prescribed manner or that it should be in the form of questions and answers - Merely because a dying declaration is not recorded by a Magistrate, the same by itself, is not a ground to disbelieve the entire prosecution case - Effect of statement not recorded before Magistrate depends upon the facts and circumstances of each case - In case there are wholly inconsistent or contradictory statements made or if it appears from the record that dying declaration is not reliable then a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon. (Balbir Singh & Anr. Vs State of Punjab) 2006(3) Apex Court Judgments 541 (S.C.) : 2006(4) Criminal Court Cases 582 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Treating doctor not examined - Defence is deprived of its valuable right of cross examination of the doctor with regard to the condition of the deceased - It renders unsafe to place any reliance on such a dying declaration. (Ranjeet Singh Vs State of Rajasthan) 2005(4) Criminal Court Cases 443 (Rajasthan) (DB)

SC **Evidence Act, 1872, Section 32** - Dying Declaration - Two dying declaration - First one by Magistrate and second by Police officer - Magistrate

taking precaution of sending relatives of deceased out of room - No such precaution taken by police officer - Court to consider each of them in its correct prospective and satisfy itself which one of them reflects the true state of affairs - Dying declaration made before magistrate relied on. (Nallam Veera Stayanandam & Ors. Vs. The Public Prosecutor, High Court of A.P.) 2004(2) Criminal Court Cases 269 (S.C.)

SC **Evidence Act, 1872, Section 32** - Dying declaration - Victim did not knew Tamil - Doctor who knew Telugu and Tamil translated the questions and answers and the same recorded by Magistrate - As the statement recorded by Magistrate as translated by doctor, was narrated to the deceased which she admitted, there cannot be any doubt that whatever was stated by deceased, was correctly recorded by Magistrate in the dying declaration. (Ravikumar alias Kutti Ravi Vs State of Tamil Nadu) 2006(2) Criminal Court Cases 246 (S.C.) : 2006(1) Apex Court Judgments 429 (S.C.)

Evidence Act, 1872, Section 32 - Dying declaration - Where the language of dying declaration was of the scribe but the substance was that of the deceased, no infirmity can be attached to the dying declaration on this count. (Dharmej Singh Vs State) 2005(3) Criminal Court Cases 418 (J&K)

Evidence Act, 1872, Section 32 - Multiple dying declarations - Court has to scrutinize all the declarations available and has to arrive at a conclusion whether such declarations inspire confidence for the purpose of convicting the accused - Earliest version may have to be given due weight. (Golla Hanumanthu Vs State of A.P.) 2005(2) Criminal Court Cases 327 (A.P.)

Evidence Act, 1872, Section 32 - Multiple dying declarations - Earliest oral dying declaration that deceased had told PW1 that incident happened when she was making an attempt to light the stove - Except that nothing more had been stated - Held, subsequent versions in improved form definitely are doubtful. (Golla Hanumanthu Vs State of A.P.) 2005(2) Criminal Court Cases 327 (A.P.)

Evidence Act, 1872, Section 32 - Oral dying declaration - Is a weak evidence - In absence of any independent corroboration it cannot be relied upon. (Birsa Munda & Anr. Vs State of Jharkhand) 2002(3) Criminal Court Cases 619 (Jharkhand)

Evidence Act, 1872, Section 32 - Oral dying declaration - Should be proved strictly and in a cogent and convicting and satisfactory manner and much more so when Court has to act upon it for convicting accused on its basis. (Mudavath Hema Naik & Anr. Vs State of A.P.) 2004(1) Criminal Court Cases 91 (A.P.)

Evidence Act, 1872, Section 32 - Oral dying declaration - Where circumstances create doubt in veracity of oral dying declaration, conviction cannot be sustained on such dying declaration. (Nand Kumar Giri & Anr. Vs State of Bihar) 2005(3) Criminal Court Cases 778 (Patna)

Evidence Act, 1872, Section 32 - Post mortem report - Non examination of doctor who conducted autopsy over the dead body - Attendance of doctor could not be procured - Post mortem report is admissible in evidence. (Debi Prasad Panda Vs State of Orissa) 2003(1) Criminal Court Cases 409 (Orissa)

Evidence Act, 1872, Section 32 - Rape and thereafter victim set on fire - Dying declaration - Recorded in presence of SDM - Four persons alleged to have committed rape and man with small pox marks poured kerosene oil and put her on fire - IO apprehended accused - Deceased identified the accused - Identification memo is hit by Section 162(1) Criminal Procedure Code, 1973 - Identification memo treated by trial Court as dying declaration but conviction cannot be based on this dying declaration as there was enough time for calling SDM but no effort made and it is not case of prosecution that SDM was not available - Services of a doctor present in the hospital not availed to record dying declaration - Certificate of doctor that patient is fit to make statement obtained when first dying declaration was recorded but no effort made in this regard when second dying declaration was recorded - Dying declaration made in Bengali and translated by PW-1 in Hindi - No evidence that dying declaration was read over and explained to the deceased after it was recorded - Husband took the deceased to hospital but husband was absent from hospital and his absence not explained when deceased was fighting for life - Not safe to rely on the dying declaration - Accused acquitted. (Shri Niwas Vs State) 2005(3) Criminal Court Cases 552 (Delhi)

Evidence Act, 1872, Section 32 - Suit for cancellation of sale deed alleging that defendants got it executed from his father 'S' by playing fraud - Plaintiff filed family register maintained under Panchayat Raj Act, indicating

that plaintiff is son of 'S' and also certified copy of Will of 'S' wherein it is indicated that plaintiff is son of 'S' - Statement of 'S' in Will is admissible in evidence - Plaintiff has locus standi to file suit - Illustration (k) of Section 32 and not Section 32(5) and (6) of Evidence Act apply. (Hameed & Ors. Vs Kanhaiya) 2005(1) Civil Court Cases 146 (Allahabad)

SC **Evidence Act, 1872, Section 32** - Two dying declarations - First dying declaration recorded by Executive Magistrate on the day, the deceased sustained injuries - It contained signatures of deceased - Second dying declaration recorded next day by police constable - Second dying declaration not signed by deceased - Dying declarations not vitiated thereby - Injuries must have aggravated second day and victim must not have been in a position to put her signatures. (Srinivasa & Ors. Vs State by Santebennur Police) 2005(4) Criminal Court Cases 239 (S.C.) : 2005(2) Apex Court Judgments 663 (S.C.)

Evidence Act, 1872, Section 32 - Two dying declarations - First dying declaration recorded by Judicial Magistrate - Doctor opined, before and after recording dying declaration, that deceased is fit to make statement - Second dying declaration recorded by police, while deceased was in the hands of her husband - Second dying declaration does not inspire confidence whereas first dying declaration credible and inspire confidence and it does not need any corroboration as it is a truthful version. (Surinder Kumar Vs State of Haryana) 2005(4) Criminal Court Cases 520 (P&H) (DB)

SC **Evidence Act, 1872, Section 32** - Two dying declarations - Gap of 3 days of two dying declarations - Both dying declaration consistent with each other - A dying declaration should inspire confidence and it should not appear to be tutored - Both the dying declarations absolutely coherent, cogent and inspiring confidence - Nothing found to discredit or disbelieve the dying declarations - Held, dying declarations, rightly relied upon. (Shanti & Anr. Vs State of Haryana) 2006(2) Criminal Court Cases 460 (S.C.)

Evidence Act, 1872, Section 32 - Two dying declarations - It is the earliest version that has to be given due importance, unless there is evidence to show that the earliest version was not found to be a trustworthy one. (State by Mahila Police, Mysore Vs Gnanendra & Ors.) 2006(4) Criminal Court Cases 289 (Karnataka) (DB)

Evidence Act, 1872, Section 32 - Two dying declarations - Materially different versions given with regard to actual occurrence and role played by each accused in two dying declarations, one recorded by police and other by Magistrate - Held, it could not be made basis for conviction. (Battina Govindamma & Ors. Vs State of A.P.) 2002(3) Criminal Court Cases 570 (A.P)

SC **Evidence Act, 1872, Section 32** - Two dying declarations - One recorded by Police and second by Magistrate - Glaring contradictions in the two dying declarations - Even the motives given in two dying declaration entirely different - Held, contradictions create a doubt as to whether the injury suffered by deceased was really because of the act of the accused or was a figment of the imagination of the deceased. (Chinnamma Vs State of Kerala) 2004(4) Criminal Court Cases 16 (S.C.) : 2004(2) Apex Court Judgments 350 (S.C.)

Evidence Act, 1872, Section 32 and 113-B, Indian Penal Code, 1860, Sections 300, 304-A, 498-A and 34 - Dowry death - Charge of murder - Dying declaration - Recorded by police constable 12 days before death - No certificate from doctor regarding condition of patient to make such declaration - No explanation as to why declaration in form required under law could not be obtained - Such dying declaration cannot be relied upon - In absence of reliable evidence, accused, held, are entitled to benefit of doubt - Order of acquittal cannot be interfered with. (State Vs Mallesha) 2002(3) Criminal Court Cases 522 (Karnataka)

Evidence Act, 1872, Section 32(1) - Dying declaration - Once the Court comes to the conclusion that the declaration is a truthful version, there is no question of further corroboration. (Sakhari Alias Shakuntala Mundala Nayak Vs State of Maharashtra) 2004(3) Criminal Court Cases 420 (Bombay)

Evidence Act, 1872, Section 32(1) - Dying declaration - Once the Court comes to the conclusion that the declaration is a truthful version, there is no question of further corroboration. (Sakhari Vs State of Maharashtra) 2004(3) Criminal Court Cases 420 (Bombay)

SC **Evidence Act, 1872, Section 32(1)** - Dying declaration - Recording of - Deceased knew Hindi language only - Magistrate asked questions in

English and doctor translated it - Deceased gave answers in Hindi - Both Magistrate and doctor had working knowledge of Hindi - Magistrate noted gestures of deceased - Possibility of any tutored statement ruled out - Dying declaration relied on. (B.Shashikala Vs State of Andhra Pradesh) 2005(2) Criminal Court Cases 540 (S.C.)

Evidence Act, 1872, Section 32(1), Indian Penal Code, 1860, Section 302 - Murder - Dying declaration - Death of deceased by burn injuries - Accused alleged to have poured kerosene oil on her daughter-in-law and set her ablaze - Behaviour of accused with deceased was not good - While the victim was sleeping appellant set her ablaze - Conviction by trial court - Deceased in dying declaration narrated that appellant herself told deceased that she had set her on fire - Dying declaration corroborated by statement of PW1 - Dying declaration made in a fit state of mind, hence, natural - Conviction of appellant, upheld. (Smt.Bhanumati Vs The State) 2006(4) Criminal Court Cases 702 (Uttaranchal) (DB)

Evidence Act, 1872, Section 32(1), Indian Penal Code, 1860, Section 326 - Grievous hurt - Dying declaration - Veracity of - At the relevant time, deceased was lying on his cot on platform of his house and was talking to prosecution witnesses - Accused arrived there and inflicted two knife blows on the abdomen - Deceased himself gave contradictory statement regarding number of assailants and number of blows - He ruled out the presence of P.W.1 - No consistency in the evidence of eye witnesses - Dying declaration of deceased having material contradictions - Deceased was an educated man - No explanation as to why his thumb impressions were fixed on dying declaration - Conviction cannot be based on such dying declaration - Accused entitled to be acquitted. (Kamlesh Singh Vs State) 2006(4) Criminal Court Cases 133 (Allahabad)

SC Evidence Act, 1872, Section 32, Criminal Procedure Code, 1973, Section 154 - Dying declaration - FIR - Statement of an injured recorded in the event of death - Can also be treated as a First Information Report. (Balbir Singh & Anr. Vs State of Punjab) 2006(4) Criminal Court Cases 582 (S.C.) : 2006(3) Apex Court Judgments 541 (S.C.)

Evidence Act, 1872, Section 32, Criminal Procedure Code, 1973, Section 313 - Dying declaration not specifically put to the accused in his statement recorded u/s 313 Criminal Procedure Code, 1973 - Dying

declaration cannot be used against the accused. (Ranjeet Singh Vs State of Rajasthan) 2005(4) Criminal Court Cases 443 (Rajasthan) (DB)

SC **Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302** - Murder - Dying declaration - Conviction solely on that basis - Dying declaration before Judicial Magistrate - Statement of Magistrate that deceased was in fit condition to make statement - No certificate of doctor to this effect though he was available - Held, dying declaration could not be relied up - Conviction set aside. (Panchdeo Singh Vs State of Bihar) 2002(2) Criminal Court Cases 602 (S.C.)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302 - Murder - Dying declaration - Death of wife by kicking and inflicting blows with a cutting instruments on her neck, breast, abdomen and hand - Conviction by trial court - Appeal - Evidence of Doctor that deceased sustained 21 injuries and cause of death was shock as a result of ante mortem injuries to lungs - Weapon of offence recovered on disclosure statement made by appellant - Blood group of deceased found on shirt of appellant - Extra judicial confession by appellant that he had killed his wife - Dying declaration recorded promptly and in a fit state of mind of deceased - No reason to disbelieve dying declaration - Charge against appellant proved beyond doubt - Conviction justified. (Madan Lal Vs State of Rajasthan) 2006(4) Criminal Court Cases 1060 (Rajasthan) (DB)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302 - Bride burning - Dying declaration - Three dying declarations containing contrary contents - Dying declaration recorded by SDM - It did not bear medical certificate of fitness of deceased, but record of medical treatment showed that deceased was in a position to make a statement before the SDM - Dying declaration made before I.O. and parents-in-law not believed - SDM being independent Public Officer had no enmity with accused - Dying declaration recorded by SDM, believed. (Smt. Gyano Devi Vs State) 2006(4) Criminal Court Cases 064 (Delhi) (DB)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302 - Dying declaration - Conviction on the basis of - Dying declaration found to be true, coherent, consistent and free from any effort to induce the deceased to make a false statement - Corroborated by medical evidence - Accused can be convicted on the basis of such dying declaration without further

corroboration from the eye witnesses who turned hostile. (Om Parkash @ Omi Vs State of Haryana) 2006(2) Criminal Court Cases 210 (P&H) (DB)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302 - Dying declaration - Recorded by SDM - Dying declaration is preferably to be in question and answer form - However, non adherence to the same is not fatal and by itself does not provide ground for disregarding it. (Smt. Gyano Devi Vs State) 2006(4) Criminal Court Cases 064 (Delhi) (DB)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302 - Murder - Causing death of wife by pouring kerosene and lit fire - Dying declaration recorded in hospital by police constable in presence of doctor who certified that deceased was in a fit state of mind to make statement - Corroboration by eye witness who had seen deceased and accused in quarrel and had rushed to rescue deceased when he saw her in flames - Further corroboration by medical evidence - Evidence of deceased and accused not on good relations - Evidence of ill treatment of wife - Mere fact that dying declaration is not in question and answer form does not destroy its value - Order of acquittal set aside and accused convicted, with imprisonment for life with fine. (State by Magadi Road Police, Bangalore Vs K.G.Shivashankar) 2006(2) Criminal Court Cases 888 (Karnataka)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Section 302 - Murder - Dying declaration - Deceased suffered 100% burns - Dying declaration recorded in the presence of doctor who gave her a Certificate of fitness - Statement cannot be discarded merely because it was recorded by head constable - There was no time for the head constable to secure presence of Magistrate - Accused convicted on the basis of dying declaration which was found to be credible - No further corroboration is necessary. (Izaz Vs State of Haryana) 2005(3) Criminal Court Cases 145 (P&H)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Sections 300, 498-A and 34, Criminal Procedure Code, 1973, Section 162(2) - Dying declaration - Declarant with burn injuries brought to hospital and at time of admission cause of burns recorded as “accidental” - Subsequent recording of dying declaration before 24 hours of death, implicating her husband and her mother-in-law as persons who set her on fire - Charges framed on basis of dying declaration - Dying declaration not containing doctor’s certificate that declarant was mentally fit and balanced to make such statement - Evidence

of independent witnesses suggesting that declaration may not be true - Held, where evidentiary value of dying declaration has been watered down considerably, in absence of any other evidence to corroborate it, such dying declaration cannot be made sole basis of conviction. (State By Circle Police Inspector, Ranebennur Vs Basavaraj & Anr.) 2002(2) Criminal Court Cases 192 (Karnataka)

Evidence Act, 1872, Section 32, Indian Penal Code, 1860, Sections 304-B, 498-A - Dowry death - Death by burning - Junior Auditor in Co-operative Societies married daughter of a labourer - It is unbelievable that accused would demand dowry when he knew from beginning that his father-in-law is a poor labourer - Accused rushed deceased to hospital and sent information to her family members immediately - Accused suffered minor injuries which suggests that accused made attempt to extinguish fire - Dying declaration not believable as relatives of deceased were with her for sufficient time and thus there is possibility that dying declaration contained tutored version - Accused acquitted. (Joginder Singh Vs State of Haryana) 2005(4) Criminal Court Cases 139 (P&H)

Evidence Act, 1872, Sections 32, 113-A, Indian Penal Code, 1860, Section 498-A - Suicide by wife - Cruelty by husband - Suicide note in handwriting of deceased, found in jacket of deceased, recovered at time of inquest - Suicide note implicating husband as person responsible for her committing suicide - Rejection of suicide note as “plant” and also on ground that handwriting was identified by deceased’s father and other relatives who were interested and unreliable witnesses - Rejection of suicide note, which is in nature of dying declaration not justified in background of cruel treatment meted out to deceased, as evidenced by depositions of other witnesses - Acquittal of accused on ground that demand for dowry was not proved is erroneous, as “cruelty” is wider and is not confined to dowry harassment - Order of acquittal, reversed. (State by Kamakshipalya Police, Bangalore Vs Maregowda & Ors.) 2002(1) Criminal Court Cases 141 (Kant.)

SC Evidence Act, 1872, Sections 32, 155 & 157, Criminal Procedure Code, 1973, Section 164 - Dying declaration - Maker of propoerted dying declaration when survives - Statement is not one u/s 32 Evidence Act - It is a statement in terms of S.164 Cr.P.C. and can be used under Section 157 of the Evidence Act for the purpose of corroboration and under Section 155 for the purpose of contradiction. (State of U.P. Vs Veer Singh & Ors.) 2004(4)

SC **Evidence Act, 1872, Sections 32, 155 & 157, Criminal Procedure Code, 1973, Section 164** - Dying declaration - Maker of purported dying declaration when survives - Statement is not one u/s 32 Evidence Act - It is a statement in terms of Section 164 Criminal Procedure Code, 1973 and can be used under Section 157 of the Evidence Act for the purpose of corroboration and under Section 155 for the purpose of contradiction. (State of U.P. Vs Veer Singh & Ors.) 2004(2) Apex Court Judgments 629 (S.C.) : 2004(4) Criminal Court Cases 48 (S.C.)

SC **Evidence Act, 1872, Sections 32, 33** - Both the provisions are exception to the general principle that best should be direct - Section 32 renders statement of relevant facts made by a person, who is dead, or who cannot be found or who has become incapable of giving evidence, etc., admissible in evidence as to the relevant facts when it relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute raised - Section 33 provides the conditions necessary to be satisfied to admit as secondary evidence testimony given by a witness in a former judicial proceeding or before any person authorized by law to take it for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party - The statement as to any fact in issue or relevant fact to be admissible as an admission must be such as are relevant and may be proved against the person, who makes them or his representative in interest and not on behalf of the person, who makes them, unless when it is of such a nature that if the persons making it were dead, it would be relevant as between third person under Section 32. (Mahila Bajrangi (dead) through L.Rs. & Ors. Vs Badribai & Anr.) 2003(1) Apex Court Judgments 104 (S.C.)

Evidence Act, 1872, Sections 32, 6 and 157, Indian Penal Code, 1860, Sections 376 and 306 - Rape - Girl aged committing suicide within an hour of rape - Prosecutrix narrated the incident to her mother - Statement of victim is admissible - S.32 is an exception to the rule of hearsay and makes

admissible the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death - Conviction u/s 306 and 376 IPC upheld. (Sunil Kumar Arjun Das Gupta Vs State of M.P.) 2003(1) Criminal Court Cases 124 (M.P.)

SC **Evidence Act, 1872, Section 33** - Applicability of the provision - There are three pre-requisites and they are (i) that the earlier proceeding was between the same parties; (ii) that the adverse party in the first proceeding had the right and opportunity to cross examine; and (iii) that the questions in issue in both the proceedings were substantially the same - In the absence of any of the three pre-requisites Section 33 of the Act would not be attracted. (Sashi Jena & Ors. Vs Khadal Swain & Anr.) 2004(1) Apex Court Judgments 528 (S.C.)

Evidence Act, 1872, Section 33 - Testimony of PW recorded before committing Magistrate and thereafter case committed to Sessions Court for trial - Death of PW before he could be examined as a witness by Sessions Court - Testimony of PW before committing Magistrate is admissible in evidence u/s 33 of the Act. (Gurdev Singh Vs State of Punjab) 2006(2) Criminal Court Cases 626 (P&H)

Evidence Act, 1872, Section 33, Criminal Procedure Code, 1973, Section 306(4) - Statement by approver at time of enquiry u/s 306(4) Criminal Procedure Code, 1973 is not relevant or admissible u/s 33 Evidence Act during the subsequent trial in which the approver is not available by reason of his death. (Asokan Vs State of Kerala) 2005(4) Criminal Court Cases 27 (Kerala)

Evidence Act, 1872, Section 33, Criminal Procedure Code, 1973, Section 306(4)(a) - Approver - Statement recorded by Magistrate u/s 306(4)(a) Criminal Procedure Code, 1973 - Death of approver before his examination by trial Court - Statement of approver at the time of enquiry u/s 306(4)(a) Criminal Procedure Code, 1973 is not admissible in evidence as accused had no right of cross-examination at that stage. (Asokan L.S. Vs State of Kerala) 2006(1) Criminal Court Cases 694 (Kerala) (FB)

Evidence Act, 1872, Section 34 - Account books - Loos sheets - Are not books of account kept in regular course of business. (M.Krishna Rao Vs M.L.Narasikha Rao) AIR 2003 A.P. 498

Evidence Act, 1872, Section 34 - Books of account - Entries in account books alone are not sufficient to charge any person with liability - There has to be further evidence to prove that the transaction took place in accordance with those entries - Author of making entries in books of account not examined - Held, defendant is not liable to pay the suit claim. (P.Sood & Co. Vs Peerchand Misrimalji Bhansali) 2005(3) Civil Court Cases 170 (Madras)

Evidence Act, 1872, Section 34 - Books of account - Loose sheets contained in files are not books of account. (M.Krishna Rao & Anr. Vs M.L.Narasikha Rao & Ors.) 2004(2) Civil Court Cases 265 (A.P.)

Evidence Act, 1872, Section 34 - Books of accounts - Entries - Proved by official staff - Neither objected nor evidence produced to doubt correctness of those entries - Held, said entries are admissible in evidence. (Kulamani Mohanty Vs Industrial Development Corporation of Orissa Ltd.) AIR 2002 Orissa 38

Evidence Act, 1872, Section 34 - Entries in books of account - Numerous entries extending over a large number of years - Defendant neither disputed any entry nor cross examined the witnesses of the account books - Held, statement of witnesses produced by plaintiff are sufficient to fix the defendant with liability. (State Bank of India Vs. M/s.H.Satish Hosiery Factory, Modhopuri & Anr.) 2004(2) Civil Court Cases 553 (P&H)

Evidence Act, 1872, Section 34 - Entries in books of account - Proof - Parties having business transaction with each other - Entries made in books of account sufficiently supported by evidence of ST form which could not be forged or procured - Held, entries in books of account rightly considered as relevant by Courts below. (M/s Roshan Industries & Ors. Vs M/s Mohan Lal) 2005(1) Civil Court Cases 243 (P&H)

Evidence Act, 1872, Section 34 - Entry in books of account - By itself not sufficient to charge any person with liability - Some further evidence to establish the entries is desirable and highly essential to establish the debt - An entry in ledger that a certain sum was paid to defendant is not by itself sufficient to establish the payment unless supported by any receipt or voucher to that effect. (N.Satyanarayana Raju Vs Chekuri Gopalakrishnaraju) 2004(2) Civil Court Cases 636 (A.P.)

SC **Evidence Act, 1872, Sections 34, 32** - Entries in books of record made by a person who is dead - S.32(2) is attracted according to which the statement made by a dead person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business etc. is by itself relevant. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

Evidence Act, 1872, Sections 34, 65, Banker's Books Evidence Act, 1891 - Bahi entries - Only two pages produced - No reliance can be placed on such bahi entries when original bahi is not produced as entries in account books are relevant only if such books of account are kept in regular course of business and original bahi is produced in Court - When account books in original are not produced in Court it cannot be discovered whether the accounts are kept in regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page-numbering. (Rattan Singh Vs Sagarmal) 2005(3) Civil Court Cases 335 (P&H)

SC **Evidence Act, 1872, Section 35** - Admissibility of a document under section 35 - Three conditions to be satisfied viz. (1) Entry that is relied on must be one in a public or other official book, register or record; (2) It must be an entry stating a fact in issue or relevant fact; and (3) It must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. (Partap Singh Vs State of Jharkhand & Anr.) 2005(2) Criminal Court Cases 334 (S.C.)

SC **Evidence Act, 1872, Section 35** - Age - Birth entries in School register - Evidentiary value - No reliable evidence to show that the date of birth was recorded in the school register on the basis of the statement of any responsible person - Entry is not of much evidentiary value. (Sushil Kumar Vs Rakesh Kumar) 2004(2) Civil Court Cases 63 (S.C.) : 2003(2) Apex Court Judgments 690 (S.C.)

SC **Evidence Act, 1872, Section 35** - Age - Determination - Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case. (Ravinder Singh Gorkhi Vs State of U.P.) 2006(3) Criminal Court Cases 577 (S.C.) : 2006(2) Apex

Evidence Act, 1872, Section 35 - Age - Entry in school register - Evidentiary value - If entry of age in school register is made on the basis of information given by parents, the entry has evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. (AIR 1965 SC 282 followed) (Kamini Das Vs Upendra Biswal) 2006(2) Civil Court Cases 754 (Orissa) (DB)

SC **Evidence Act, 1872, Section 35** - Age - School register - A register maintained in a school is admissible in evidence to prove date of birth of the person concerned - Such date of birth is recorded in school register by authorities in discharge of their public duty. (State of Chhattisgarh Vs Lekhrum) 2006(2) Criminal Court Cases 735 (S.C.) : 2006(2) Apex Court Judgments 159 (S.C.)

Evidence Act, 1872, Section 35 - Age - Voters list - Entry of age or other description in the voter list of a person is not conclusive proof of such age or status, but that is probative evidence with rebuttable presumption. (Kamini Das Vs Upendra Biswal) 2006(2) Civil Court Cases 754 (Orissa) (DB)

SC **Evidence Act, 1872, Section 35** - Date of birth - Entry in school register - Entry is relevant and admissible but entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded. (Partap Singh Vs State of Jharkhand & Anr.) 2005(2) Criminal Court Cases 334 (S.C.)

Evidence Act, 1872, Section 35 - Entry in birth and death register - Incorporated in register kept and maintained by competent authority - Admissible in evidence. (Chitru Devi Vs Ram Dei) AIR 2002 H.P. 59

Evidence Act, 1872, Section 35 - Entry in public record - To be considered subject to relevancy and by assessing evidence as a whole and not in isolation. (Bhami Bewa Vs Krushna Chandra Swain @ Gochhayat & Ors.) 2004(2) Civil Court Cases 543 (Orissa)

Evidence Act, 1872, Section 35 - Revenue entries - Presumption of truth - No rebuttal - Reliance can be placed on revenue entries. (Dumnu Ram Vs Madan Lal) AIR 2002 HP 141

SC Evidence Act, 1872, Section 35 - Scope - Provision of Section 35 Evidence Act requires the following conditions to be fulfilled before a document is held to be admissible thereunder : (i) it should be in the nature of the entry in any public or official register;; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and (iv) all persons concerned indisputably must have an access thereto. (Ravinder Singh Gorkhi Vs State of U.P.) 2006(3) Criminal Court Cases 577 (S.C.) : 2006(2) Apex Court Judgments 458 (S.C.)

Evidence Act, 1872, Section 35 - Secondary evidence - Can only be allowed when existence, execution and loss of a document is proved - Without any evidence having been led on the question of existence, execution and loss of the document, it would not be fair and reasonable to conclude that no such document was ever executed - An opportunity be provided to prove the existence, execution and loss of document and in case it is so proved only then secondary evidence be allowed. (Gopal Singh Vs Shish Pal) 2006(2) Civil Court Cases 719 (P&H)

Evidence Act, 1872, Section 35 - Voters list - Prepared by competent official of election department in discharge of his official duty - Not challenged by plaintiff before competent authority in any proceedings - Voters list is admissible in evidence. (Chitru Devi Vs Ram Dei) AIR 2002 H.P. 59

Evidence Act, 1872, Section 40 - Judgment of criminal court - Finding of fact - Not relevant in civil suit except to prove acquittal or conviction - Civil Court has to reach its own conclusion as to commission or non commission of act giving rise to claim in suit. (Nawab Deen Vs Sohan Singh) AIR 2002 HP 143

Evidence Act, 1872, Section 41 - Judgment by a matrimonial Court - It is a judgment in rem and is binding on the whole world - The declaration given in such judgments conferring a status or taking it away is a conclusive proof of that legal character. (M/s Sachdeva Rice Mills Vs Smt.Raj Anand)

2003(1) Civil Court Cases 582 (P&H)

Evidence Act, 1872, Section 43 - Admission in earlier litigation - Suit for specific performance - Executant pleaded in written statement in an earlier suit as to execution of suit agreement to sale - Held, it is relevant to be considered in the present suit. (S.Mahaboob Basha & Anr. Vs B.R.Mohan Rao (died) per L.Rs. & Ors.) 2006(4) Civil Court Cases 526 (A.P.)

SC Evidence Act, 1872, Section 44 - Judgment or decree obtained by playing fraud on Court - Such decree is nullity and non est in the eye of law - Such decree or judgment has to be treated as a nullity by every court, whether superior or inferior - It can be challenged in any court even in collateral proceedings. (Hamza Haji Vs State of Kerala) 2006(4) Civil Court Cases 407 (S.C.)

Evidence Act, 1872, Section 45 - Age - Proof - Opinion of doctor - Doctor is not always truthful - Opinion of doctor is not conclusive - It being opinion evidence as such it has to be judged along with other evidence. (Kamlesh Vs State of Uttar Pradesh) 2003(1) Criminal Court Cases 93 (Allahabad)

SC Evidence Act, 1872, Section 45 - Ballistic expert - Report - Admissibility - Identifiable marks on pellets - Recovery of 12 bore country made pistol, 13 live cartridges 12 bore, one foreign made pistol, 6 live cartridges and a motorcycle - Three pellets extricated from body during post mortem - Ballistic expert conducted detailed laboratory test fires and microscopic examination - Opinion given that three lead pellets marked must have been fired from a 12 bore country made pistol - He deposed that he had prepared the report on basis of microscopic examination and he had also taken photographs of the pellets - Held, in case of country made pistol, ballistic expert can found identifying marks on pellets - Failure to produce micro-photographs is not fatal when expert has given convincing reasons to support his opinion. (State of M.P. through C.B.I etc. Vs Paltan Mallah & Ors. etc.) 2005(1) Apex Court Judgments 295 (S.C.) : 2005(1) Criminal Court Cases 899 (S.C.)

Evidence Act, 1872, Section 45 - Disputed signatures - Not necessary that it should be compared with the admitted signatures - It can be compared with the signatures which are proved to be signatures of the same executant.

(Mohd. Aslam Vs Shambhoo Singh & Ors.) 2005(2) Civil Court Cases 767 (Rajasthan)

Evidence Act, 1872, Section 45 - Divergent reports of two Handwriting experts - Court is justified in ignoring the reports and placing reliance on the testimony of attesting witnesses and the scribe. (Balbir Singh Vs Sarup Singh & Ors.) 2004(2) Civil Court Cases 186 (P&H)

Evidence Act, 1872, Section 45 - Expert - His opinion that defendant on reverse of pronote whereunder last payment was made, was forged one - Expert not appearing as witness and not subject to cross examination - His report alone cannot be treated as evidence. (Sri Balaji Traders Vs Ponnuri Lakshmaiah) AIR 2002 A.P. 234

Evidence Act, 1872, Section 45 - Expert - Opinion - Value - Opinion of Handwriting expert need not be taken into consideration when there is direct and trustworthy evidence in proof of the disputed document - However, expert's evidence assumes importance when there are serious doubts about the credibility of the direct witnesses. (Bolisetti Venkateswara Rao Vs Nadakuditi Venkateswara Rao) 2003(1) Civil Court Cases 36 (A.P.)

Evidence Act, 1872, Section 45 - Expert evidence - Opinion without reasons is not conclusive - Opinion without reasons should be corroborated either by clear or by circumstantial evidence - If opinion is very sound, it may be accepted without corroboration. (Lala Ram Vs State of Rajasthan) 2003(3) Criminal Court Cases 212 (Rajasthan)

Evidence Act, 1872, Section 45 - Expert opinion - An expert's opinion is valueless unless the opinion is supported by reasons and data - An expert's opinion is not binding on Courts, it is only relevant under Section 45 of Evidence Act - For such opinion to be accepted by the Court, expert must assign reasons, for, it is the reason given by the expert, which is important and not his mere opinion. (Krishna Kanta Das Vs State of Assam) 2005(3) Criminal Court Cases 272 (Gauhati)

Evidence Act, 1872, Section 45 - Expert opinion - Disputed signatures - Application u/s 45 of Evidence Act can be filed even at the stage of arguments. (Guru Govindu Vs Devarapu Venkataramana) 2006(4) Civil Court Cases 619 (A.P.)

Evidence Act, 1872, Section 45 - Expert opinion - Fabricated or forged signatures - Opinion of expert cannot be given much weight as against direct evidence available as regards signatures on the documents. (Appana Pullam Raju Vs Central Bank of India & Ors.) 2006(1) Civil Court Cases 262 (A.P.)

SC **Evidence Act, 1872, Section 45** - Expert opinion - Mere filing of a document is not proof of its contents - A certificate issued by an expert should be brought on record by examining him. (Subhash Maruti Avasare Vs State of Maharashtra) 2006(4) Criminal Court Cases 1066 (S.C.)

Evidence Act, 1872, Section 45 - Expert opinion - Not binding on Court - Court does not become functus officio to draw conclusion if expert has also given opinion or finding. (Thyseen Vs Steel Authority of India) AIR 2002 Delhi 255

Evidence Act, 1872, Section 45 - Expert opinion - Thumb impression - Experts deposing in support of the case of their respective parties and submitted contradictory reports - Opinion of expert rightly discarded by Courts below. (Smt.Sunehri Devi Vs Pritam Singh & Ors.) 2006(3) Civil Court Cases 302 (P&H)

Evidence Act, 1872, Section 45 - Expert opinion - Two divergent opinions by two experts - One expert gave cogent reasons that document is forged - Reasons given by another expert not cogent - Court is entitled to rely upon opinion of expert giving cogent reasons. (Balwinder Kaur Vs Bawa Singh) AIR 2002 P&H 378

Evidence Act, 1872, Section 45 - Finger print expert - Three pronotes alleged to be executed by petitioner on different dates - Attesting witnesses supported said case of plaintiff - Defendant asserted that three promissory notes were executed on same day - Filed application for sending up of said promissory notes to Finger Print Expert - Evidence of expert cannot override positive evidence of attesting witnesses - Order dismissing said application - Proper. (Uttamchand Sarma Vs Jasti Chinna Veerabhadra Rao) AIR 2004 A.P. 225

Evidence Act, 1872, Section 45 - Handwriting - Expert opinion - Cannot be rejected on ground that he is remunerated witness or that it is

based on imperfect science. (Ameer Mohammed Vs Barkat Ali) AIR 2002 Rajasthan 406

Evidence Act, 1872, Section 45 - Handwriting expert - If not examined as a witness - No value or weightage can be given to his opinion. (Bapurao & Ors. Vs State of Maharashtra) 2004(1) Criminal Court Cases 483 (Bombay)

Evidence Act, 1872, Section 45 - Handwriting expert - Opinion - Can rarely take the place of substantive evidence - Before acting on such evidence it is usual to see, if it is corroborated either by clear direct evidence or by circumstantial evidence. (Vikas Ramdas Khairnar Patil Vs State of Maharashtra) 2006(2) Criminal Court Cases 933 (Bombay) (DB)

SC Evidence Act, 1872, Section 45 - Handwriting expert - There is no rule of law that opinion evidence of handwriting expert must never be acted upon, unless substantially corroborated - As human judgment cannot be said to be totally infallible, due caution shall have to be exercised and the approach ought to be that of care and caution and it is only upon probe and examination, the acceptability or creditworthy of the same depends. (Alamgir Vs State (NCT, Delhi)) 2003(1) Apex Court Judgments 66 (S.C.)

Evidence Act, 1872, Section 45 - Rebuttal of expert opinion by expert opinion - Dismissal of application of defendant on ground that defendant did not file any objection on the expert opinion obtained by plaintiff - Held, approach of trial Court is wrong because trial Court could not have decided such objection during trial - Expert opinion is evidence and evidence is not assessed, accepted or rejected during trial. (Mohd. Aslam Vs Shambhoo Singh & Ors.) 2005(2) Civil Court Cases 767 (Rajasthan)

Evidence Act, 1872, Section 45 - Rebuttal of expert opinion by expert opinion - Dismissal of defendant's application on the ground that there is no reason to disbelieve the expert opinion obtained by plaintiff - Held, trial Court at this stage, could not have observed so because it is pre-judging a piece of evidence during trial. (Mohd. Aslam Vs Shambhoo Singh & Ors.) 2005(2) Civil Court Cases 767 (Rajasthan)

Evidence Act, 1872, Section 45 - Rebuttal of expert opinion by expert opinion - Held, when one party is granted permission to produce expert

opinion for hand writing or thumb impression in dispute then the best way to rebut the expert opinion is by another expert opinion. (Mohd. Aslam Vs Shambhoo Singh & Ors.) 2005(2) Civil Court Cases 767 (Rajasthan)

Evidence Act, 1872, Section 45 - Will - Opinion of document expert - Merely because credibility of document expert is doubted in some other cases, it cannot be held that his report is not meritorious in the present case too - Evidence of expert cannot be discarded when Will is otherwise duly proved. (Daljit Singh & Ors. Vs Sukhwinder Singh & Ors.) 2006(1) Civil Court Cases 368 (P&H)

Evidence Act, 1872, Sections 45 & 47 - Thumb impression - Science of identification - The science of identifying thumb impression is an exact science and does not admit of any mistake or doubt. (Parukutty Amma Vs Thankam Amma) 2004(2) Civil Court Cases 33 (Kerala)

SC Evidence Act, 1872, Sections 45 and 47, Indian Penal Code, 1860, Section 302 - Medical evidence - - Medical evidence and oral evidence - Contradiction - Appreciation - It is trite law that when oral evidence is credible and cogent, medical evidence is contrary, is inconsequential - Only when the medical evidence totally improbabilises the oral evidence, adverse inference can be drawn. (Anil Kumar Vs State of U.P.) 2005(1) Criminal Court Cases 01 (S.C.)

SC Evidence Act, 1872, Sections 45, 47 & 73 - Opinion u/s 45 is by an expert by a scientific comparison whereas opinion u/s 47 is on the basis of familiarity resulting from frequent observations and experiences - In both cases Court is required to satisfy itself by such means as are open to conclude that opinion may be acted upon - Irrespective of opinion Court can compare the admitted writing with disputed writing and can come to its own independent conclusion - Ordinarily Ss.45 & 73 are complementary to each other - Evidence of Handwriting expert need not be invariably corroborated. (Lalit Popli Vs Canara Bank & Ors.) 2003(1) Apex Court Judgments 383 (S.C.)

Evidence Act, 1872, Sections 45, 73 - Expert opinion - Cannot be disrespected unless some more material and/or some contrary evidence and/or report is placed on record by contesting party - Where there was expert opinion on record and said expert opinion was duly proved by examining

the expert himself, said expert opinion cannot be discarded. (Vasanta Vs Walmik) 2005(1) Civil Court Cases 168 (Bombay)

Evidence Act, 1872, Sections 45, 73 - Signatures - Handwriting expert - Objection to report - Examination of handwriting expert is required in a case when report of handwriting expert is disputed - No reliance can be placed on same without examination of expert. (Sanjay K.Shetty Vs B.Narayana Shetty) 2006(2) Civil Court Cases 366 (Karnataka) (DB)

Evidence Act, 1872, Sections 45, 73 - Thumb impression or specimen signatures for comparison - Court can exercise power at instance of complainant during trial but not at stage of investigation. (Maya Bansal Vs State of Raj.) 2003(2) Criminal Court Cases 210 (Rajasthan)

Evidence Act, 1872, Sections 45, 73 & Constitution of India Art.20(3) - "Witness against himself" - Giving of finger-impressions or specimen writing or signature by an accused person - Cannot be said to be a witness against himself - Thus Court can ask an accused to give his thumb impression. (Maya Bansal Vs State of Raj.) 2003(2) Criminal Court Cases 210 (Rajasthan)

Evidence Act, 1872, Sections 50, 101 to 104 - Suit for cancellation of sale deed alleging that defendants got it executed from his father 'S' by playing fraud - Allegation by defendant that plaintiff is not son of 'S' and his mother 'K' was not second wife of 'S' - This fact is required to be proved by defendants themselves - Plea that plaintiff is required to prove by producing relatives of 'S' to prove factum of marriage - Not tenable - Plaintiff is not required to give evidence u/s 50 of the Act. (Hameed & Ors. Vs Kanhaiya) 2005(1) Civil Court Cases 146 (Allahabad)

Evidence Act, 1872, Sections 50, 60 - Issue of adoption - Deposition by cousin of person who adopted, family priest and family barber that giving and taking ceremony took place at residence of natural father - Witnesses having special means of knowledge, their evidence held relevant on issue of adoption. (Bhami Bewa Vs Krushna Chandra Swain @ Gochhayat & Ors.) 2004(2) Civil Court Cases 543 (Orissa)

Evidence Act, 1872, Section 50 - Relationship - Proof - Ingredients of the provision are : (1) there must be a case where the Court has to form

an opinion as to the relationship of one person to another; (2) in such a case, the opinion, expressed by conduct as to the existence of such relationship is a relevant fact, (3) but the person whose opinion expressed by conduct is relevant must be a person so as a member of the family or otherwise has special means of knowledge on the particular subject of relationship. (Piara Singh Johal & Anr. Vs Gej (Died) through LRs.) 2005(3) Civil Court Cases 557 (P&H)

Evidence Act, 1872, Section 50 - Relationship - Proof - To be proved by examining such witnesses who had exclusive knowledge of relationship of the parties and any other documentary evidence - No witness examined showing that marriage was solemnised between the parties or that they had seen both of them living as husband and wife - Birth of two children showing them to be born to them is not sufficient to establish the marriage. (Amar Kaur Vs Dhanna Singh & Ors.) 2004(2) Civil Court Cases 176 (P&H)

Evidence Act, 1872, Section 54 - Bad character - Evidence of bad character of accused cannot be adduced unless the accused leads the evidence of good character - This prohibition does not apply in a case where bad character of any person is itself in issue. (Prithvi Singh Vs State of U.P.) 2002(3) Criminal Court Cases 36 (Allahabad)

Evidence Act, 1872, Sections 58, 65 - Admission in written statement - Certified copy of written statement filed in earlier suit produced - Admission in written statement is admissible u/s 58 and cannot be discarded on ground that certified copy of written statement is not public document under S.65. (Raman Pillai Krishna Pillai Vs Kumaran Parameswaran) AIR 2002 Kerala 133

Evidence Act, 1872, Section 60, Criminal Procedure Code, 1973, Section 293(4), Indian Penal Code, 1860, Section 302 - Post mortem report - Non examination of doctor who conducted autopsy over dead body - Evidentiary value - Death caused by inflicting injuries - Prejudice caused to defence - Defence denied opportunity to cross examine doctor as to nature of injuries and whether they were sufficient in ordinary course to cause death - In absence of any evidence that deceased died due to homicidal violence, appellants cannot be held guilty - Contents of post-mortem report could not be proved by examining compounder of hospital - Post-mortem report is not one of those documents which fall under Section 293(4) Criminal Procedure

Code, 1973 (Sowam Kisku & Ors. Vs State of Bihar (Now Jharkhand))
2006(4) Criminal Court Cases 906 (Jharkhand)

Evidence Act, 1872, Section 60, Powers of Attorney Act, 1882, Section 2, Negotiable Instruments Act, 1881, Section 138 - Dishonour of Cheque - All transactions in relation to dishonour of cheque undertaken by power of attorney holder in total exclusion of the payee or holder in due course - In such an eventuality, power of Attorney holder, in addition to his capacity to file complaint, alone has to be the witness in place of the complainant apart from other witnesses if involved in the transaction. (Mamatadevi Prafullakumar Bhansali Vs Pushpadevi Kailashkumar Agrawal & Anr.) 2005(3) Civil Court Cases 246 (Bombay) : 2005(3) Criminal Court Cases 562 (Bombay)

Evidence Act, 1872, Sections 61 and 91 - Document - Proof - Once the document is proved then it is not obligatory upon that party to lead further evidence to prove the contents of the document - Onus is then on the other party to lead cogent and proper evidence, documentary or otherwise to show that the contents of the document were incorrect or that they have been in possession prior or after execution of that document. (Hoshiar Singh Vs Ram Kumar & Ors.) 2004(3) Civil Court Cases 186 (P&H)

Evidence Act, 1872, Section 63 - Secondary evidence - Document not stamped and unregistered - Secondary evidence disallowed - Held, it would be premature for trial Court to go into said question. (Swaran Singh Vs Narinder Kaur) AIR 2002 P&H 40

Evidence Act, 1872, Section 63 - Secondary evidence - Photostat copy - Can be received as secondary evidence unless its authenticity is doubtful and if the party having possession of original fails to produce it in spite of issuing notice. (Amangenti Prameela & Anr. Vs P.Venkat Reddy (Died) per LRs. & Ors.) 2004(2) Civil Court Cases 465 (A.P.)

Evidence Act, 1872, Sections 63 & 65 - Secondary evidence - Proof of Will - Proof of carbon copy of Will by secondary evidence as original alleged to be destroyed by opposite party - Carbon copy not bearing signatures of testator and attesting witnesses - Cannot be considered as true copy of original - Secondary evidence can be allowed only when original is proved to have been lost or misplaced - Where execution of Will itself is not proved,

question of proving its existence by means of secondary evidence does not arise. (K.P.Krishnakumar Vs Smt.Radhalakshmi Amma) 2005(1) Civil Court Cases 21 (Karnataka)

SC **Evidence Act, 1872, Sections 63, 65 and 65B** - Secondary evidence - Telephone Call records of Mobile - Absence of certificate u/s 65 B - Whether fatal - Held No - Secondary evidence means and includes, among other things, “copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies” - Section 65 enables secondary evidence of the contents of a document to be adduced if Call records stored in huge servers which cannot be easily moved and produced in the Court - Printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service providing Company can be led into evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge - Irrespective of the compliance of the requirements of Section 65B, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely Sections 63 & 65 - Call records held admissible and reliable. (State (N.C.T. of Delhi) Vs Navjot Sandhu @ Afsan Guru) 2005(2) Apex Court Judgments 320 (S.C.) : 2005(4) Criminal Court Cases 294 (S.C.)

Evidence Act, 1872, Sections 65 & 66 - Secondary evidence - Rent note - In earlier ejectment petition landlord had admitted that the demised shop had been given on rent on the basis of a rent note - Death of landlord - Question of serving notice on him to produce the original rent note therefore could not arise - Secondary evidence allowed. (Ashok Kumar Vs Sukhvarsha Diwan) 2003(2) Civil Court Cases 491 (P&H)

Evidence Act, 1872, Sections 65, 63 - Secondary evidence - Allowed without determining existence of original - Document admitted in evidence as secondary evidence - Does not absolve party from proving fact that original document was in existence and executed. (Malkit Singh Vs The Special Court N.D.P.S. & Ors.) 2006(2) Civil Court Cases 383 (Rajasthan)

Evidence Act, 1872, Sections 65, 66 - Secondary evidence - Photostat copy - Not admissible in evidence in absence of notice u/s 66 of Evidence Act. (Hemant Kumar Agrahari & Anr. Vs Smt.Lakshmi Devi & Anr.) 2004(2) Civil Court Cases 50 (Allahabad)

Evidence Act, 1872, Sections 65, 66, 63 & 79 - Secondary evidence
- Certified copy of Will - Plaintiff never received original will - Section 65(a) not applicable - Consequently Section 66 also not required to be followed
- Certified copy of Will is admissible in evidence for purpose of proving contents of original document in view of Sections 63(1), 65(f) and Section 79 Evidence Act r/w Section 57 Registration Act. (Hameed & Ors. Vs Kanhaiya) 2005(1) Civil Court Cases 146 (Allahabad)

Evidence Act, 1872, Sections 65, 66, 63 & 79 - Secondary evidence
- Certified copy of Will - Plaintiff never received original will - S.65(a) not applicable - Consequently S.66 also not required to be followed - Certified copy of Will is admissible in evidence for purpose of proving contents of original document in view of Ss.63(1), 65(f) and S.79 Evidence Act r/w S.57 Registration Act. (Hameed & Ors. Vs Kanhaiya) 2005(1) Civil Court Cases 146 (Allahabad)

Evidence Act, 1872, Section 65 - Sale deed - Loss of original - Certified copy - Without taking any steps for production of the original or laying the foundation for secondary evidence, production of a certified copy by itself is not admissible in evidence. (Hadiani Debi alias Tiki Devi Vs Kailash Panda & Ors.) 2004(2) Civil Court Cases 211 (Orissa)

Evidence Act, 1872, Section 65 - Secondary evidence - A copy of unstamped document, which is required to be stamped - Cannot be proved by way of secondary evidence. (Akkam Laxmi Vs Thosha Bhoomaiah) 2003(1) Civil Court Cases 452 (A.P.)

Evidence Act, 1872, Section 65 - Secondary evidence - Agreement to sell - Original with vendor - Copy given to vendee lost - Photostat copy produced in suit for specific performance - Could be admitted as secondary evidence. (L.S.Sadapopan Vs K.S.Sabarinathan) AIR 2002 Madras 278

Evidence Act, 1872, Section 65 - Secondary evidence - Agreement to sell - Photostat copy - Can be received as secondary evidence subject to satisfaction of conditions laid down in the provision - Person intending to adduced secondary evidence has to prove to the satisfaction of Court, the existence, condition, or contents of the original - For this purpose independent evidence has to be adduced to show that the document in its original form existed, as to its contents and obviously, the availability of it with a particular

individual - Mere assertion is not sufficient. (Trilokchand Jain Vs Gurrapu Rajamouli & Anr.) 2004(3) Civil Court Cases 406 (A.P.)

Evidence Act, 1872, Section 65 - Secondary evidence - Agreement to sell - Suit for specific performance - Defendant failed to produce original agreement in his possession - Defendant could not prove that original document was lost and he had lodged complaint with police - Plaintiff is entitled to tender photocopy of agreement. (Dwarika Prasad Bajpai Vs Kedar Prasad Bajpai) AIR 2004 Calcutta 204

Evidence Act, 1872, Section 65 - Secondary evidence - Agreement to sell - Photostat copy - Can be received as secondary evidence subject to satisfaction of conditions laid down in the provision - Person intending to adduced secondary evidence has to prove to the satisfaction of Court, the existence, condition, or contents of the original - For this purpose independent evidence has to be adduced to show that the document in its original form existed, as to its contents and obviously, the availability of it with a particular individual - Mere assertion is not sufficient. (Trilokchand Jain Vs Gurrapu Rajamouli & Anr.) 2004(3) Civil Court Cases 406 (A.P.)

Evidence Act, 1872, Section 65 - Secondary evidence - Can be allowed if there is loss or destruction of the document - Such permission of the Court to lead secondary evidence is summary in nature and the party propounding the document has to prove the factum of execution of the document during the course of trial. (Ved Parkash Vs Rattan Lal Aggarwal) 2005(1) Civil Court Cases 103 (P&H)

Evidence Act, 1872, Section 65 - Secondary evidence - Compromise submitted in police station - Attested copy issued - MHC summoned who stated that original compromise is not traceable - Compromise neither pleaded in plaint nor in replication - Name of ASI of Police Post not given to whom it was submitted - Copy of DDR not placed on record - Held, if original document was not in existence at any stage secondary evidence cannot be allowed. (Ram Diya Vs Brij Mohan) 2005(1) Civil Court Cases 369 (P&H)

Evidence Act, 1872, Section 65 - Secondary evidence - Document in possession of a person not party to the suit - No evidence that document is in possession of that person - Serving of notice to that person to produce

the document - Failure of that person to produce the document - In such an eventuality clause (b) of Section 65 is attracted - Secondary evidence can be allowed when it is proved by independent evidence as to the existence, condition or contents of the original. (Trilokchand Jain Vs Gurrapu Rajamouli & Anr.) 2004(3) Civil Court Cases 406 (A.P.)

Evidence Act, 1872, Section 65 - Secondary evidence - Existence of document and that despite notice it is not produced by the party in whose custody the document is kept is a sine qua non for allowing secondary evidence. (Hari Singh Vs Shish Ram) 2003(1) Civil Court Cases 554 (P&H)

Evidence Act, 1872, Section 65 - Secondary evidence - Existence of document and that it is capable of being proved by secondary evidence is a must - Proper foundation is also required to be laid to establish right to adduce secondary evidence. (P.K.Gupta Vs Varinder Sharma) AIR 2002 P&H 342

Evidence Act, 1872, Section 65 - Secondary evidence - Failure to prove loss of original - Plaintiff cannot be permitted to tender secondary evidence in the form of certified copy. (Rambhau Sadashivappa Jatkar Vs Tryambak Shenfal Satbharkre) 2006(3) Civil Court Cases 257 (Bombay)

Evidence Act, 1872, Section 65 - Secondary evidence - For the document “Endorsement of redemption of mortgage” - Plaintiffs case that original mortgage deed is lying with the defendant and defendant saying that original mortgage deed is lying with the plaintiff - Held, trial Court rightly permitted defendant to produce secondary evidence for the document “endorsement of redemption of mortgage” - Plaintiff shall have every right to raise objection about the admissibility of the document when it is tendered in evidence and at that time trial Court to decide the objection - Order of trial Court allowing secondary evidence, upheld. (Hulas Devi Vs Raj Kumar & Ors.) 2005(2) Civil Court Cases 810 (Rajasthan)

Evidence Act, 1872, Section 65 - Secondary evidence - Original agreement to sell not filed alongwith plaint - Application for leading secondary evidence an after thought as defendant in the written statement denied the existence of the agreement and thereafter plea of loss set up and photocopy sought to be proved - Very existence and loss of original agreement to sell

not established - Order dismissing application for leading secondary evidence by trial Court - Order upheld. (Banarsi Dass Vs Om Parkash & Ors.) 2005(2) Civil Court Cases 629 (P&H)

Evidence Act, 1872, Section 65 - Secondary evidence - Photostat copy of agreement produced and plea raised that original is in possession of defendant - Defendant raising plea that agreement is fabricated by plaintiff and he deliberately produced photostat - Rejection of application - Held, summary rejection of application without affording opportunity to both parties to adduce evidence regarding existence, condition or contents of document, not proper - Court directed to decide application afresh after affording opportunity to parties. (P.K.Gupta Vs Varinder Sharma) AIR 2002 P&H 342

Evidence Act, 1872, Section 65 - Secondary evidence - Photostat copy of minutes of Panchayat - Not admissible in absence of notice to produce it under S.66 of Act. (Hemant Kumar Agrahari Vs Smt.Lakshmi Devi) AIR 2004 Allahabad 126

Evidence Act, 1872, Section 65 - Secondary evidence - Will - Secondary evidence allowed subject to proof of existence and loss of Will - Held, it is sufficient if Court is satisfied about prima facie existence of such conditions, which have to be proved before secondary evidence is accepted - No prejudice is caused to the opposite party - Order upheld. (Ram Sahai Sood Vs Om Parkash Sood & Ors.) 2005(3) Civil Court Cases 623 (P&H)

Evidence Act, 1872, Section 65(c) - Secondary evidence - Registered mortgage deed - Original is required to be with the plaintiff - Plaintiff not able to locate the same - Secondary evidence allowed. (Ved Parkash Vs Rattan Lal Aggarwal) 2005(1) Civil Court Cases 103 (P&H)

Evidence Act, 1872, Section 65(f) - Secondary evidence - Registered mortgage deed - Certified copy - Cannot be held to be a public document certified copy of which can be produced in evidence as secondary evidence in terms of Section 65(f) of Evidence Act. (Ved Parkash Vs Rattan Lal Aggarwal) 2005(1) Civil Court Cases 103 (P&H)

Evidence Act, 1872, Section 67 - Document - Proof - Can be only when the party to it deposed orally - Proof not necessary when other party admits the document - Exception to proof of document is only when document

falls into the category referred to in Sections 79 to 90 of Evidence Act. (Kota Sreevalli & Ors. Vs Chinni Seetharamaiah & Ors.) 2006(3) Civil Court Cases 631 (A.P.)

SC **Evidence Act, 1872, Sections 67, 45 & 47** - Handwriting - Proof - Expert opinion is regarded as relevant evidence - The other mode is by examining a person acquainted with such handwriting and the same is regarded as relevant evidence - There can be other modes through which identity of the handwriting can be established - To prove the identity of the handwriting any mode not forbidden by law can be resorted. (State through Inspector of Police, A.P. Vs K.Narasimhachary) 2005(4) Criminal Court Cases 688 (S.C.)

SC **Evidence Act, 1872, Sections 67, 76 to 78, Prevention of Corruption Act, 1988, Sections 19, 20** - Sanction for prosecution - Proof - Sanction for prosecution issued in name of Governor and authenticated by Secretary to Govt. - Signature of Governor identified by witness who was familiar with his signatures - Held, sanction order is validly proved. (State through Inspector of Police, A.P. Vs K.Narasimhachary) 2005(4) Criminal Court Cases 688 (S.C.)

Evidence Act, 1872, Section 68 - Attesting witness - When sole attesting witness who is alive and aged gave evidence evasively and purposely against the attestation, other evidence can be adduced to prove execution of the document. (Parukutty Amma Vs Thankam Amma) 2004(2) Civil Court Cases 33 (Kerala)

Evidence Act, 1872, Section 68 - Document - Proof - Document required to be attested is to be proved by examining atleast one attesting witness - However, when execution of a document is not denied it is not necessary to prove the document by examining any scribe or attesting witness or the executant, more so in respect of a registered document. (G.Ramaiah (Dead) by LRs. Vs Muthyala Prakash & Anr.) 2004(2) Civil Court Cases 334 (A.P.)

Evidence Act, 1872, Section 68 - Partition deed - Not compulsorily attestable - S.68 Evidence Act is not applicable to Partition Deeds. (K.Chinna Thimma Reddi Vs K.A.Venkatarami Reddi (Died) & Ors.) 2004(2) Civil Court Cases 698 (A.P.)

SC **Evidence Act, 1872, Section 68** - Registered document - A document by law required to be attested is required to be proved in accordance with S.68 of Evidence Act - Mere registration does not dispense with the need of proving execution and attestation. (Bhagat Ram & Anr. Vs Suresh & Ors.) 2004(1) Apex Court Judgments 80 (S.C.) : 2004(2) Civil Court Cases 297 (S.C.)

SC **Evidence Act, 1872, Section 68** - Registered document - Proof - Registrar as a witness - When Registrar of Deeds satisfies the requirements of an attesting witness he must be called in the witness box to depose to the attestation - Evidence of Registrar is to be appreciated and evaluated like the testimony of any other attesting witness. (Bhagat Ram & Anr. Vs Suresh & Ors.) 2004(1) Apex Court Judgments 80 (S.C.) : 2004(2) Civil Court Cases 297 (S.C.)

SC **Evidence Act, 1872, Section 68** - Registrar - Attesting witness - A Registrar of deeds before he be termed an attesting witness has to be called in the witness box - Court must feel satisfied by his testimony that what he did satisfies the requirement of an attesting witness. (Bhagat Ram & Anr. Vs Suresh & Ors.) 2004(1) Apex Court Judgments 80 (S.C.) : 2004(2) Civil Court Cases 297 (S.C.)

SC **Evidence Act, 1872, Section 68, Registration Act, 1908, Section 58** - Endorsements made at the time of registration are relevant to the matters of registration only - On account of registration of a document presumption as to correctness or regularity of attestation cannot be drawn. (Bhagat Ram & Anr. Vs Suresh & Ors.) 2004(1) Apex Court Judgments 80 (S.C.) : 2004(2) Civil Court Cases 297 (S.C.)

Evidence Act, 1872, Section 68, Succession Act, 1925, Sections 276, 278 - Will - Subsequent Will - Where an earlier Will stands superseded by a later Will, no probate of earlier Will can be granted - Such probate petition is barred - Only the latest Will prevails as last testament of the deceased. (Rajan Suri & Anr. Vs. State & Anr.) 2006(2) Civil Court Cases 386 (Delhi)

Evidence Act, 1872, Section 71 - Will - One attesting witness examined who admitted his signatures but pleaded ignorance of its facts - Provision for proof of execution of Will by other independent evidence -

Provision can be pressed into service only when both attesting witnesses deny knowledge of execution of Will - When only one attesting witness examined denies knowledge of execution of Will and other attesting witness is not called at all to testify, provision cannot be pressed into operation. (Robert D'Mello Vs Henry D'Mello & Anr.) 2003(3) Civil Court Cases 396 (Karnataka)

Evidence Act, 1872, Section 73 - "Any person" - Covers all the persons including complainant as well as accused who is present in Court. (Jai Prakash Vs State of Rajasthan & Anr.) 2005(2) Civil Court Cases 829 (Rajasthan) : 2005(2) Criminal Court Cases 690 (Rajasthan)

Evidence Act, 1872, Section 73 - "Any person" - Covers all the persons including complainant as well as accused who is present in Court. (Jai Prakash Vs State of Rajasthan & Anr.) 2005(2) Criminal Court Cases 690 (Rajasthan)

Evidence Act, 1872, Section 73 - Direction for giving specimen signatures - Direction u/s 73 cannot be given for the purpose of enabling the opposite party to use the specimen handwriting or signature as evidence against the person who has given it. (Bhaskaran Vs Sankaran) 2003(1) Criminal Court Cases 470 (Kerala)

Evidence Act, 1872, Section 73 - Disputed signatures - Comparison by Court - It is not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other - Prudent course is to obtain the opinion and assistance of an expert. (Jyothis Kuries and Loans Vs George Jose) 2004(2) Civil Court Cases 200 (Kerala)

Evidence Act, 1872, Section 73 - Expert - Rejection of evidence on ground that expert had no qualifications - Not proper. (Nallabothu Vs Garre) AIR 2003 A.P. 201

Evidence Act, 1872, Section 73 - Expert evidence - Direct and circumstantial evidence lending support to evidence of expert - Expert evidence well supported by cogent reasons - Finding by Court that document was forged one without taking into consideration expert evidence on ground that he spoke about natural variations in between disputed and admitted signatures and thus did not give correct opinion - Cannot be accepted.

(Nallabothu Purnaiah Vs Garre) AIR 2003 A.P. 201

Evidence Act, 1872, Section 73 - Expert evidence - Not conclusive
- It is only opinion evidence to be considered in the light of other admissible evidence. (S.Mahaboob Basha & Anr. Vs B.R.Mohan Rao (died) per L.Rs. & Ors.) 2006(4) Civil Court Cases 526 (A.P.)

Evidence Act, 1872, Section 73 - Handwriting or thumb impression
- Opinion of an expert - Even when the assistance of an expert is obtained it is for the Court to make its own opinion by its own assessment of the report of the expert based on the data furnished by the expert. (Bhaskaran Vs Sankaran) 2003(1) Criminal Court Cases 470 (Kerala)

Evidence Act, 1872, Section 73 - Signatures - Comparison - Matter pending in Court - Court can send documents for comparison of signatures u/s 73 of the Evidence Act. (Naresh Batra Vs State of U.T., Chandigarh) 2003(1) Criminal Court Cases 289 (P&H)

Evidence Act, 1872, Section 73 - Similarity of disputed and admitted thumb impressions - As per science of thumb impressions, similarity of ridge characteristics of at least eight points is essential. (Madan Lal & Anr. Vs Rajesh Kumar (Dead) through LRs.) 2005(3) Civil Court Cases 506 (P&H)

SC **Evidence Act, 1872, Section 73** - Specimen signatures - Magistrate cannot direct a person to give specimen signatures while case is under investigation. (State of Haryana Vs Jagbir Singh & Anr.) 2004(1) Apex Court Judgments 57 (S.C.) : 2004(1) Criminal Court Cases 296 (S.C.)

Evidence Act, 1872, Section 73 - Specimen signatures - Second application for specimen signatures in slow speed - Specimen signatures taken by Court - Opinion of handwriting expert that there were some similarity between specimen and disputed handwriting, definite opinion can be formed if specimen writing is taken in slow speed - Held, obtaining specimen signatures once does not prevent Court to obtain specimen signatures once again - Trial Court directed to obtain specimen handwriting in slow speed. (Ram Dev Vs State of Rajasthan) 2006(3) Criminal Court Cases 911 (Rajasthan)

Evidence Act, 1872, Section 73 - Specimen thumb impression - Taking for the second time - Earlier thumb impression taken and Handwriting

expert submitted report that disputed thumb mark is mostly smudged and only its right portion is comparable and specimen thumb mark does not serve the purpose of comparison - Fresh specimen thumb impression - Allowed. (Abdul Sattar Vs Bashir) 2006(3) Civil Court Cases 532 (P&H)

Evidence Act, 1872, Section 73 - Specimen writing - Court can direct any person present before it to write any words or figures for comparison of words or figures so written with any words or figures alleged to have been written by such person or for sending to handwriting expert - However, there is no element of compulsion under the provision of Section 73 Evidence Act. (Jai Prakash Vs State of Rajasthan & Anr.) 2005(2) Criminal Court Cases 690 (Rajasthan) : 2005(2) Civil Court Cases 829 (Rajasthan)

Evidence Act, 1872, Section 73 - Specimen writing for comparison - Cannot be ordered when case is at the stage of investigation - Direction for specimen writing can only be issued when an inquiry or trial is pending in Court. (Karamjit Singh Vs State (U.T.) Chandigarh) 2005(1) Criminal Court Cases 910 (P&H)

Evidence Act, 1872, Section 73 - Writing - Comparison - Court in a pending proceeding can direct any person present in Court to give specimen writing for the purpose of enabling the Court to compare such writings with writings alleged to have been written by such person. (Ram Dev Vs State of Rajasthan) 2005(2) Criminal Court Cases 717 (Rajasthan)

Evidence Act, 1872, Section 73, Indian Penal Code, 1860, Section 376 - Rape - Lover letters - Writing - Court itself comparing and holding that it is not in the handwriting of prosecutrix - Request of accused for comparison of handwriting by an expert - Declined - Amounts to miscarriage of justice - Accused acquitted. (Sunil Kumar Vs State of Haryana) 2006(2) Criminal Court Cases 497 (P&H) (DB)

Evidence Act, 1872, Section 73, Indian Penal Code, 1860, Section 376/511 - Love letters - Proof of handwriting of prosecutrix - Court can direct any person present in Court to give his handwriting for comparison with the writing alleged to have been written by such person - Order of trial Court declining request of accused for an order of specimen handwriting of prosecutrix cannot be sustained and the same quashed. (Ram Dev Vs State of Rajasthan) 2005(2) Criminal Court Cases 717 (Rajasthan)

Evidence Act, 1872, Section 73, Negotiable Instruments Act, 1881, Section 138 - Cheque - Name, date and amount alleged to be put by the complainant and complainant denied this suggestion - Court directing for comparison of handwriting of complainant with the disputed handwriting on the cheque - Held, Magistrate has committed no illegality or irregularity. (Jai Prakash Vs State of Rajasthan & Anr.) 2005(2) Criminal Court Cases 690 (Rajasthan)

Evidence Act, 1872, Section 73, Negotiable Instruments Act, 1881, Section 138 - Cheque - Name, date and amount alleged to be put by complainant and complainant denied this suggestion - Accused moved an application for comparison of his handwriting with the disputed handwriting on the cheque - Court instead ordering comparison of handwriting of complainant with the disputed handwriting on cheque - Held, Magistrate has committed no illegality or irregularity. (Jai Prakash Vs State of Rajasthan & Anr.) 2005(2) Civil Court Cases 829 (Rajasthan) : 2005(2) Criminal Court Cases 690 (Rajasthan)

Evidence Act, 1872, Section 73, Negotiable Instruments Act, 1881, Section 138 - Cheque - Name, date and amount alleged to be put by the complainant and complainant denied this suggestion - Court directing for comparison of handwriting of complainant with the disputed handwriting on the cheque - Held, Magistrate has committed no illegality or irregularity. (Jai Prakash Vs State of Rajasthan & Anr.) 2005(2) Civil Court Cases 829 (Rajasthan) : 2005(2) Criminal Court Cases 690 (Rajasthan)

Evidence Act, 1872, Sections 73 & 45 - Disputed signatures - Comparison by Judge - Subject of handwriting law is intricate and highly scientific in its approach - There are men specially trained and competent to express opinions on the disputed signatures - Judge should not take upon himself the task of comparing the signatures - Prudent course is to obtain opinion and assistance of an expert. (Veerabhadrappe Vs The Manager, State Bank of Mysore) 2005(1) Civil Court Cases 67 (Karnataka)

Evidence Act, 1872, Sections 73 & 45, Criminal Procedure Code, 1973, Section 164 - Specimen handwriting - During investigation - Direction of Court to accused to give handwriting in course of investigation to enable investigating agency to compare such writing - Can be made under provision of S.164 Cr.P.C. - Section 73 of Evidence Act is no impediment - Handwriting

opinion so obtained during investigation can be read into evidence despite the bar created by S.73 of Evidence Act. (Sanjay Goel Vs State of U.P.) 2002(1) Criminal Court Cases 439 (All.)

Evidence Act, 1872, Sections 73, 165 - Finger prints - Police taking finger prints without permission of Magistrate during investigation when accused was not under arrest - Comparison with chance prints found at the place of occurrence - Accused arrested after prints tallied - Taking of finger prints not illegal. (Sham Sunder Vs State of Haryana) 2006(1) Criminal Court Cases 631 (P&H) (DB)

Evidence Act, 1872, Sections 73, 165 - Finger prints - Taken by police without permission of Magistrate during investigation when accused was not under arrest - Not illegal. (Sham Sunder Vs State of Haryana) 2006(1) Criminal Court Cases 631 (P&H) (DB)

Evidence Act, 1872, Sections 74 & 65 - Assessment order - Certified copy - Per se admissibility - Assessment order is a public document and certified copies of public documents are per se admissible in evidence. (Harbans Lal Vs Leena Rani) 2002(1) Criminal Court Cases 599 (P&H)

SC Evidence Act, 1872, Sections 74 to 78 & 67 - Public document - Proof - Public document can be proved in terms of Sections 76 to 78 of the Evidence Act and can be proved otherwise also. (State through Inspector of Police, A.P. Vs K.Narasimhachary) 2005(4) Criminal Court Cases 688 (S.C.)

Evidence Act, 1872, Section 74 - Power of attorney - Registered - Certified copy - Not a public document within meaning of S.74 - Hence inadmissible in evidence. (Bidhan Paul Vs Paresh Chandra Ghosh) AIR 2002 Gauhati 46

SC Evidence Act, 1872, Section 74 - Public document - Is admissible in evidence without formal proof and certified copy of the document is admissible in evidence for the purpose of proving the existence and contents of the original. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2004(2) Civil Court Cases 01 (S.C.) : 2003(2) Apex Court Judgments 614 (S.C.)

SC **Evidence Act, 1872, Section 74, Prevention of Corruption Act, 1988, Section 19** - Illegal gratification - Sanction for prosecution - Issued in the name of Governor and authenticated by Secretary to Govt. - It is a public document within meaning of Section 74 of Evidence Act. (State through Inspector of Police, A.P. Vs K.Narasimhachary) 2005(4) Criminal Court Cases 688 (S.C.)

Evidence Act, 1872, Section 76 - Birth and death register entry - Can be proved by filing certified copy. (Maha Singh & Ors. Vs Bakhtawari) 2003(1) Civil Court Cases 682 (P&H)

Evidence Act, 1872, Section 76 - Birth entry - Name of daughter not mentioned - Immaterial as normally a child is named later on. (Maha Singh & Ors. Vs Bakhtawari) 2003(1) Civil Court Cases 682 (P&H)

Evidence Act, 1872, Section 78(6) - Public document of foreign country - Can be proved by a copy certified by the legal keeper thereof with a certificate either of a Notary Public or an Indian Counsel or a Diplomatic Agent - Such document fulfills the requirements of S.78(6). (Mehnga Singh & Ors. Vs Gurdial Singh & Ors.) 2004(2) Civil Court Cases 525 (P&H)

Evidence Act, 1872, Sections 78(6) & 85, Registration Act, 1908, Section 33 - General Power of attorney - Executed by a person residing outside India - Duly authenticated by a Notary Public - Fulfills the requirement of S.33 Registration Act - It does not require registration in India - Its original or certified copy is admissible in evidence and attaches a rebuttal presumption of its valid execution. (Chanan Kaur alias Channo Vs Pakhar Singh & Ors.) 2004(2) Civil Court Cases 225 (P&H)

Evidence Act, 1872, Section 83 - Maps or plans - Made for purpose of any cause must be proved by the person who has prepared them. (Ushabai Vs Wasudeo & Ors.) 2004(3) Civil Court Cases 94 (Bombay)

Evidence Act, 1872, Section 83 - Maps or plans - Made for the purpose of any cause - Must be proved to be accurate - Onus of proving that such a map is accurate lies on the party who produced it. (Kishanlal Maniklal Rathi Vs Dinkar Yashwant Patil) 2004(2) Civil Court Cases 456 (Bombay)

Evidence Act, 1872, Section 90 - Document 30 years old - No

presumption of truth of the contents of the document can be drawn even if document is 30 years old - Only due execution and attestation can be presumed if it comes from proper custody - Factum of proper custody is not a matter of presumption but ought to be satisfactorily proved either by adducing evidence aliunde to show that the document was produced from proper custody or by showing that the person who produced it was the depository of the document in question - Whether a presumption should be drawn is a matter of judicial discretion to be exercised by Court having regard to the facts and circumstances of the case - There is no mandate that presumption must necessarily be drawn. (Shobha Satyanarayan Birla Vs Janabai Parshuram Pawar) 2004(3) Civil Court Cases 69 (Bombay)

Evidence Act, 1872, Section 90 - Document more than 30 years old - Presumption - Document executed in the year 1928 alleged to be proof of fact that marriage had been placed between defendant and a certain person and not between defendant and plaintiff's father - Failure of plaintiff to prove that said document was produced from proper custody - Document produced for first time in first appeal - Evidence not produced as to how document came in her custody - Document not admissible. (Chitru Devi Vs Ram Dei) AIR 2002 H.P. 59

Evidence Act, 1872, Section 90 - Thirty years old document coming from a proper custody - Presumption as to its due execution arises under Section 90 Evidence Act. (Sunehri Devi Vs Lachhmi) 2004(3) Civil Court Cases 45 (P&H)

SC **Evidence Act, 1872, Section 91** - Document - Contents - Can be proved by writing itself - In case deed is capable of being construed differently then parties can lead evidence to show how they understood the same. (Tulsi & Ors. Vs Chandrika Prasad & Ors.) 2006(3) Apex Court Judgments 63 (S.C.) : 2006(4) Civil Court Cases 36 (S.C.)

SC **Evidence Act, 1872, Section 91** - Terms of any disposition of property if reduced to writing then no evidence is admissible in proof of the terms of such disposition of property except the document itself. (Bishwanath Prasad Singh Vs Rajendra Prasad & Anr.) 2006(2) Apex Court Judgments 233 (S.C.) : 2006(2) Civil Court Cases 170 (S.C.)

Evidence Act, 1872, Section 91, Stamp Act, 1899, Sections 35,

36 - Insufficiently stamped document - Secondary evidence - Once original document is found not admissible in evidence then secondary evidence by way of oral evidence of Xerox copy of such document cannot be allowed to be received - Allowing party to confront Xerox copy of such document to witnesses is not permissible. (Lakshamma Vs Riyaz Khan) AIR 2003 Karnataka 197

Evidence Act, 1872, Section 91, Transfer of Property Act, 1882, Section 118, Registration Act, 1908, Section 49 - Exchange of immovable property of value of more than Rs.100/- - Requires compulsory registration - Unregistered deed is inadmissible in evidence - It can neither be proved under Section 91 of Evidence Act nor any oral evidence can be given to prove its contents. (Krishna Prasad & Ors. Vs Shyam Narayan Prasad & Ors.) 2006(4) Civil Court Cases 642 (Sikkim)

Evidence Act, 1872, Sections 91 & 92 - Document whether a mortgage deed or rent deed - Court can examine the real intention of the parties executing a document and the nature and intent of the transaction can be gathered by Court from the terms of the document itself. (Banarsi Dass Vs Gian Chand) 2005(1) Civil Court Cases 292 (P&H)

Evidence Act, 1872, Sections 91, 92 - Agreement for sale - Oral evidence can be given to show that actual transaction was loan transaction and not as agreement for sale. (K.Bhaskaran Nair Vs Habeeb Mohammed) AIR 2002 Kerala 308

Evidence Act, 1872, Sections 91, 92 & 95 - Dimensions of the area not mentioned in the document - Parole evidence with regard to furnishing particulars and dimensions - Are admissible. (Bhagwana Vs Mohinder Dass) 2005(1) Civil Court Cases 71 (P&H)

SC Evidence Act, 1872, Section 92 - Exclusion of oral by documentary evidence - Bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different. (R.Janakiraman Vs State, rep., by Inspector of Police, CBI, SPE, Madras) 2006(1) Apex Court Judgments 298 (S.C.) : 2006(1) Criminal Court Cases 657 (S.C.)

Evidence Act, 1872, Section 92 - Registered adoption deed - Recitals

clearly indicated that adoption took place on the date mentioned in the deed
- Oral evidence to show that adoption took place on different date - Not
admissible. (M.D.Gopalaiah Vs Smt.Usha Priyadarshini) AIR 2002 Karnataka
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Evidence Act, 1872, Section 92 Proviso (2) - When a document is
silent, the existence of any separate oral evidence which is not inconsistent
with the terms incorporated in the document, may be proved. (Bhagwana Vs
Mohinder Dass) 2005(1) Civil Court Cases 71 (P&H)

Evidence Act, 1872, Section 92(1) Proviso - Document - A fact
which would invalidate a document may be allowed to be proved under
proviso (1) to Section 92 of Evidence Act - There is no bar in looking into
the evidence adduced to show that the agreed purport and intention of the
parties to the document executed is different from what is reflected therein.
(Krishna Prasad & Ors. Vs Shyam Narayan Prasad & Ors.) 2006(4) Civil
Court Cases 642 (Sikkim)

Evidence Act, 1872, Sections 93 to 98 - Construction of documents
with the aid of extrinsic evidence - (1) Where the language used is on its
face ambiguous or defective so as to render the meaning unintelligible or
where the language though intelligible creates an obvious uncertainty of the
meaning, extrinsic evidence is wholly inadmissible because it is a patent
ambiguity; (2) where the language used is quite plain and intelligible but
some difficulty arises in applying it to existing facts, for example, when a
description is partly correct and partly incorrect, parol evidence is admissible
to identify the subject matter; (3) where the language used is such that part of
a description applies to one subject matter and part to another, but the whole
does not apply correctly to either, parol evidence is admissible; (4) where
the language used is plain and intelligible and applies equal to two or more
persons or two or more things and it is necessary to ascertain to which person
or thing the words were intended to apply, parol evidence is admissible; (5) in
construing the document, the intention must be gathered from the document
itself- However, if there is ambiguity in the language used in the document,
it is permissible to look to surrounding circumstances to gather the intention,
such as user or possession and enjoyment; Categories (2), (3) and (4) pertain
to latent ambiguity. (Pradeep Kumar Vs Mahaveer Pershad) 2003(2) Civil
Court Cases 586 (A.P.)

Evidence Act, 1872, Sections 101 to 103 - Burden of proof - When a person is bound to provide the existence of any fact, it is said that the burden of proof lies on that person. (K.Mani Vs Elumalai) 2003(3) Civil Court Cases 247 (Madras)

Evidence Act, 1872, Sections 101 to 105 - Burden of proof - Matter pleaded by plaintiff and controverted by defendant - Has to be positively proved by plaintiff and not negatively disproved by defendant. (Heirs Kantilal Purshottamdas Patel Vs Dahiben Jagdish Rathod) AIR 2003 Gujarat 82

SC **Evidence Act, 1872, Sections 101, 102** - Burden of proof and onus of proof - Distinction - Right to begin follows onus probandi - It assumes importance in the early stage of a case - Question of onus of proof has greater force, where the question is which party is to begin - Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others - The elementary rule is Section 101 is inflexible - In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. (Anil Rishi Vs Gurbaksh Singh) 2006(2) Apex Court Judgments 427 (S.C.) : 2006(3) Civil Court Cases 243 (S.C.)

SC **Evidence Act, 1872, Sections 101-103** - Burden of proof - When both parties have adduced evidence, the question of onus of proof becomes academic. (Sushil Kumar Vs Rakesh Kumar) 2004(2) Civil Court Cases 63 (S.C.) : 2003(2) Apex Court Judgments 690 (S.C.)

Evidence Act, 1872, Sections 101-103 - Onus of proof - Both parties adducing evidence - Onus of proof loses its significance. (Jagtar Singh Vs Gurmit Singh & Anr.) 2006(1) Civil Court Cases 329 (P&H)

Evidence Act, 1872, Section 101 - Burden of proof and onus of proof - There is difference between the two - Initial onus of proof is always on plaintiff - If plaintiff discharges that onus and makes out a case which entitle him to the relief, the onus shifts on the defendant to prove the circumstances, if any, which would disentitle the plaintiff to that relief. (Augur Nath Vs

Kishan Chand) 2003(2) Civil Court Cases 208 (P&H)

Evidence Act, 1872, Section 101, 102, Civil Procedure Code, 1908, Order 32 Rule 5, Contract Act, 1872, Section 12 - Unsound mind - Burden of proof - Lies on the person who sets up such a plea - Such burden can be discharged by proving at least by balance of probability that the action of executing the deed of transfer was the outcome of an unsound mind. (Lakshmi Vs Dr.Ajay Kumar & Ors.) 2006(1) Civil Court Cases 588 (P&H)

Evidence Act, 1872, Section 101, Negotiable Instruments Act, 1881, Sections 4, 118 - Promissory note - Containing signature of one witness but his name not mentioned - Said witness not examined - Execution not proved - Merely because the document bears the signatures of executant it does not amount to accepting the liability in view of specific denial of execution of promissory note and acknowledgement of debt. (Canara Bank Vs Vara Trading Company & Ors.) 2006(4) Civil Court Cases 707 (Karnataka) (DB)

Evidence Act, 1872, Section 101-102 - Agreement to sell - Subsequent agreement between parties superseding previous agreement - Plea by vendee that subsequent agreement was got executed by playing fraud or in ignorance his signatures were obtained - Burden to prove same is on vendee. (Smt. Sunder Bai & Ors. Vs Nonit Ram) 2004(2) Civil Court Cases 173 (M.P.)

SC **Evidence Act, 1872, Section 102** - Onus of proof - Initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. (Anil Rishi Vs Gurbaksh Singh) 2006(2) Apex Court Judgments 427 (S.C.) : 2006(3) Civil Court Cases 243 (S.C.)

Evidence Act, 1872, Section 102 - Onus to prove - Once both the parties adduce evidence then question of onus loses its significance and it becomes an academic issue. (Madan Lal & Anr. Vs Rajesh Kumar (Dead) through LRs.) 2005(3) Civil Court Cases 506 (P&H)

SC **Evidence Act, 1872, Sections 102, 103** - Burden of proof and onus of proof - Burden of proof lies upon a person who has to prove the fact and which never shifts - Onus of proof shifts - Such a shifting of onus is

a continuous process in the evaluation of evidence. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

SC **Evidence Act, 1872, Sections 102, 103** - Mala fide - Burden of proof - Is on the person making the allegation - Such burden is very heavy - Malice cannot be inferred or assumed - Such a charge can easily be made than made out - Courts to examine it with extreme care, caution and circumspection - It has been rightly described as 'the last refuge of a losing litigant'. (Purushottam Kumar Jha Vs State of Jharkhand & Ors.) 2006(3) Apex Court Judgments 303 (S.C.)

SC **Evidence Act, 1872, Sections 102-103** - Suit based on title - In a suit for possession based on title once the plaintiff is able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

Evidence Act, 1872, Sections 103, 106, Indian Penal Code, 1860, Section 302 - Accused abducted deceased and they were last seen in the company of deceased - It is for accused to establish as to how injuries were caused. (Kumar @ Kumarasamy & Ors. Vs State) 2004(4) Criminal Court Cases 714 (Madras)

SC **Evidence Act, 1872, Section 105, Indian Penal Code, 1860, Section 96** - Private defence - Burden of proof - Is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (Sekar @ Raja Sekharan Vs State rep. by Inspector of Police, T.Nadu) 2002(3) Criminal Court Cases 676 (S.C.)

SC **Evidence Act, 1872, Section 105, Indian Penal Code, 1860, Section 96** - Private defence - Not required to be proved by calling evidence - It can be established by reference to circumstances transpiring from the prosecution evidence itself. (Sekar @ Raja Sekharan Vs State rep. by Inspector of Police, T.Nadu) 2002(3) Criminal Court Cases 676 (S.C.)

SC Evidence Act, 1872, Section 105, Indian Penal Code, 1860, Section 96 - Private defence - The defence pleaded must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling any further reasonable apprehension, from the attacker. (Sekar @ Raja Sekharan Vs State rep. by Inspector of Police, T.Nadu) 2002(3) Criminal Court Cases 676 (S.C.)

SC Evidence Act, 1872, Section 105, Indian Penal Code, 1860, Sections 96 to 106 - Private defence - Onus to prove is on accused - Plea can be established either by defence evidence or from the prosecution evidence - It cannot be based on speculation or mere surmises - Plea need not to be taken explicitly - There must be circumstances which caused reasonable apprehension in the mind that he would suffer death or grievous hurt if he does not exercise his right of private defence - Burden to prove private defence is not as onerous as that which lies on the prosecution - While prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a preponderance of probability. (Krishnan Vs State of Tamil Nadu) 2006(3) Apex Court Judgments 282 (S.C.) : 2006(4) Criminal Court Cases 264 (S.C.)

SC Evidence Act, 1872, Section 106 - Burden of proof - A fact specially within the knowledge of a person - Burden of proving that fact is upon him. (Trimukh Maroti Kirkan Vs State of Maharashtra) 2006(3) Apex Court Judgments 698 (S.C.) : 2006(4) Criminal Court Cases 1040 (S.C.)

SC Evidence Act, 1872, Section 106 - Burden of proof - Any fact especially within the knowledge of a person, the burden of proving that fact is upon him. (Sushil Kumar Vs Rakesh Kumar) 2003(2) Apex Court Judgments 690 (S.C.) : 2004(2) Civil Court Cases 63 (S.C.)

Evidence Act, 1872, Section 106, Criminal Procedure Code, 1973, Section 313 - Statement of accused recorded u/s 313 Cr.P.C. - Court can consider admissions made by accused as his explanation u/s 106 of Evidence Act. (State of Maharashtra Vs Shivaji Anandrao Chede) 2003(2) Criminal Court Cases 538 (Bom.)

Evidence Act, 1872, Section 106, Indian Penal Code, 1860, Section 304 Part I - Un-natural death - Death of woman at his husband's

house - Deceased suffered injury on neck which was so grave that it broke all bones of the neck so as to make it free to revolve like a nut - No eye witness - Husband used to harass the deceased by demanding dowry - It is for the husband to explain the circumstances in which his wife came to die - Presumption u/s 106 Evidence Act becomes applicable which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him - Failure of the appellant to do so takes the needle of suspicion towards him so also the presumption under Section 106 of the Evidence Act.(Paramjit Singh Vs State of Punjab) 2005(3) Criminal Court Cases 716 (P&H)

SC **Evidence Act, 1872, Section 106, Indian Penal Code, 1860, Sections 364, 302/34** - Abduction and murder - One of the accused dragged victim and while doing so called another accused to bring a lathi to kill the victim - Conviction u/s 364 Indian Penal Code, 1860 is justified - What transpired thereafter? - Prosecution proceeded on footing that there were eye witnesses to the fact of murder - Hence, rule of burden of proof under Section 106 Evidence Act viz. fact that what happened to victim after his abduction by accused persons is within knowledge of accused persons, does not apply - Conviction u/s 302/34 set aside. (Murlidhar & Ors. Vs State of Rajasthan) 2005(2) Apex Court Judgments 84 (S.C.) : 2005(3) Criminal Court Cases 102 (S.C.)

Evidence Act, 1872, Sections 106 - Non production of best evidence - Party in possession of best evidence within his knowledge to produce the same, if does not produce - Adverse inference can be drawn against him. (A.S.Rathinam Vs A.S.Ponnammal) 2003(3) Civil Court Cases 86 (Madras)

Evidence Act, 1872, Sections 106, 114, Indian Penal Code, 1860, Sections 148, 302, 364, 436 and 427 - Kidnapping with intention to kill - Person who was kidnapped not seen thereafter - It is for the appellant to explain where kidnapped person had disappeared if they had not actually killed him - Presumption u/s 106 Evidence Act is attracted. (Rajinder Singh & Ors. Vs State of Punjab) 2006(1) Criminal Court Cases 827 (P&H)(DB)

SC **Evidence Act, 1872, Sections 108, 107** - Death - Presumption as to date/time of death - Cannot be drawn in respect of person not heard of for seven years - But, can be inferred on basis of evidence, factual or

circumstantial - Onus of proving that person was alive/dead on particular date/ time is upon the person who asserts it - S.108 is exception to rule enacted in S.107 relating to presumption of human life for thirty years. (L.I.C. of India Vs Anuradha) 2004(1) Apex Court Judgments 715 (S.C.)

Evidence Act, 1872, Section 108 - Death - Presumption after expiry of seven years - Date of death has to be proved in same manner as any other fact is proved. (Eliamma Simon Vs Seven Seas Transportation Ltd.) AIR 2002 Kerala 219

Evidence Act, 1872, Section 108 - Missing person - Presumption does not automatically arise as to exact date of death of missing person - Presumption cannot be drawn of death of missing person as the date that immediately followed the lapse of seven years from date of his disappearance. (Eliamma Simon Vs Seven Seas Transportation Ltd.) AIR 2002 Kerala 219

Evidence Act, 1872, Section 108, Army Act, 1950, Section 106 - Missing of army personal - Every case of missing of a service person is not a case of desertion - Presumption of death is available after seven years - Family members are entitled to get benefits from the date of missing. (Indira Vs Union of India) 2005(3) Civil Court Cases 494 (Kerala)

Evidence Act, 1872, Section 109 - Relationship of landlord and tenant and title of landlord denied - Burden lies on defendant to prove absence of relationship of landlord and tenant and also to prove that plaintiff is not the owner. (Raees Ahmed Vs Shrigopal Prakash) 2003(1) Civil Court Cases 666 (Rajasthan)

Evidence Act, 1872, Section 110 - Mother of plaintiff in possession of suit property since 1909 to 1969 - Long standing possession is prima facie evidence of complete title - There is presumption of complete title u/s 110 of the Act - Burden of proving that she was not owner of suit property lies on the defendant. (Tulsabai & Ors. Vs Sakharam Bhanu Chavan & Ors.) 2006(2) Civil Court Cases 271 (Bombay) (DB)

SC Evidence Act, 1872, Section 111 - Fraud, misrepresentation or undue influence - Onus of proof - Burden of proof is on the party who so alleges - But, when a person is in a fiduciary relationship with another and the latter is

in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position. (Krishna Mohan Kul @ Nani Charan Kul & Anr. Vs Pratima Maity & Ors.) 2003(2) Apex Court Judgments 368 (S.C.)

SC **Evidence Act, 1872, Section 111** - Scope - Provision applies when bona fides of a transaction is in question and not when real nature thereof is in question - Words 'active confidence' indicate that relationship between the parties must be such that one is bound to protect the interests of the other. (Anil Rishi Vs Gurbaksh Singh) 2006(2) Apex Court Judgments 427 (S.C.) : 2006(3) Civil Court Cases 243 (S.C.)

Evidence Act, 1872, Section 112 - Child - Paternity - Birth of child during continuation of marriage is a conclusive proof of legitimacy - Burden of proof is on the person who asserts illegitimacy. (M/s Sachdeva Rice Mills Vs Smt.Raj Anand) 2003(1) Civil Court Cases 582 (P&H)

Evidence Act, 1872, Section 112 - Child - Paternity - Blood test to establish paternity - (1) Court cannot order blood test as a matter of course; (2) Whenever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained; (3) there must be a strong prima facie case that the husband must establish non-access in order to dispel the presumption arising u/s 112 of the Evidence Act; (4) the Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and mother as an unchaste woman; (5) no one can be compelled to give sample of blood for analysis. (Heera Singh Vs State of U.P. & Ors.) 2005(4) Criminal Court Cases 897 (Allahabad)

Evidence Act, 1872, Section 112 - Child - Paternity - DNA test - Cannot be allowed unless the man shows that he had no access to wife when the child could have been begotten. (Heera Singh Vs State of U.P. & Ors.) 2005(4) Criminal Court Cases 897 (Allahabad)

Evidence Act, 1872, Section 112 - Child - Paternity - DNA test - Consent of person concerned is necessary - Mother on behalf of minor child not giving consent - Court in capacity of ad litem guardian of minor cannot direct such test in absence of direct and positive evidence of non-access as required by Section 112 Evidence Act - Court exercises protective jurisdiction

on behalf of minor - It is unfair to direct DNA test to assist litigant, at the cost of a minor. (Heera Singh Vs State of U.P. & Ors.) 2005(4) Criminal Court Cases 897 (Allahabad)

Evidence Act, 1872, Section 112 - DNA test - Husband excluded from possible paternity of the child - Is of no consequence unless presumption u/s 112 of Evidence Act is not displaced by husband by proving non access. (Sajitha Vs State of Kerala) 2003(1) Civil Court Cases 78 (Kerala) : 2003(1) Criminal Court Cases 24 (Kerala)

Evidence Act, 1872, Section 112 - Paternity and maternity both denied - Presumption u/s 112 is not applicable. (Madhulika Verma Vs Prabhawati Verma) 2003(3) Civil Court Cases 234 (M.P)

Evidence Act, 1872, Section 112, Criminal Procedure Code, 1973, Section 53, Indian Penal Code, 1860, Section 417 - DNA test of accused - Promise to marry - Cohabitation - Child born - Refusal to marry - Complaint of cheating - DNA test of husband - Section 112 Evidence Act is not applicable as there is no relationship of husband and wife between the parties - DNA test is a must for the case u/s 417 Indian Penal Code, 1860 - No infirmity in the order - Petition dismissed. (Ravichandran Vs Sub Inspector of Police, All Women Police Station, Perambalur) 2006(3) Criminal Court Cases 704 (Madras)

Evidence Act, 1872, Section 112, Hindu Marriage Act, 1955, Sections 5 & 7 - Child - Legitimacy - Where marriage is itself disputed, presumption of legitimacy in favour of child cannot be drawn. (Bommi & Anr. Vs Munirathinam) 2004(3) Civil Court Cases 276 (Madras)

Evidence Act, 1872, Sections 112, 45 - Child - Legitimacy - Conclusive proof - It is conclusive proof if child is born during continuance of marriage or within 280 days after dissolution of marriage when mother remains unmarried - Parties can avoid the rigor of such conclusive presumption only by proving non-access in between husband and wife when the child could have been begotten - DNA test cannot rebut the conclusive presumption as to legitimacy of child. (Shaik Fakruddin Vs Shaik Mohammed Hasan & Anr.) 2006(2) Civil Court Cases 248 (A.P.)

Evidence Act, 1872, Sections 112, 45 - Child - Paternity - DNA test -

If on admitted facts contentious issue of paternity can be decided effectively, DNA test cannot be directed in a routine manner. (Shaik Fakruddin Vs Shaik Mohammed Hasan & Anr.) 2006(2) Civil Court Cases 248 (A.P.)

Evidence Act, 1872, Sections 112, 45 - Child - Paternity - DNA test
- Injunction suit - In a dispute as to properly, where paternity is not the core issue for determination of dispute, DNA test cannot be directed by Court. (Shaik Fakruddin Vs Shaik Mohammed Hasan & Anr.) 2006(2) Civil Court Cases 248 (A.P.)

Evidence Act, 1872, Sections 113-A and 113-B, IPC: Ss.498-A, 304-B, **Evidence Act, 1872, Sections 113-A and 113-B** - Brothers, sisters living separate and aged parents of husband are generally roped in litigation for demand of dowry - Court while framing charge should be very cautious - Charge should be framed when there is cogent and convincing evidence - If on the face of complaint it shows that complaint is false, charge should not be framed. (Mukesh Rani Vs State of Haryana) 2002(2) Criminal Court Cases 123 (P&H)

Evidence Act, 1872, Sections 113-A, 113-B, Indian Penal Code, 1860, Sections 498-A, 304-B and 306 - Suicide by woman - Charge of cruelty against husband and in-laws - Gap of four years between incident of cruelty and commission of suicide - Held, there is no nexus between two and presumption, consequently, cannot be made - Acquittal is justified. (State Vs Srikanth) 2002(3) Criminal Court Cases 554 (Karnataka)

Evidence Act, 1872, Sections 113-A, 113-B, Indian Penal Code, 1860, Sections 304-B, 306 and 498-A - Suicide - Merely because it occurred within seven years of marriage it cannot be presumed that it is dowry death - Accused and deceased lived together for over six years and it is preposterous to expect the accused to inflict cruelty on deceased for half thola of gold - Evidence as to illicit relationship of husband is just hearsay evidence - Presumption arises that woman committed suicide on apprehension of illicit relationship of her husband with another woman - Conviction set aside. (Vishwambar Vs State of Karnataka) 2006(3) Criminal Court Cases 940 (Karnataka)

Evidence Act, 1872, Section 113-A - If wife is subjected to cruelty or torture and commits suicide within 7 years of her marriage, Court may

presume that husband abetted suicide. (Murugesan @ Subramaniam Vs State) 2002(2) Criminal Court Cases 657 (Madras)

Evidence Act, 1872, Section 113-A, Indian Penal Code, 1860, Section 306 - Suicide within seven years of marriage - Evidence showing assault by accused on deceased on the date of incident supported by other circumstances leading to conclusion that being unable to bear the brunt, young wife ended her life - Conviction cannot be interfered with. (Abani Goswami @ Jitu Goswami Vs State of Assam) 2003(3) Criminal Court Cases 438 (Gauhati)

Evidence Act, 1872, Section 113-A, Indian Penal Code, 1860, Sections 304-B, 306 - Suicide by wife by consuming poison - Section 304-B Indian Penal Code, 1860 is not applicable - Accused can be convicted for abetment of suicide by employing presumption laid down in Section 113-A of Evidence Act - Conviction altered from Section 304-B to Section 306 IPC. (Harvinder Singh Vs State of Punjab) 2005(4) Criminal Court Cases 289 (P&H)

Evidence Act, 1872, Section 113-A, Indian Penal Code, 1860, Sections 304-B, 498-A - Dowry death - Demand of colour television about 2-1/2 months earlier - This is not demand for dowry immediately before death - Demand of colour television can be a form of cruelty punishable u/s 498-A Indian Penal Code, 1860 - Presumption under Section 113 Evidence Act applies - Act of appellant would be punishable u/s 306 and not u/s 304-B IPC. (Roshan Singh & Anr. Vs State of Punjab) 2006(1) Criminal Court Cases 236 (P&H)

Evidence Act, 1872, Section 113-B - Presumption u/s 113-B Evidence Act - Available when death is for dowry cruelty or harassment and it is for or in connection with dowry soon before the death and the death must have taken place within 7 years of the marriage in suspicious circumstances. (State Vs Virendra Kumar & Ors.) 2005(3) Criminal Court Cases 732 (Rajasthan)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, 304-B - Dowry death - Presumption - Burden of Proof - Presumption would arise only after prosecution establishes death within seven years - Initial burden of proof is on prosecution - Onus put on accused to prove date of marriage not proper - Conviction set aside. (Baljeet Singh and Another Vs. State of

Haryana) 2004(2) Criminal Court Cases 468 (S.C.)

SC **Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, 304-B** - Dowry death - Presumption - Ingredients to raise presumption - Presumption would arise only after prosecution establishes death within seven years otherwise than in normal circumstances and - Soon before death deceased was subjected to cruelty or harassment in connection with demand of dowry by persons accused of offence - No presumption can be drawn without establishment of both the ingredients. (Baljeet Singh and Another Vs. State of Haryana) 2004(2) Criminal Court Cases 468 (S.C.)

SC **Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304B** - Dowry death - 'Soon before' - It is a relative term and it depends upon circumstances of each case and no strait jacket formula can be laid down - It would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question - There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death - If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. (Hira Lal & Ors. Vs State (Govt. of NCT) Delhi) 2003(3) Criminal Court Cases 187 (S.C.)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Un-natural death in husband's house within three months of marriage - Explanation of husband that deceased was pregnant and felt dejected due to miscarriage and that he could not bring a suit of her choice on occasion of marriage of niece - Explanation not acceptable - These incidents are not sufficient for a young girl to end her life - Conviction upheld. (Krishan Kumar Vs State of Haryana) 2003(2) Criminal Court Cases 243 (P&H)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Un-natural death in husband's house within three months of marriage - Has to be explained by husband on some reasonable hypothesis. (Krishan Kumar Vs State of Haryana) 2003(2) Criminal Court Cases 243 (P&H)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 498-A - Dowry death - Husband harassed wife as demand of

Rs.40,000/- not met - Deceased committed suicide by taking poison - Presumption is that it was dowry death - Statement of defence witness that relations between husband and wife were normal - Not believed as outsiders may not know what is happening inside home. (Rameshwar Dass Vs State of Punjab) 2002(3) Criminal Court Cases 154 (P&H)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - “Soon” - Cannot be taken to mean “immediate” - Period of 13 days would be well within the ingredient of the word “soon before death” as envisaged in Section 304-B I.P.C. (Ashok Kumar Vs State of Haryana) 2006(2) Criminal Court Cases 197 (P&H) (DB)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Three main ingredients of offence u/s 304-B Indian Penal Code, 1860 are : (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage - When these factors are proved by reliable and cogent evidence, then the presumption of dowry death under section 113-B of the Evidence Act clearly arises. (Ram Badan Sharma Vs State of Bihar) 2006(4) Criminal Court Cases 097 (S.C.)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Dowry death - “Soon before” - Meaning - Expression is pregnant with the idea of proximity test - It cannot be said that the term “soon before” is synonymous with the term “immediately before” - Expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question - There must be existence of a proximate and live link. (Thakkan Jha & Ors. Vs State of Bihar) 2006(2) Criminal Court Cases 848 (S.C.)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Presumption u/s 113-B Evidence Act - Necessary ingredients are: (a) the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage; (b) it must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative; (c) such cruelty or harassment must be in connection with the demand of dowry. (Tirath Kumar

@ Raj Rani & Anr. Vs State of Haryana) 2006(1) Apex Court Judgments 61 (S.C.)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Dowry death - Conviction of husband, his parents and sister - Evidence of harassment due to demand of dowry - Deceased and her husband were living separately - Injuries received by deceased when she was in the house of husband - No cogent evidence on record brought by husband to rebut case of prosecution - Conviction of husband upheld - Parents and sister acquitted giving them benefit of doubt. (Visakha Singh & Ors. Vs State of Punjab) 2006(2) Criminal Court Cases 1022 (P&H) (DB)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Dowry death - Death in matrimonial home within 2 and 1/2 years of marriage - It was an unnatural death within seven years of marriage as such provision of Section 113-B of Evidence Act is attracted - It is incumbent upon the accused to lead cogent and convincing evidence to show how occurrence took place - Onus shifts on him to prove his innocence. (Amrik Singh Vs State of Punjab) 2005(3) Criminal Court Cases 841 (P&H)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Dowry death - Presumption - Cannot be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter - Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. (Thakkan Jha & Ors. Vs State of Bihar) 2006(2) Criminal Court Cases 848 (S.C.)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Dowry death - Presumption - Shall be raised only on proof of: (1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC); (2) The woman was subjected to cruelty or harassment by her husband or his relatives; (3) Such cruelty or harassment was for, or in connection with, any demand for dowry; (4) Such cruelty or harassment was soon before her death. (T.Aruntperunjothi Vs State Through S.H.O., Pondicherry) 2006(2)

SC **Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B** - Once prosecution is able to establish ingredients of Section 304-B Indian Penal Code, 1860 then presumption against accused starts u/s 113-B Evidence Act - However, it is a rebuttable presumption and the onus lies on the accused against whom the presumption lies to discharge it. (Satbir Singh & Ors. Vs State of Haryana) 2005(4) Criminal Court Cases 516 (S.C.)

SC **Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B** - Presumption u/s 113-B Evidence Act - Necessary ingredients are: (a) the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage; (b) it must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative; (c) such cruelty or harassment must be in connection with the demand of dowry. (Tirath Kumar @ Raj Rani & Anr. Vs State of Haryana) 2005(4) Criminal Court Cases 747 (S.C.)

SC **Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B** - Rebuttal of presumption arising u/s 113-B Evidence Act - Prosecution able to establish ingredients of Section 304-B Indian Penal Code, 1860 - Presumption arises u/s 113-B Evidence Act - Rebuttal of presumption - Defence version that it is a case of heart attack - Accused did not bring out any evidence that deceased was suffering from heart ailment - No credence is to be given to evidence of DW1 as he is not a qualified doctor - Prosecution evidence that deceased had bluish signs on her neck - Held, presumption u/s 113-B Evidence Act remains unrebutted. (Satbir Singh & Ors. Vs State of Haryana) 2005(4) Criminal Court Cases 516 (S.C.)

SC **Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B** - Three main ingredients of offence u/s 304-B Indian Penal Code, 1860 are : (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage - When these factors are proved by reliable and cogent evidence, then the presumption of dowry death under section 113-B of the Evidence Act clearly arises.

(Ram Badan Sharma Vs State of Bihar) 2006(3) Apex Court Judgments 39 (S.C.)

SC Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Section 304-B - Dowry death - Presumption - Shall be raised only on proof of: (1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC); (2) The woman was subjected to cruelty or harassment by her husband or his relatives; (3) Such cruelty or harassment was for, or in connection with, any demand for dowry; (4) Such cruelty or harassment was soon before her death. (T.Aruntperunjothi Vs State Through S.H.O., Pondicherry) 2006(3) Criminal Court Cases 022 (S.C.)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Sections 300, 302, 304-B, 498-A, Dowry Prohibition Act, 1961, Section 4 - Dowry death - Conviction u/ss 498-A, 304-B r/w Section 34 Indian Penal Code, 1860 and Section 4 Dowry Prohibition Act - When accused is convicted for more serious offence of dowry death, his conviction for less serious offence of subjecting his wife to cruelty is unwarranted. (Abdul Sab Nabi Sab Kittur & Ors. Vs State By Savanoor Police Station, Bangalore) 2006(4) Criminal Court Cases 201 (Karnataka)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Sections 304-B, 306 and 498-A - Dowry death - Suicide by married woman within one year of marriage - Evidence of close relatives that she was subjected to physical violence and mental harassment soon before death for not bringing full amount of promised dowry - Evidence of prosecution supported by inquest panchanama which confirms the fact of number of injuries found on the dead body of deceased - Trial Court not justified in ignoring this evidence and acquitting accused merely on the ground that injuries recorded in inquest panchanama not recorded in post-mortem report wherein it is recorded that death was due to hanging - Order of acquittal set aside and accused convicted for cruelty and dowry death. (State By Chikkanayakanahalli Police Vs Muniyappa & Ors.) 2006(3) Criminal Court Cases 891 (Karnataka) (DB)

Evidence Act, 1872, Section 113-B, Indian Penal Code, 1860, Sections 304-B, 498-A, Dowry Prohibition Act, 1961, Section 4 - Dowry

death - Presumption - Husband kicked wife on stomach who was in advanced stage of pregnancy and causing thereby her death - No evidence that parents of husband abetted his criminal act - No evidence of cruelty or harassment in connection with any demand of dowry soon before her death - Presumption of culpability against parents cannot be raised - Conviction of parents for dowry death set aside. (Abdul Sab Nabi Sab Kittur & Ors. Vs State By Savanoor Police Station, Bangalore) 2006(4) Criminal Court Cases 201 (Karnataka)

Evidence Act, 1872, Sections 113-B and 113-A, Indian Penal Code, 1860, Sections 304-A and 306 - Dowry death and abetment of suicide by married women - Framing of charge - Alternative charges for both offences must be framed, as both involves element of presumption under Sections 113-B and 113-A of the Evidence Act. (State by Kamakshipalya Police, Bangalore Vs Maregowda & Ors.) 2002(1) Criminal Court Cases 141 (Kant.)

Evidence Act, 1872, Section 114 - Adverse inference - Be drawn against a party who suppresses and does not produce original documents. (Indian Bank, Chittoor Vs V.R.Venkataraman & Ors.) 2004(2) Civil Court Cases 491 (A.P.)

Evidence Act, 1872, Section 114 - Adverse inference - Party not entering into witness box - Adverse inference can be drawn against him. (Krishna Devi & Ors. Vs Amarjit & Ors.) 2004(2) Civil Court Cases 593 (P&H)

Evidence Act, 1872, Section 114 - Adverse inference - Suit for partition as adopted son - Issue of adoption - Fact that natural father though alive not examined to prove factum of adoption - Non examination does not amount to suppressing material evidence in absence of proof that examination of natural father would have been detrimental to case of plaintiff. (Bhami Bewa Vs Krushna Chandra Swain @ Gochhayat & Ors.) 2004(2) Civil Court Cases 543 (Orissa)

Evidence Act, 1872, Section 114 - Applicability of the provision - Two essential elements are : (i) possession of articles; (ii) possession is soon after the incident - Both the corpus and animus are to be established by the prosecution for raising the presumption of possession u/s 114 of the Act. (Jagdish Vs State of Maharashtra) 2006(1) Criminal Court Cases 730

(Bombay) (DB)

Evidence Act, 1872, Section 114 - Application filed for bringing subsequent events on record - Notice of application given to opponent party - No reply filed - Held, facts as brought on record by application shall be deemed to have been admitted. (Smt.Kala Wati Vs Ram Piari & Ors.) 2005(3) Civil Court Cases 9 (P&H)

Evidence Act, 1872, Section 114 - Best evidence - Withholding of - Adverse inference is to be drawn against the party withholding documents in his possession even when onus to prove that document is not on him. (Jaswinder Singh Vs Parshotam Lal Sanghi & Ors.) 2005(3) Civil Court Cases 478 (P&H)

SC **Evidence Act, 1872, Section 114** - Document if pleaded but not produced - Non production of such document would give rise to drawl of an adverse inference to the effect that had such document been produced, the same would have gone against his interest. (Sushil Kumar Vs Rakesh Kumar) 2004(2) Civil Court Cases 63 (S.C.) : 2003(2) Apex Court Judgments 690 (S.C.)

SC **Evidence Act, 1872, Section 114** - Existence of a fact - Presumption - Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened - In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the facts of the particular case. (State of Andhra Pradesh Vs V.Vasudeva Rao) 2004(1) Criminal Court Cases 137 (S.C.)

Evidence Act, 1872, Section 114 - Family settlement - Admitted to be reduced into writing but not produced - Adverse inference is to be drawn that there was no such family settlement in existence. (Rajni Bajaj & Ors. Vs Ram Piari)2006(1) Civil Court Cases 711 (P&H)

Evidence Act, 1872, Section 114 - Man and woman living together - Long cohabitation - Children born out of cohabitation - Presumption of marriage arises - Burden to prove lies on the person who alleges their matrimonial status. (Neelavva Vs Divisional Controller) AIR 2002 Karnataka 347

Evidence Act, 1872, Section 114 - Notice - Sent under Certificate of Posting - There is presumption that notice was received by the addressee. (C.E.I. Consultancy Vs M/s Modi World Infotech) 2002(3) Criminal Court Cases 218 (A.P.)

Evidence Act, 1872, Section 114 - Official acts - Are presumed to be carried out regularly and properly. (P.K.Thankamma Vs Sundaresan T.S.) 2006(1) Civil Court Cases 741 (Kerala) : 2006(1) Criminal Court Cases 979 (Kerala)

Evidence Act, 1872, Section 114 - Party not entering into witness box - Presumption has to be drawn that the version raised in pleading is not true. (Indian Bank, Chittoor Vs V.R.Venkataraman & Ors.) 2004(2) Civil Court Cases 491 (A.P.)

SC Evidence Act, 1872, Section 114 - Prevention of Corruption Act, 1988, Section 20 - Presumption - Scope and Ambit - Presumption is not the final conclusion - But could be final if it remains undisturbed - Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof - However, as a caution of prudence it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. (State of Andhra Pradesh Vs C.Uma Maheswara Rao & Anr.) 2004(2) Criminal Court Cases 791 (S.C.)

Evidence Act, 1872, Section 114 - Question as to payment made by plaintiff - Defendant did not examine himself to controvert the oral evidence of plaintiff in this respect - Court can draw adverse inference against the defendant. (Louiz Vs Augustin) 2004(3) Civil Court Cases 464 (Kerala)

Evidence Act, 1872, Section 114 - Signature - Admitted - Presumption arises that it is executed by signatory - Presumption is not applicable when language of document is not known to executant - Burden lies on other party to prove that contents of document were explained to executant and he affixed his signature on being aware of its contents. (B.R.Koteswara Rao Vs G.Rameshwari Bai) AIR 2004 A.P. 34

Evidence Act, 1872, Section 114 - When an application is filed but not pressed it leads to an inference that applicant was not interested in the said application. (Ram Chand Premi Vs Nawab Kaur) 2004(2) Civil Court

Evidence Act, 1872, Section 114 Illu.(e), Registration Act, 1908, Section 17 - Registered deed - Plea that Sub Registrar did not read out and explain contents of the document - Court can presume that Sub Registrar performed his duty in accordance with law - When this presumption stands un rebutted, then document cannot be held to be void. (Ranganayakamma & Anr. Vs K.S.Prakash (Deceased) By LRs & Ors.) 2006(3) Civil Court Cases 80 (Karnataka) (DB)

Evidence Act, 1872, Section 114 Illus.(e) - Refusal to accept summons and order of injunction - Report of process server - There is presumption regarding regularity of official acts. (Cheruvannoor Nallalam Grama Panchayat Vs Ravi) 2006(2) Civil Court Cases 193 (Kerala)

Evidence Act, 1872, Section 114 Illus.(f), Hindu Marriage Act, 1955, Sections 10, 4 - Judicial separation - Petition by wife - Wife Christian and husband Hindu - Marriage performed by a Hindu Priest in temple as per Hindu rites knowing that she was a Christian - It cannot be said that necessary condition precedent of Shudhikaran was not performed - Priest would not have married a Christian lady to a Hindu person without performing the condition precedent - Wife lived with husband for more than 8 years - Wife went all over India along with husband and participated in Pooja, Havan and various religious ceremonies - Wife was accepted in a Hindu Family as a Hindu - Plea that since wife had not converted to Hinduism and marriage was not between two Hindus, Family Court has no jurisdiction to entertain wife's petition is untenable - Petition by husband for declaration of nullity of marriage is liable to be dismissed. (Madhavi Ramesh Dudani Vs Ramesh K.Dudani) 2006(2) Civil Court Cases 206 (Bombay) (DB)

Evidence Act, 1872, Section 114(g) - Independent witness - Not examined - Reasons not furnished for non examining - Evidence which could be produced but not produced, presumption is that it would have gone against the party who withholds it. (Administration of Union Territory of Dadra and Nagar Haveli Vs Maganbhai Laxmibhai Vartha & Anr.) 2006(2) Criminal Court Cases 720 (Bombay)

Evidence Act, 1872, Section 114, 137 - Failure to cross examine on a vital issue - Adverse inference will be drawn. (Mehnga Singh & Ors. Vs

Gurdial Singh & Ors.) 2004(2) Civil Court Cases 525 (P&H)

Evidence Act, 1872, Section 114, Criminal Procedure Code, 1973, Section 167 - Remand - Considered the prayer and remanded accused to judicial custody - Considered means, deemed; determined; adjudged; reasonably regarded and the expression 'Heard' has a similar meaning - Contention that remand was granted on request not accompanied by case diary which is mandatory - No application moved by accused that case diary not produced alongwith request for remand - Nothing in order to indicate that hearing was without copies of the case diary - All judicial and official acts would be presumed to have been rightly and regularly performed - Court is not expected to pass detailed order authorising judicial remand - No illegality or impropriety in impugned order to warrant interference. (Vinod Kumar Gupta Vs Commissioner of Customs) 2006(2) Criminal Court Cases 258 (Delhi)

SC Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 13 - Mental disorder - Husband alleged to be suffering from Paranoid Schizophrenia - Husband refusing to submit himself for medical examination and go before the medical Board - This confirms the plea of wife that husband is suffering from Paranoid Schizophrenia and Court can draw adverse inference in view of the conduct of the husband. (Vinita Saxena Vs Pankaj Pandit) 2006(2) Apex Court Judgments 162 (S.C.)

Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 13 - DNA test to prove paternity of child - No person can be compelled to give a sample of blood for analysis against his will - However, in the event of refusal it is open for Court to draw adverse inference. (Sunil Eknath Trambake Vs Leelavati Sunil Trambake) 2006(3) Civil Court Cases 459 (Bombay)

SC Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 13 - Divorce - Petition by wife on ground of cruelty and mental disorder - In absence of any evidence led by husband the evidence led by wife has to be relied upon. (Vinita Saxena Vs Pankaj Pandit) 2006(2) Civil Court Cases 256 (S.C.)

Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 7 - Marriage - When factum of marriage is disputed, even registration

of marriage either under the Hindu Marriage Act or under the Special Marriage Act, cannot constitute proof of a valid marriage. (Leelamma Vs Radhakrishnan) 2005(2) Civil Court Cases 509 (Kerala)

Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 7 - Marriage - Presumption - Long co-habitation as husband and wife - Declaration in ration card and in other documents executed in her favour - Existence of valid marriage cannot be presumed - Essentials of a valid marriage applicable to the parties according to their customary rites has to be pleaded and proved. (Leelamma Vs Radhakrishnan) 2005(2) Civil Court Cases 509 (Kerala)

SC Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 13 - Divorce - Petition by wife on ground of cruelty and mental disorder - In absence of any evidence led by husband the evidence led by wife has to be relied upon. (Vinita Saxena Vs Pankaj Pandit) 2006(2) Apex Court Judgments 162 (S.C.)

SC Evidence Act, 1872, Section 114, Hindu Marriage Act, 1955, Section 13 - Mental disorder - Husband alleged to be suffering from Paranoid Schizophrenia - Husband refusing to submit himself for medical examination and go before the medical Board - This confirms the plea of wife that husband is suffering from Paranoid Schizophrenia and Court can draw adverse inference in view of the conduct of the husband. (Vinita Saxena Vs Pankaj Pandit) 2006(2) Civil Court Cases 256 (S.C.)

Evidence Act, 1872, Section 114, Illus. (a) - Presumption - For raising presumption u/s 114 Illus.(a) prosecution must establish ownership of property, its theft and possession by accused. (Jagdish Vs State of Maharashtra) 2006(1) Criminal Court Cases 730 (Bombay) (DB)

SC Evidence Act, 1872, Section 114, Land Acquisition Act, 1894, Sections 28 & 34 - Interest - Waiver of - Statutory provision for payment of interest - A party if obtains an order of stay by representing that he will not claim interest then that party is not entitled to interest. (Union of India Vs Pramod Gupta (D) by Lrs. & Ors.) 2006(1) Apex Court Judgments 197 (S.C.)

Evidence Act, 1872, Section 114, Narcotic Drugs and Psychotropic

Substances Act, 1985, Sections 21, 8 - Contraband - Recovery of - Two samples drawn - Samples sent to different laboratories - Report of only one Lab produced - Adverse inference drawn - Conviction set aside. (Abdul Gani Vs State of M.P.) 2006(1) Criminal Court Cases 382 (M.P.)

SC Evidence Act, 1872, Section 114, Post Office Act, 1898, Section 27 - Notice - Postman gave intimation and despite that respondent did not receive notice - Notice returned unserved - Presumption of law is that notice is served on respondent - Presumption also operates u/s 114 Evidence Act apart from that under the Post office Act - There is no obligation cast on appellant to examine postman. (P.T.Thomas Vs Thomas Job) 2005(3) Civil Court Cases 01 (S.C.) : 2005(2) Apex Court Judgments 452 (S.C.)

Evidence Act, 1872, Section 114, Punjab Land Revenue Act, 1887, Section 44 - Jamabandi - Entries therein not conclusive proof of possession - The same is rebuttable - Change in entries explained away - Court below accepting explanation for change of entry in jamabandi - Decision, upheld. (Om Parkash & Anr. Vs Ramji Lal & Ors.) 2006(2) Civil Court Cases 407 (P&H)

SC Evidence Act, 1872, Section 114-A, Indian Penal Code, 1860, Sections 375, 376 - Promise to marry - Intercourse with consent of prosecutrix - Absence of consent - Burden is on prosecution to prove absence of consent - Of course, position is different if case is covered by S.114-A of Evidence Act - Consent or absence of it can be gathered from the attendant circumstances - Previous or contemporaneous acts or the subsequent conduct can be legitimate guides. (Deelip Singh @ Dilip Kumar Vs State of Bihar) 2005(1) Criminal Court Cases 655 (S.C.)

Evidence Act, 1872, Section 114-A, Indian Penal Code, 1860, Section 376 - Rape - When sexual intercourse by the accused is proved, the Court shall presume that victim was raped and she did not give consent for sexual intercourse. (Rajendran & Ors. Vs State of Tamil Nadu) 2003(1) Criminal Court Cases 290 (Madras)

SC Evidence Act, 1872, Section 114-A, Indian Penal Code, 1860, Sections 375, 376 - Promise to marry - Intercourse with consent of prosecutrix - Absence of consent - Burden is on prosecution to prove absence of consent - Of course, position is different if case is covered by Section 114-A of

Evidence Act - Consent or absence of it can be gathered from the attendant circumstances - Previous or contemporaneous acts or the subsequent conduct can be legitimate guides. (Deelip Singh @ Dilip Kumar Vs State of Bihar) 2005(1) Criminal Court Cases 655 (S.C.)

Evidence Act, 1872, Section 114A, Indian Penal Code, 1860, Section 376, Evidence Act, 1872, Section 114A - Rape - Consenting party - Deposition of prosecutrix that she was subjected to sexual intercourse against her will and without her consent - Held, it is for the accused to prove that prosecutrix was consenting party. (Akhtar Vs State of Haryana) 2002(2) Criminal Court Cases 64 (P&H)

Evidence Act, 1872, Section 114A, Indian Penal Code, 1860, Section 376 - Rape - Testimony of prosecutrix not suffering from any infirmity - In such a case Court will presume that victim did not consent. (Devinder Vs State of Haryana) 2003(2) Criminal Court Cases 673 (P&H)

Evidence Act, 1872, Section 114A, Indian Penal Code, 1860, Section 376(2)(g) - Rape - Gang rape - Consent - In gang rape if the prosecutrix states that she did not consent to sexual intercourse then Court is to presume that she did not consent. (Kuldip Singh & Anr. Vs State of Punjab) 2003(3) Criminal Court Cases 104 (P&H)

SC **Evidence Act, 1872, Section 115** - Age - Mentioned in bail application to take benefit of minority - Cannot be totally ignored - A person is not expected to take false ground regarding his age before the Court - Whether it was accepted or not is immaterial - The maker of it is bound by the same and he cannot be permitted to take advantage of his own wrong. (Sushil Kumar Vs Rakesh Kumar) 2004(2) Civil Court Cases 63 (S.C.) : 2003(2) Apex Court Judgments 690 (S.C.)

SC **Evidence Act, 1872, Section 115** - Date of birth - Horoscope - If maker of the horoscope is not produced nor it is proved to be prepared in due course of time and events, cannot be looked in evidence to prove date of birth. (Sushil Kumar Vs Rakesh Kumar) 2003(2) Apex Court Judgments 690 (S.C.) : 2004(2) Civil Court Cases 63 (S.C.)

SC **Evidence Act, 1872, Section 115** - Parties cannot be permitted to rely upon a part of a document and at the same time raise a contention that

the same is inadmissible. (Sushil Kumar Vs Rakesh Kumar) 2004(2) Civil Court Cases 63 (S.C.) : 2003(2) Apex Court Judgments 690 (S.C.)

SC **Evidence Act, 1872, Section 115, Civil Procedure Code, 1908, Section 11** - Res judicata and estoppel - Res judicata debars Courts from exercising its jurisdiction - Doctrine of estoppel can be invoked against party - Doctrine of res judicata creates Estopper by Accord. (Bhanu Kumar Jain Vs Archana Kumar & Anr.) 2005(1) Apex Court Judgments 121 (S.C.) : 2005(1) Civil Court Cases 725 (S.C.)

SC **Evidence Act, 1872, Section 115, Civil Procedure Code, 1908, Section 11** - Res judicata and estoppel - Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party - If an issue is decided against a party then that party is estopped from raising the same in the later proceeding - The doctrine of res judicata creates a different kind of estoppel viz Estoppel by Accord. (Swamy Atmananda & Ors. Vs Sri Ramakrishna Tapovanam & Ors.) 2005(2) Apex Court Judgments 471 (S.C.) : 2005(3) Civil Court Cases 397 (S.C.)

SC **Evidence Act, 1872, Section 115, Civil Procedure Code, 1908, Section 11** - Res judicata and estoppel - Res judicata debars Courts from exercising its jurisdiction - Doctrine of estoppel can be invoked against party - Doctrine of res judicata creates Estopper by Accord. (Bhanu Kumar Jain Vs Archana Kumar & Anr.) 2005(1) Apex Court Judgments 121 (S.C.) : 2005(1) Civil Court Cases 725 (S.C.)

SC **Evidence Act, 1872, Section 116** - Estoppel - A person inducted as tenant by appellant - He is estopped from attorning any other as landlord. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2003(2) Apex Court Judgments 614 (S.C.) : 2004(2) Civil Court Cases 01 (S.C.)

SC **Evidence Act, 1872, Section 116** - Estoppel - A person who comes upon any immovable property by the licence of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such licence was given. (Bansraj Laltaprasad Mishra Vs Stanley Parker Jones) 2006(2) Civil Court Cases 459 (S.C.) :

2006(2) Apex Court Judgments 313 (S.C.)

SC **Evidence Act, 1872, Section 116** - Estoppel - Applicability of procedural law of estoppel or acquiescence - Court would be concerned with conduct of a party for determination as to whether he can be permitted to take a different view in a subsequent proceeding, unless there exists a statutory interdict - Provision of Section 116 Evidence Act is clear whereby in certain situation a person may be estopped from pleading a title in himself - Mere admission does not create title but while determining such a question intention of the parties as to in whom title of property shall vest, conduct of parties assumed significance. (Jai Narain Parasrampuriah (Dead) & Ors. Vs Pushpa Devi Saraf & Ors.) 2006(3) Apex Court Judgments 612 (S.C.)

SC **Evidence Act, 1872, Section 116** - Relationship of landlord and tenant - Denial by tenant - Auction sale by Municipal Council - Tenant attorned purchaser and making payment of rent - Till the auction sale is set aside it cannot be said that purchaser did not acquire a valid title - Sale effected by purchaser in favour of respondents not suffering from any infirmity - Tenant is estopped from denying the relationship of landlord and tenant. (Sheikh Noor Vs Sheikh G.S.Ibrahim) 2003(3) Civil Court Cases 286 (S.C.) : 2003(2) Apex Court Judgments 158 (S.C.)

SC **Evidence Act, 1872, Section 116** - Tenant - Cannot deny title of his landlord, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord. (Bhogadi Kannababu & Ors. Vs Vuggina Pydamma & Ors.) 2006(3) Civil Court Cases 348 (S.C.) : 2006(2) Apex Court Judgments 563 (S.C.)

Evidence Act, 1872, Section 116 - Tenant is estopped from denying that the landlord did not have valid title to the property rented out to him. (Darshan Kumar Vs Mahesh Kumar) 2003(3) Civil Court Cases 671 (P&H)

Evidence Act, 1872, Section 116 - Tenant is not permitted to deny title of his landlord during subsistence of tenancy. (Madan Lal & Anr. Vs Rajesh Kumar (Dead) through LRs.) 2005(3) Civil Court Cases 506 (P&H)

Evidence Act, 1872, Section 116 - Waiver - Is a question of fact which has to be established by parties who wish to rely upon such principle.

(Jagjit Singh Bains Vs Brij Mohan Sharma) 2003(3) Civil Court Cases 614 (P&H)

SC Evidence Act, 1872, Section 116, Civil Procedure Code, 1908, Section 11 - An issue, already settled in a suit between the same parties in respect of certain subject matter, cannot be allowed to be raised again between the very same parties in regard to the same subject matter, but in a different suit. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(2) Apex Court Judgments 232 (S.C.)

SC Evidence Act, 1872, Section 116, Civil Procedure Code, 1908, Section 11 - Issue of interpolation/forgery in agreement - Undertaking and acceptance not to raise issue of interpolation - Respondent is precluded from raising the same issue of interpolation/forgery in agreement, in another suit, between the same parties and when in both suits main issue is substantially and materially one and the same. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(2) Apex Court Judgments 232 (S.C.)

SC Evidence Act, 1872, Section 116, Civil Procedure Code, 1908, Section 11 - Res judicata, waiver & estoppel - Issue of fact once determined finally by a Court of competent jurisdiction when comes directly in question in subsequent proceedings between the same parties then the persons cannot be allowed to raise the same question which already stands determined earlier by the competent Court. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(2) Apex Court Judgments 232 (S.C.)

SC Evidence Act, 1872, Section 116, Civil Procedure Code, 1908, Section 11 - An issue, already settled in a suit between the same parties in respect of certain subject matter, cannot be allowed to be raised again between the very same parties in regard to the same subject matter, but in a different suit. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(3) Civil Court Cases 228 (S.C.)

SC Evidence Act, 1872, Section 116, Civil Procedure Code, 1908, Section 11 - Issue of interpolation/forgery in agreement - Undertaking and acceptance not to raise issue of interpolation - Respondent is precluded from raising the same issue of interpolation/forgery in agreement, in another suit, between the same parties and when in both suits main issue is substantially

and materially one and the same. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(3) Civil Court Cases 228 (S.C.)

SC **Evidence Act, 1872, Section 116, Civil Procedure Code, 1908, Section 11** - Res judicata, waiver & estoppel - Issue of fact once determined finally by a Court of competent jurisdiction when comes directly in question in subsequent proceedings between the same parties then the persons cannot be allowed to raise the same question which already stands determined earlier by the competent Court. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(3) Civil Court Cases 228 (S.C.)

Evidence Act, 1872, Section 116, Punjab Village Common Lands (Regulation) Act, 1961, Section 11 - Tenant or a person claiming through such tenant cannot deny title of landlord - A tenant cannot be permitted to change the nature of his possession - Person entering as a lessee of the Panchayat by way of a resolution, paying rent as per entries in the revenue record and Panchayat record cannot be allowed to question the vesting of the property in Gram Panchayat. (Ajit Singh Vs Joint Development Commissioner, Punjab) 2005(2) Civil Court Cases 827 (P&H)

Evidence Act, 1872, Section 118 - Child witness - A competent witness to depose - Court can convict an accused on the basis of evidence of a child witness if Court finds that child witness has the capacity of understanding and gives truthful answers - However, the rule of prudence is to seek corroboration to the evidence of child witness before it is made foundation for conviction - A child witness is susceptible to being tutored and because of tutoring he is so much impressed that he begins to believe that what is tutored to him is the truth - Court, therefore has to be extremely cautious while accepting the evidence of the child witness. (Baban Bakayya Attre Vs State of Maharashtra) 2002(1) Criminal Court Cases 341 (Bom.)

Evidence Act, 1872, Section 118 - Child witness - Before recording statement, Court put questions and satisfied itself with the rational answers given - When answers given are intelligible and rational then child witness is competent to depose before the Court. (Ajay Kumar Vs State of Punjab) 2003(1) Criminal Court Cases 554 (P&H)

Evidence Act, 1872, Section 118 - Child witness - Child aged seven years when he came in the witness box - Statement of child found to be

truthful and forthright - Testimony of child could not be shattered by cross examination - A truthful version coming out from the child - No ambiguity found in statement of child - Statement of child corroborated by medical evidence - Conviction on the basis of evidence of child witness who was the sole eye witness can be sustained. (Raju alias Raj Kumar Vs State of Haryana) 2005(4) Criminal Court Cases 43 (P&H)

SC **Evidence Act, 1872, Section 118** - Child witness - Decision whether child witness has sufficient intelligence primarily rest with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. (Ratansinh Dalsukhbhai Nayak Vs State of Gujarat) 2004(1) Criminal Court Cases 416 (S.C.)

SC **Evidence Act, 1872, Section 118** - Child witness - Evidence Act does not prescribe any particular age as determinative factor to treat a witness to be a competent one - A child of tender age can be allowed to testify if he had intellectual capacity to understand questions and gives rational answers thereto. (Ratansinh Dalsukhbhai Nayak Vs State of Gujarat) 2004(1) Criminal Court Cases 416 (S.C.)

SC **Evidence Act, 1872, Section 118** - Child witness - Evidence of child witness not to be per se rejected - However Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (Ratansinh Dalsukhbhai Nayak Vs State of Gujarat) 2004(1) Criminal Court Cases 416 (S.C.)

Evidence Act, 1872, Section 118 - Child witness - Is a competent witness - Court should look for corroboration to ensure that the child witness has not deposed under the influence of any person because of his tender age - If Court comes to the conclusion that the testimony of the child witness inspires confidence and has not been shaken in cross-examination and finds corroboration from other circumstances then there is no bar for Court to act upon the testimony of a child witness. (Ajay Kumar Vs State of Punjab) 2003(1) Criminal Court Cases 554 (P&H)

Evidence Act, 1872, Section 118 - Child witness - Sole eye witness -

Conviction on the basis of testimony of child, who was the sole eye witness can be sustained. (Raju alias Raj Kumar Vs State of Haryana) 2005(4) Criminal Court Cases 43 (P&H)

Evidence Act, 1872, Section 118 - Child witness - When a child witness gives answers fearlessly, intelligently and boldly and gives minute details of the occurrence and withstood the cross-examination, the credibility of such a child witness cannot be discarded on the ground of being a child. (Pawan Kumar Vs State of Haryana) 2004(2) Criminal Court Cases 768 (P&H)

Evidence Act, 1872, Section 118 - Power of attorney holder - There is no embargo for a power of attorney holder to appear as a witness - Power of attorney holder whether has personal knowledge about the controversy or not is a question which can be thrashed out by cross-examining him and only if it is found that power of attorney holder had no personal knowledge about the facts in controversy, the evidentiary value of his deposition can be whittled down. (Raees Ahmed Vs Shrigopal Prakash) 2003(1) Civil Court Cases 666 (Rajasthan)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Sections 364A, 365, 387, 307 - Child - Abduction of child of 10 years for ransom - Accused gave injuries and threw the child when he became unconscious - Accused convicted and sentenced to life imprisonment mainly on statement of child - Child could not be shattered in cross examination - Court found him fit to make statement after putting questions - There is no bar for Court to act upon the testimony of a child witness. (Ajay Kumar Vs State of Punjab) 2003(1) Criminal Court Cases 554 (P&H)

SC Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape - Competent Witness - Appreciation of evidence - Rural and illiterate witness - Victim not an intelligent girl, had passed out in class 3 on third attempt - Her Mother a rustic woman and illiterate - To examining their evidence with microscopic approach would be insult to justice - Approximate dates or periods given - Evidence relied. (State of Himachal Pradesh Vs Shree Kant Shekari) 2005(1) Criminal Court Cases 158 (S.C.)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape - Of child aged 5/6 years - Victim was under great trauma and

this could be reason that after a lapse of 15/16 months of the incident she was not in a position to even raise a finger of accusation towards the appellant - Conduct of victim does not create any doubt in the mind of Court so far as involvement of accused is concerned - Case otherwise proved by eye witnesses - Conviction upheld. (Kapoor Singh alias Kapoora Vs State of Haryana) 2005(2) Criminal Court Cases 692 (P&H)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape - Victim dumb, deaf and mentally retarded - At time of medical examination doctor considered victim to be a person who was in a position to understand the writing relating to consent - Nothing on record to indicate that she was not a person who could understand questions put to her or give rational answers - The authority to decide whether such a person is competent witness is Court - Non examination of victim would deprive defence of right of cross-examination - Accused acquitted. (Suresh Vs State of Maharashtra) 2004(1) Criminal Court Cases 326 (Bombay)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape of 5 years child - Statement of child witness natural, true and voluntary and supported by Medical evidence - There was no motive to make false statement - A father would never expose his daughter to ignominy except when unavoidably necessary - Conviction and sentence of life imprisonment, upheld. (Malkiat Singh Vs State of Punjab) 2005(2) Criminal Court Cases 269 (P&H)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape of child aged 5 years - Statement of victim not recorded during investigation and she not named as a witness in the list of prosecution witnesses - Victim brought in witness box at the instance of Court - Opportunity to cross examine given - Lacuna, if any, in not recording statement of victim at Investigation stage does not make any difference as proper opportunity was given to defence to cross examine the victim. (Malkiat Singh Vs State of Punjab) 2005(2) Criminal Court Cases 269 (P&H)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape - Of child aged 5/6 years - Victim was under great trauma and this could be reason that after a lapse of 15/16 months of the incident she was not in a position to even raise a finger of accusation towards the appellant - Conduct of victim does not create any doubt in the mind of Court so far

as involvement of accused is concerned - Case otherwise proved by eye witnesses - Conviction upheld. (Kapoor Singh alias Kapoora Vs State of Haryana) 2005(2) Criminal Court Cases 692 (P&H)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape - Child of 6 years of age - Contradictions and inconsistencies in evidence of a child witness - AIR 1983 SC 753 followed wherein held that much importance cannot be attached to minor discrepancies and reasons assigned emphasized. (State of Karnataka Vs Revannaiah) 2005(4) Criminal Court Cases 276 (Karnataka)

SC Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape - Competent Witness - Appreciation of evidence - Rural and illiterate witness - Victim not an intelligent girl, had passed out in class 3 on third attempt - Her Mother a rustic woman and illiterate - To examining their evidence with microscopic approach would be insult to justice - Approximate dates or periods given - Evidence relied. (State of Himachal Pradesh Vs Shree Kant Shekari) 2005(1) Criminal Court Cases 158 (S.C.)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape of 5 years child - Statement of child witness natural, true and voluntary and supported by Medical evidence - There was no motive to make false statement - A father would never expose his daughter to ignominy except when unavoidably necessary - Conviction and sentence of life imprisonment, upheld. (Malkiat Singh Vs State of Punjab) 2005(2) Criminal Court Cases 269 (P&H)

Evidence Act, 1872, Section 118, Indian Penal Code, 1860, Section 376 - Rape of child aged 5 years - Statement of victim not recorded during investigation and she not named as a witness in the list of prosecution witnesses - Victim brought in witness box at the instance of Court - Opportunity to cross examine given - Lacuna, if any, in not recording statement of victim at Investigation stage does not make any difference as proper opportunity was given to defence to cross examine the victim. (Malkiat Singh Vs State of Punjab) 2005(2) Criminal Court Cases 269 (P&H)

Evidence Act, 1872, Sections 118, 119 - Dumb, deaf and illiterate witness - A party should not suffer because of the impairment in all the ways and in such a situation, such person cannot be denied justice even though the

evidence is adduced through somebody - It is always desirable that such a party should be assisted by the son and evidence of the son should be treated as the evidence of the mother. (Khaleel Beig Vs Smt.Sk.Mothi Begum) 2006(2) Criminal Court Cases 815 (A.P.)

Evidence Act, 1872, Section 119 - Deaf and dumb witness - Prayer for cross examination of such witness in presence of expert - Declined by trial Court - Permission given to cross examine the witness, by himself putting questions in the language of signals, so as to elicit answers. (Nar Khan Vs State) 2002(1) Criminal Court Cases 438 (Raj.)

Evidence Act, 1872, Section 119 - Deaf and dumb witness - Statement recorded by signs without assistance of an expert - Held, there is no reason to discard her testimony solely on the basis of non assistance by an expert in recording her statement. (Deshraj Vs State of Rajasthan) 2005(2) Criminal Court Cases 264 (Rajasthan)

Evidence Act, 1872, Section 119 - Deaf witness - Can be examined on Commission as is provided u/s 119 of the Evidence Act. (Kamla Bakshi Vs Union of India & Ors.) 2004(3) Civil Court Cases 145 (J&K)

Evidence Act, 1872, Section 119 - Dumb witness - Evidence without recording signs is no evidence. (Dilawarsab Alisab Jakati Vs State of Karnataka) 2005(3) Criminal Court Cases 603 (Karnataka)

Evidence Act, 1872, Section 119, Indian Penal Code, 1860, Section 376 - Rape victim - Deaf and dumb - Statement recorded by signs without assistance of an expert - Her testimony cannot be discarded solely on the basis of non assistance by an expert in recording her statement - Victim had narrated incident to her mother and brother immediately and they supported the version of prosecutrix - Victim was a married lady having three children - Absence of injury in her private parts not a reason to disbelieve her - No material to draw any inference as to her consent or that her testimony was unnatural or improbable - Conviction and sentence calls for no interference. (Deshraj Vs State of Rajasthan) 2005(2) Criminal Court Cases 264 (Rajasthan)

Evidence Act, 1872, Section 119, Oaths Act, 1969, Section 4 - Deaf and dumb witness - Court has to assess the competency of the interpreter after satisfying itself - Then Court has to administer oath and such an interpreter

becomes a witness of the Court - Then oath has to be administered to the deaf and dumb witness through the interpreter as the Court will not be knowing the language or sign as to show the oath has to be administered to such witness. (Dilawarsab Alisab Jakati Vs State of Karnataka) 2005(3) Criminal Court Cases 603 (Karnataka)

Evidence Act, 1872, Section 122 - Dialogue between husband and wife is inadmissible - However what is witnessed by wife is admissible in evidence as witnessing a thing is not communication. (Bhalchandra Namdeo Shinde Vs State of Maharashtra) 2003(3) Criminal Court Cases 193 (Bombay)

Evidence Act, 1872, Section 132, Constitution of India, Art.20(3) - State case and private complaint on basis of same incident - Witness facing trial in private complaint only - Even if he is compelled to depose as witness in State case that would not amount to compulsion to give evidence against himself. (State of Maharashtra Vs Balasaheb @ Ramesh Laxman Deshmukh) 2002(1) Criminal Court Cases 271 (Bom.)

Evidence Act, 1872, Section 133 - Accomplice - Accomplice means an associate in crime - Accomplice is a competent witness against accused - A person who is under threat of death or other form of pressure cannot be considered a willing participant in crime and thus an accomplice - Principles regarding testimony of an approver and his corroboration - Enumerated. (Babu Lal Kahar Vs State of Bihar) 2003(2) Criminal Court Cases 684 (Patna)

SC Evidence Act, 1872, Section 133 - Accomplice - Conviction of an accused on the testimony of an accomplice cannot be said to be illegal but Court will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. (K.Hashim Vs State of Tamil Nadu) 2005(1) Criminal Court Cases 635 (S.C.)

Evidence Act, 1872, Sections 133 r/w S.114 Illustration (b) - Accomplice - Is a competent witness to give evidence - However conviction cannot be based on uncorroborated testimony of approver - Nature and extent of such corroboration depends upon facts of each case - Where confession made by approver is self exculpatory, no reliance can be placed on evidence of such approver. (Banwari Lal Vs State of Himachal Pradesh) 2003(3) Criminal Court Cases 36 (H.P.)

Evidence Act, 1872, Section 133-B, Indian Penal Code, 1860, Section 304-B - Dowry death - Death occurred within one year of marriage, at matrimonial home, otherwise than in normal circumstances - Demand of dowry and harassment proved by oral evidence - Dead body cremated clandestinely without informing parents of deceased or Police - Deceased not suffering from any ailment which could result into her death - Conviction upheld. (Ombir Vs State of Haryana) 2005(4) Criminal Court Cases 880 (P&H) (DB)

Evidence Act, 1872, Section 134 - No particular number of witnesses is required for proof of any fact - Evidence has to be weighed and not counted - Conviction can be based on evidence of one credible eye witness. (Kishan Singh Vs The State of Rajasthan) 2002(3) Criminal Court Cases 237 (Rajasthan)

SC Evidence Act, 1872, Section 134, Criminal Procedure Code, 1973, Section 173 - Number of witnesses - Ordinarily prosecution should examine all witnesses whose names have been disclosed in the charge-sheet - Such a rule is however, not of universal application - Each case has to be considered on its own facts. (Ramjee Rai & Ors. Vs State of Bihar) 2006(4) Criminal Court Cases 758 (S.C.) : 2006(3) Apex Court Judgments 440 (S.C.)

SC Evidence Act, 1872, Section 134, Indian Penal Code, 1860, Sections 302, 34 and 149 - Murder - Common intention - Independent witness - Accused, 14 in number duly armed came to the house of deceased in a group and started assaulting him - Accused were carrying pistols, gandasas, lathies and spears - Offence committed in a village owing to land dispute - When an offence is committed in a village owing to land dispute, independent witnesses may not come forward - Some of the witnesses examined, independent and consistent in their evidence. (Ramjee Rai & Ors. Vs State of Bihar) 2006(4) Criminal Court Cases 758 (S.C.) : 2006(3) Apex Court Judgments 440 (S.C.)

Evidence Act, 1872, Section 136 - Nature of document disputed - When finding as to nature of documents is to affect the rights of either party either way then Court to allow parties to adduce evidence during trial, after receiving the disputed document with an endorsement 'subject to admissibility', on all issues including the nature of the disputed document. (Idamakanti Ananthamma Vs Idamakanti Ramanamma) 2003(2) Civil Court

Cases 86 (A.P.)

Evidence Act, 1872, Section 137 - Co-defendant - Cross examination
- Condition precedent for giving an opportunity to cross examine co-defendant is that there exists a conflict of interest between them and if there is no conflict of interest then such an opportunity need not be given. (M/s Ennen Castings (P) Ltd. Vs M.M.Sundaresh) 2003(3) Civil Court Cases 526 (Karnataka)

SC Evidence Act, 1872, Section 137 - Cross examination - A party which fails to avail of the opportunity to cross-examine at the appropriate stage is precluded from taking the plea of non-observance of principles of natural justice at a later stage. (Daroga Singh & Ors. Vs B.K.Pandey) 2005(1) Criminal Court Cases 442 (S.C.)

Evidence Act, 1872, Section 137 - Cross examination - Failure to cross examination on a particular point recorded in examination-in-chief - The same is deemed to be admitted. (Amrik Singh Vs State of Punjab) 2005(4) Criminal Court Cases 900 (P&H)

Evidence Act, 1872, Section 137 - Cross examination by co-defendant
- Can be allowed when rights of co-defendant are in conflict. (M/s Ennen Castings (P) Ltd. Vs M.M.Sundaresh) AIR 2003 Karnataka 293

Evidence Act, 1872, Section 137 - Defence of defendant struck out
- Defendant has right to cross examine plaintiff and his witnesses, to show on the basis of material on record that plaintiff is not entitled to any decree. (Sheshrao Raibhan Ingale Vs Shilpa Sheshrao Ingale) 2005(3) Civil Court Cases 102 (Bombay)

Evidence Act, 1872, Section 137 - Defence witness - Not cross examined as post of P.P. was not manned - Held, it is not a statement in the eye of law and it is not admissible in evidence. (Anwar Ali Vs State of Rajasthan) 2003(1) Criminal Court Cases 531 (Rajasthan)

Evidence Act, 1872, Section 137 - No cross-examination of a witness of facts stated by him in his examination - Inference to be drawn is that the statement of the witness was not contested. (Jaswinder Singh & Ors. Vs Kartar Singh & Ors.) 2004(3) Civil Court Cases 80 (P&H)

Evidence Act, 1872, Section 137 - Proforma defendant - Cross

examination - A proforma defendant has no right to examine either adversely or friendly plaintiff's witnesses - Nor he has any right to bring his own witnesses and cross examine adversely defendant's witnesses - Moreso when proforma defendant has not filed any written statement. (State of West Bengal Vs Smt.Rama Devi) 2003(1) Civil Court Cases 48 (Calcutta)

Evidence Act, 1872, Section 137 - Proforma defendant - Has no right to examine either adversely or friendly plaintiff's witnesses - Nor he has any right to bring his own witnesses and cross examine adversely defendants witnesses - Moreso when he has not filed any written statement. (State of West Bengal Vs Rama Devi) AIR 2002 Calcutta 235

Evidence Act, 1872, Section 137 - Re-examination - Object - It is for the purpose of reconciling any discrepancies that may exist between examination-in-chief and cross-examination or for the purpose of removing or diminishing any suspicion that the cross-examination may have cast on the evidence in-chief or to enable the witness to state the whole truth as to matters which have only been partially dealt with in cross-examination. (Subhash Chandra Vs The State of Rajasthan) 2002(2) Criminal Court Cases 597 (Rajasthan)

Evidence Act, 1872, Section 137 - Re-examination - Opposite party with permission of Court has right to further cross examine upon the matter. (Subhash Chandra Vs The State of Rajasthan) 2002(2) Criminal Court Cases 597 (Rajasthan)

Evidence Act, 1872, Section 137 - Re-examination - Star witness in murder trial - In later part of his cross-examination stating in favour of accused - Matter being grave it is proper on part of prosecutor to seek re-examination of witness by way of explanation - Improper to reject prayer for re-examination by the Court. (Subhash Chandra Vs The State of Rajasthan) 2002(2) Criminal Court Cases 597 (Rajasthan)

Evidence Act, 1872, Section 137 - Suggestions made in cross examination of prosecution witnesses - May be called into aid only to lend assurance to prosecution case. (Rajesh Namdeo Mhatre Vs State of Maharashtra) 2003(1) Criminal Court Cases 55 (Bombay)

Evidence Act, 1872, Section 137, 138 - Witness examined -

Opportunity to cross examine given but counsel not prepared with the facts of the case - Prayer for adjournment declined - To meet the ends of justice, last opportunity given to cross examine the witnesses. (Padam Singh & Ors. Vs State of Haryana) 2005(3) Criminal Court Cases 95 (P&H)

Evidence Act, 1872, Section 137, Civil Procedure Code, 1908, Order 18 Rule 4 - Affidavit filed by way of examination-in-chief - Right of cross examination of that witness is not taken away. (Shamrao Vishnu Kunjir Vs Suresh Vishnu Kunjir & Ors.) 2005(3) Civil Court Cases 219 (Bombay)

Evidence Act, 1872, Sections 137 and 154 - Hostile witness - At the stage of cross examination by defence witness declared hostile - Prosecution allowed to cross examine the witness - Accused is entitled to cross-examine the witness to the extent the witness in the cross-examination done by the Public Prosecutor has contradicted himself in relation to the statements/admissions made by him in the examination-in-chief. (Pradhan Vs State of Maharashtra) 2005(2) Criminal Court Cases 476 (Bombay)

Evidence Act, 1872, Sections 137, 138 - Re-examination - If during re-examination new matters are introduced then opposite party should be afforded an opportunity to cross examine the witness again. (Tanala Satyanarayana Vs Tanali Ramarao & Ors.) 2006(3) Civil Court Cases 279 (A.P.)

Evidence Act, 1872, Sections 138 - Witness - Not fully cross examined - Death of witness - His evidence would not be inadmissible - How much to be attached shall be decided considering other facts and circumstances surrounding it. (Dever Park Builders Pvt.Ltd. Vs Madhuri Jalan) AIR 2002 Calcutta 281

Evidence Act, 1872, Sections 138, 33 - Cross examination partly held - Death of defendant in meantime - His evidence is not inadmissible - There is no provision in law that if a witness is not cross-examined either in full or in part his evidence would be absolutely inadmissible - How much weight such evidence carries is to be decided considering other facts and circumstances surrounding it - Provisions of S.33 are not applicable to such a case. (Dever Park Builders Pvt.Ltd. & Ors. Vs Smt.Madhuri Jalan) 2003(1) Civil Court Cases 598 (Calcutta)

Evidence Act, 1872, Section 138 - Cross examination - Absence of - Witness tendered for cross examination without there being any examination in chief - Adverse inference cannot be drawn when that witness is not cross examined as cross examination without there being examination-in-chief is not permissible and it amounts to giving up the witness. (Rakesh & Anr. Vs State of Haryana) 2005(4) Criminal Court Cases 645 (P&H)

Evidence Act, 1872, Section 138 - Cross examination - Need not to be confined to the facts to which the witness testified on his examination in chief. (Nasir Khan & Anr. Vs State of Chhattisgarh) 2003(2) Criminal Court Cases 271 (Chhattisgarh)

Evidence Act, 1872, Section 138 - Cross examination - Written statement not filed - Still party has right to cross examine witnesses of plaintiff and to participate in the process of hearing - However, the scope of cross-examination cannot be permitted to travel beyond limited object of pointing out falsity or weakness of plaintiff's case and in any case, it cannot be converted into presentation of defence theory. (Suryabhan Vs Shobha Bhimrao Pawar) 2003(2) Civil Court Cases 155 (Bombay)

Evidence Act, 1872, Section 138 - Two set of defendants - Set of defendants opposing to the plaintiff's case must be allowed to cross examine the plaintiff's witnesses after the other set of defendants have cross examined. (Chandra Sekhar Pattjoshi Vs Jogendra Pattjoshi & Ors.) 2004(2) Civil Court Cases 09 (Orissa)

SC Evidence Act, 1872, Section 138, Criminal Procedure Code, 1973, Section 311 - Court witness - Right to cross examine - A witness summoned by Court is not a witness of any particular party - Court should give the right of cross examination to the complainant. (Zahira Habibullah Sheikh & Anr. Vs State of Gujarat & Ors.) 2006(2) Apex Court Judgments 179 (S.C.) : 2006(2) Criminal Court Cases 385 (S.C.)

SC Evidence Act, 1872, Section 145 - Contradictions - Provision of S.145 Evidence Act is applicable only when same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding - Witness cannot be contradicted by the statement of another witness - Evidence of a witness cannot be demolished by referring to the evidence of other witnesses. (Chaudhari Ramjibhai Narasangbhai Vs

State of Gujarat & Ors.) 2004(1) Criminal Court Cases 500 (S.C.)

SC **Evidence Act, 1872, Section 145** - Discrediting PW - Defence version not put to PW in cross examination - No credence can be given to defence evidence. (Majid Vs State of Haryana) 2002(2) Criminal Court Cases 499 (S.C.)

SC **Evidence Act, 1872, Section 145** - Previous statement - Disowning by witness - Witness should be cross examined by inviting his attention to those parts of it which are to be used for the purpose of contradicting him - Unless done so testimony of a witness will not be vitiated. (Raj Kishore Jha Vs State of Bihar & Ors.) 2004(1) Criminal Court Cases 213 (S.C.) : 2003(2) Apex Court Judgments 656 (S.C.)

Evidence Act, 1872, Section 145 - 'Previous statement made in writing or reduced into writing' - Does not expressly refer to a statement made or recorded either under Section 161 or 164 Cr.P.C. - The statement made in writing or reduced into writing need not be before any authority as such. (State Vs P.Seshagiri Rao & Anr.) 2002(1) Criminal Court Cases 317 (A.P.)

SC **Evidence Act, 1872, Section 145** - Scope - Provision of Section 145 Evidence Act is attracted when a specific contradiction is required to be taken - In certain cases omissions are also considered to be contradictions. (Bishna @ Bhiswadeb Mahato Vs State of West Bengal) 2006(1) Criminal Court Cases 71 (S.C.)

Evidence Act, 1872, Section 145 - Statement recorded u/s 162 Criminal Procedure Code, 1973 - Can be used in civil proceedings in view of Section 145 of Evidence Act. (Ranjit Satardekar & Anr. Vs Joe Mathias & Anr.) 2006(3) Civil Court Cases 344 (Bombay)

Evidence Act, 1872, Section 145 - Statement recorded u/s 164 Cr.P.C. by a committal Court - It is a previous statement and can be made use by the defence for the purpose of contradiction and for the purpose of impeaching the credibility of the evidence given by the witness. (Criminal Procedure Code, 1973, Section 164). (Allaudin Vs State of Assam) 2004(3) Criminal Court Cases 130 (Gauhati)

Evidence Act, 1872, Section 145 - Statement recorded u/s 164

Criminal Procedure Code, 1973 by a committal Court - It is a previous statement and can be made use by the defence for the purpose of contradiction and for the purpose of impeaching the credibility of the evidence given by the witness. (Criminal Procedure Code, 1973, Section 164). (Allaudin Vs State of Assam) 2004(3) Criminal Court Cases 130 (Gauhati)

Evidence Act, 1872, Section 145 - Witness - Contradiction with previous statement - Even in civil cases a witness can be contradicted with his statement recorded u/s 162 Cr.P.C. (Jagdish Chamriya Barela Vs State of M.P.) 2002(3) Criminal Court Cases 361 (M.P.)

Evidence Act, 1872, Section 145 - Witness - Impeaching credit - Former statement - Unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. (Bhanwari & Ors. Vs State of Rajasthan) 2002(2) Criminal Court Cases 114 (Raj.)

Evidence Act, 1872, Section 145, Criminal Procedure Code, 1973, Section 161 - Prosecution witness can only be contradicted with statement recorded u/s 161 Cr.P.C. - Defence witness cannot be contradicted or corroborated either by prosecution or defence with aid of a statement recorded u/s 161 Cr.P.C. (State of Kerala Vs Ramachandran) 2002(3) Criminal Court Cases 534 (Kerala)

Evidence Act, 1872, Section 145, Criminal Procedure Code, 1973, Sections 161 & 162 - Cross examination of witness with previous statement - There is no prohibition imposed by S.145 for contradicting the witness from his previous statement recorded otherwise than during investigation under S.162 Cr.P.C. (Jagdish Chamriya Barela Vs State of M.P.) 2002(3) Criminal Court Cases 361 (M.P.)

Evidence Act, 1872, Section 145, Criminal Procedure Code, 1973, Sections 161 & 162 - Hostile witness - Cross examination of own witness - Permission can be granted only when examination-in-chief is closed and party calling witness becomes adverse party - If prosecution wants to cross-examine his own witness under Section 145 Criminal Procedure Code, 1973 regarding his previous statements recorded under Section 161 Criminal Procedure Code, 1973 as provided under Section 162 then it has to close the examination-in-chief. (Central Bureau of Investigation Vs Arun Kumar Kaushik) 2006(4) Criminal Court Cases 251 (Allahabad)

Evidence Act, 1872, Sections 145, 153, 155, 161 - Witness - Impeaching credit - A witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Court by calling his attention to those parts of it which are to be used for the purpose of contradiction. (Bhanwari & Ors. Vs State of Rajasthan) 2002(2) Criminal Court Cases 114 (Raj.)

Evidence Act, 1872, Sections 145, 155 - Witness - Former statement - Contradiction - Unless former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness since there are bound to be some discrepancies between the narrations of different witnesses or as between two statements of the same witness. (Sadhuram & Anr. Vs State of Rajasthan) 2002(1) Criminal Court Cases 390 (Raj.)

Evidence Act, 1872, Section 154 - Hostile witness - A witness cannot be declared hostile even prior to his examination as a witness in the case - Courts cannot presuppose that there is every likelihood that witness will turn hostile and will not support the case - There must be something concrete before the Court to come to a conclusion that it should permit cross-examination of the witness as contemplated u/s 154 of the Evidence Act. (Rehana Begum Vs Mirza M. Shaiulla Baig (D) by LRs.) 2006(1) Civil Court Cases 514 (Karnataka)

SC Evidence Act, 1872, Section 154 - Hostile witness - Accused gave answers in favour of defence during cross examination - When the witness had not stuck to the stand in examination-in-chief and no permission was taken then, order declining permission calls for no interference. (State of Bihar Vs Lalu Prasad @ Lalu Prasad Yadav) 2002(3) Criminal Court Cases 317 (S.C.)

Evidence Act, 1872, Section 154 - Hostile witness - Cannot be believed qua one accused and disbelieved qua the other - AIR 1975 S.C. 1400 followed wherein held that testimony of a hostile witness is to be discarded altogether. (Amarjit Singh Vs State of Punjab) 2006(2) Criminal Court Cases 239 (P&H) (DB)

Evidence Act, 1872, Section 154 - Hostile witness - Court can accept statement of a hostile witness provided it inspires confidence in the mind of

Court - This is based on the principles that “Falsus in Uno Falsus in omnibus” is not applicable in criminal cases and as such Courts should separate grain of truth from chaff of falsehood. (Mahantesh Vs The State of Karnataka) 2006(2) Criminal Court Cases 13 (Karnataka) (DB)

Evidence Act, 1872, Section 154 - Hostile witness - Court not to straightaway discard their evidence - If evidence of hostile witness is found to be consistent with theories put for, either by prosecution or defence same can be made use of by either side. (Karbasappa & Ors. Vs State Through Narona Police Station) 2004(4) Criminal Court Cases 332 (Karnataka)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Entire evidence of a hostile witness is not effected. (Aman Kumar & Anr. Vs State of Haryana) 2004(2) Criminal Court Cases 212 (S.C.)

Evidence Act, 1872, Section 154 - Hostile witness - Entire testimony of a hostile witness is not to be discarded - It can be subjected to close scrutiny and that portion of evidence which is consistent with the case of the prosecution or defence may be accepted. (Azad Singh & Anr. Vs State of Haryana) 2005(3) Criminal Court Cases 544 (P&H)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Evidence of a hostile witness not to be totally rejected - It can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or the defence may be accepted. (State of Rajasthan Vs Teg Bahadur) 2005(1) Criminal Court Cases 49 (S.C.)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Evidence of a hostile witness not to be treated as effaced from record - It can be relied upon in part. (Santosh Kumar Vs State of M.P.) 2006(3) Apex Court Judgments 142 (S.C.)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Evidence of a hostile witness not to be totally rejected - It can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or the defence may be accepted. (State of Rajasthan Vs Teg Bahadur) 2005(1) Criminal Court Cases 49 (S.C.)

Evidence Act, 1872, Section 154 - Hostile witness - Evidence of a

hostile witness is admissible to that extent which supports the case of the prosecution - Entire statement of a hostile witness cannot be discarded. (Krishan & Ors. Vs State of Haryana) 2005(3) Criminal Court Cases 184 (P&H)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Evidence of a hostile witness not to be totally rejected - It can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or the defence may be accepted. (State of Rajasthan Vs Teg Bahadur) 2005(1) Apex Court Judgments 88 (S.C.)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Evidence of a hostile witness not to be treated as effaced from record - It can be relied upon in part. (Santosh Kumar Vs State of M.P.) 2006(4) Criminal Court Cases 153 (S.C.)

SC **Evidence Act, 1872, Section 154** - Hostile witness - Evidence of such a witness cannot be washed off altogether - Testimony of such a witness can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. (Radha Mohan Singh @ Lal Saheb & Ors. Vs State of U.P.) 2006(1) Criminal Court Cases 895 (S.C.) : 2006(1) Apex Court Judgments 414 (S.C.)

SC **Evidence Act, 1872, Section 154** - Hostile Witness - Evidentiary value - If a witness is declared hostile it does not result in the automatic rejection of his evidence - Evidence of a hostile witness if it finds corroboration can be taken into account while judging the guilt of an accused. (Lella Srinivasa Rao Vs State of Andhra Pradesh) 2004(2) Criminal Court Cases 390 (S.C.)

Evidence Act, 1872, Section 154 - Hostile witness - His evidence remains admissible in evidence - Conviction can be based upon the testimony of such witness. (Boina Mallaiah Vs State of A.P.) 2003(2) Criminal Court Cases 617 (A.P.)

Evidence Act, 1872, Section 154 - Hostile witness - Merely because plaintiff's witness did not support him, it cannot be said that he is a hostile witness and speaking falsehood - Evidence of hostile witness need not be rejected in toto. (C.Sesha Reddy Vs T.Basavana Goud) 2004(2) Civil Court Cases 23 (Karnataka)

Evidence Act, 1872, Section 154 - Hostile witness - Not defined anywhere - In normal parlance, witness who speaks something against the interest of the party who introduced him as witness, would be termed as 'hostile witness'. (Tanala Satyanarayana Vs Tanali Ramarao & Ors.) 2006(3) Civil Court Cases 279 (A.P.)

Evidence Act, 1872, Section 154 - Hostile witness - Part of testimony - Can be relied if it is creditworthy. (Boina Mallaiah Vs State of A.P.) 2003(2) Criminal Court Cases 617 (A.P.)

Evidence Act, 1872, Section 154 - Hostile witness - Reliance on evidence of such a witness - Three aspects to be borne in mind : (a) The court must look for evidence which is advantageous to the parties; (b) That the Court must be extremely cautious and circumspect before accepting the evidence of a hostile witness; and (c) That it must look for corroboration of the version from other reliable evidence. (Lingu S/o Dharma Meshram Vs State of Maharashtra) 2004(1) Criminal Court Cases 551 (Bombay)

Evidence Act, 1872, Section 154 - Hostile witness - Testimony of a hostile witness does not completely efface to the ground - Such evidence is admissible in the trial and there is no legal bar to base a conviction upon the testimony if corroborated by any other reliable witness. (Natabar Aunria Vs State of Orissa) 2003(2) Criminal Court Cases 531 (Orissa)

Evidence Act, 1872, Section 154, 145 - Hostile witness - Witness when resiles from his previous statement made in Court - The only requirement of law is that such witness is to be confronted with his previous statement made before Court as provided in Section 145 of Evidence Act - Witness when such confronted then his statement is admissible in evidence. (Krishan & Ors. Vs State of Haryana) 2005(3) Criminal Court Cases 184 (P&H)

SC Evidence Act, 1872, Section 154, Civil Procedure Code, 1908, Order 18 Rule 4, Order 26 Rules 16, 16-A, 17 & 18 - Witness - Examination by Commission - Commission examining a witness has no right to declare a witness hostile - For declaring a witness hostile permission of Court has to be taken and it is only after grant of such permission by Court that Commissioner can allow a party to cross examine his own witness. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(3) Civil Court Cases 420 (S.C.)

SC **Evidence Act, 1872, Section 154, Criminal Procedure Code, 1973, Section 161** - A portion of evidence not consistent with statement u/s 161 Cr.P.C. and witness declared hostile - There cannot be total rejection of the evidence - Portion which is in favour of the prosecution or the accused may be accepted but the same shall be subject to close scrutiny. (Gurpreet Singh Vs State of Haryana) 2003(1) Criminal Court Cases 128 (S.C.)

Evidence Act, 1872, Sections 155, 145 - Witness - Impeaching credit of witness - U/s 145 the credit of a witness can be impeached (1) by cross examination of his previous statement without such writing being shown to him (2) If to contradict by recitals, his attention must before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. (Sadhuram & Anr. Vs State of Rajasthan) 2002(1) Criminal Court Cases 390 (Raj.)

SC **Evidence Act, 1872, Section 155(3)** - Credit of a witness can be impeached by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. (Majid Vs State of Haryana) 2002(2) Criminal Court Cases 499 (S.C.)

Evidence Act, 1872, Section 157 - Hearsay evidence - For its admissibility prosecution is required to establish that the version given by eye-witnesses was at or about the time when the fact took place - If the version of the eye witness is at the time of the incident, there is no difficulty in applying S.157 of the Evidence Act but in either case the only thing required is to have carefully examined the version. (Tarachand Vs State of Rajasthan) 2002(1) Criminal Court Cases 327 (Raj.)

SC **Evidence Act, 1872, Section 157** - Previous statement of a particular witness - Can be used to corroborate only his own evidence during trial and not evidence of other witnesses. (Sashi Jena & Ors. Vs Khadal Swain & Anr.) 2004(1) Apex Court Judgments 528 (S.C.)

Evidence Act, 1872, Sections 159, 160 - Examination of Investigating Officer - Refreshing memory from case file - Investigating Officer can refresh his memory from case file and same is not contrary to law. (Harchanda Vs State of Rajasthan) 2004(2) Criminal Court Cases 296 (Rajasthan)

Evidence Act, 1872, Section 165 - Scope - Court should not pass

order for placing evidence on record which is not produced by the complainant when an opportunity was granted - It is not for the Court to aid prosecution case and take steps for elimination of lacunae - If prosecution has come up with lacunae in its case the benefit must go to the defence. (Gurucharan Singh Vs Mahendra Lalwani) 2006(2) Criminal Court Cases 254 (Rajasthan)

Evidence Act, 1872, Section 165, Criminal Procedure Code, 1973, Section 311 - Witness - Recall - A witness cannot be recalled to fill up the lacunae in the case - A witness can be recalled when it is essential for the just decision of the case. (State of Haryana Vs Ram Parshad) 2006(2) Criminal Court Cases 746 (P&H)

Evidence Act, 1872, Section 165, Criminal Procedure Code, 1973, Section 311 - Witness - Recall - Statement of witness that time of occurrence was 7 PM whereas the time was 7 AM - This is an error - Witness can be recalled to correct an error because to err is human - Accused not likely to suffer any prejudice as he will get ample opportunity to cross examine the witness - Recall of witness allowed. (State of Haryana Vs Ram Parshad) 2006(2) Criminal Court Cases 746 (P&H)

Evidence Act, 1872, Section 165, Negotiable Instruments Act, 1881, Section 138 - Dishonour of cheque - Arguments heard and case fixed for orders - Magistrate in suo motu exercise of discretion directed for production of accounts concerning petitioner available with complainant - Document ordered to be filed was neither filed nor exhibited by complainant during trial - Court not to aid prosecution and take steps to fill up the lacunae - Impugned order set aside. (Gurucharan Singh Vs Mahendra Lalwani) 2006(2) Criminal Court Cases 254 (Rajasthan)